

HOUSE BILL NO. 245

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOTT, Martin

Introduced: 3/8/95

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fetal homicide and assaults on fetuses."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 11.41.100(a) is amended to read:

4 (a) A person commits the crime of murder in the first degree if

5 (1) with intent to cause the death of another person or a fetus, the
6 person

7 (A) causes the death of any person or fetus; or

8 (B) compels or induces any person to commit suicide through
9 duress or deception; or

10 (2) the person knowingly engages, under circumstances manifesting
11 extreme indifference to the value of human life, in a pattern or practice of assault or
12 torture of a child under the age of 16 or a fetus, and one of the acts of assault or
13 torture results in the death of the child or the fetus; for purposes of this paragraph, a
14 person "engages in a pattern or practice of assault or torture" if the person inflicts
15 serious physical injury to the child or the fetus by at least two separate acts, and one

1 of the acts results in the death of the child or the fetus.

2 * **Sec. 2.** AS 11.41.110(a) is amended to read:

3 (a) A person commits the crime of murder in the second degree if

4 (1) with intent to cause serious physical injury to another person or
5 knowing that the conduct is substantially certain to cause death or serious physical
6 injury to another person or to a fetus, the person causes the death of any person or
7 the fetus;

8 (2) the person knowingly engages in conduct that results in the death
9 of another person or a fetus under circumstances manifesting an extreme indifference
10 to the value of human life; or

11 (3) acting either alone or with one or more persons, the person commits
12 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first
13 degree, sexual assault in the second degree, burglary in the first degree, escape in the
14 first or second degree, or robbery in any degree and, in the course of or in furtherance
15 of that crime, or in immediate flight from that crime, any person causes the death of
16 a person other than one of the participants or of a fetus.

17 * **Sec. 3.** AS 11.41.115(c) is amended to read:

18 (c) A person may not be convicted of murder in the second degree under
19 AS 11.41.110(a)(3) if the only underlying crime is burglary, the sole purpose of the
20 burglary is a criminal homicide, and the person killed is the intended victim of the
21 defendant. However, if the defendant causes the death of any other person or fetus,
22 the defendant may be convicted of murder in the second degree under
23 AS 11.41.110(a)(3). Nothing in this subsection precludes a prosecution for or
24 conviction of murder in the first degree or murder in the second degree under
25 AS 11.41.110(a)(1) or (2) or of any other crime, including manslaughter or burglary.

26 * **Sec. 4.** AS 11.41.120(a) is amended to read:

27 (a) A person commits the crime of manslaughter if the person

28 (1) intentionally, knowingly, or recklessly causes the death of another
29 person or a fetus under circumstances not amounting to murder in the first or second
30 degree; or

31 (2) intentionally aids another person to commit suicide.

1 * **Sec. 5.** AS 11.41.130(a) is amended to read:

2 (a) A person commits the crime of criminally negligent homicide if, with
3 criminal negligence, the person causes the death of another person **or a fetus**.

4 * **Sec. 6.** AS 11.41.135 is amended to read:

5 Sec. 11.41.135. MULTIPLE DEATHS. If more than one person **or fetus** dies
6 as a result of a person committing conduct constituting a crime specified in
7 AS 11.41.100 - 11.41.130, each death constitutes a separately punishable offense.

8 * **Sec. 7.** AS 11.41 is amended by adding a new section to read:

9 Sec. 11.41.138. DEFENSES TO HOMICIDES INVOLVING FETUSES.
10 AS 11.41.100 - 11.41.140 do not apply to a death of a fetus

11 (1) caused by the mother of the fetus while bearing the fetus; or

12 (2) occurring during

13 (A) a legal abortion to which the mother of the fetus or her
14 legal guardian has consented or that was performed in an emergency; or

15 (B) diagnostic testing or therapeutic treatment during which
16 usual and customary standards of medical practice were used.

17 * **Sec. 8.** AS 11.41.140 is amended to read:

18 Sec. 11.41.140. **DEFINITIONS** [DEFINITION]. In AS 11.41.100 -
19 11.41.140,

20 (1) "person," [",] when referring to the victim of a crime, means a
21 human being who has been born and was alive at the time of the criminal act; **a** [. A]
22 person is "alive" if there is spontaneous respiratory or cardiac function or, when
23 respiratory and cardiac functions are maintained by artificial means, there is
24 spontaneous brain function;

25 (2) **"fetus" is human life from conception to full birth that is within**
26 **the body of its mother, but which, if brought to full term, has the potential of**
27 **independent life outside its mother's body.**

28 * **Sec. 9.** AS 11.41.200(a) is amended to read:

29 (a) A person commits the crime of assault in the first degree if

30 (1) that person recklessly causes serious physical injury to another
31 **person or to a fetus** by means of a dangerous instrument;

1 (2) with intent to cause serious physical injury to another **person or to**
2 **a fetus**, the person causes serious physical injury to any person **or fetus**;

3 (3) the person knowingly engages in conduct that results in serious
4 physical injury to another **person or to a fetus** under circumstances manifesting
5 extreme indifference to the value of human life; or

6 (4) that person recklessly causes serious physical injury to another
7 **person or to a fetus** by repeated assault using a dangerous instrument, even if each
8 assault individually does not cause serious physical injury.

9 * **Sec. 10.** AS 11.41.210(a) is amended to read:

10 (a) A person commits the crime of assault in the second degree if

11 (1) with intent to cause physical injury to another person **or to a fetus**,
12 that person causes physical injury to another person **or to a fetus** by means of a
13 dangerous instrument;

14 (2) that person recklessly causes serious physical injury to another
15 person **or to a fetus**; or

16 (3) that person recklessly causes serious physical injury to another
17 **person or to a fetus** by repeated assaults, even if each assault individually does not
18 cause serious physical injury.

19 * **Sec. 11.** AS 11.41.220(a) is amended to read:

20 (a) A person commits the crime of assault in the third degree if that person

21 (1) recklessly

22 (A) places another person in fear of imminent serious physical
23 injury by means of a dangerous instrument;

24 (B) causes physical injury to another person **or to a fetus** by
25 means of a dangerous instrument; or

26 (C) while being 18 years of age or older

27 (i) causes physical injury to a child under 10 years of
28 age and the injury reasonably requires medical treatment;

29 (ii) causes physical injury to a child under 10 years of
30 age on more than one occasion; or

31 (2) with intent to place another person in fear of death or serious

1 physical injury to the person or the person's family member makes repeated threats to
2 cause death or serious physical injury to another person or to a fetus.

3 * **Sec. 12.** AS 11.41.230(a) is amended to read:

4 (a) A person commits the crime of assault in the fourth degree if

5 (1) that person recklessly causes physical injury to another person or
6 to a fetus;

7 (2) with criminal negligence that person causes physical injury to
8 another person or to a fetus by means of a dangerous instrument; or

9 (3) by words or other conduct that person recklessly places another
10 person in fear of imminent physical injury.

11 * **Sec. 13.** AS 11.41.250(a) is amended to read:

12 (a) A person commits the crime of reckless endangerment if the person
13 recklessly engages in conduct **that** [WHICH] creates a substantial risk of serious
14 physical injury to another person or to a fetus.

15 * **Sec. 14.** AS 11.41 is amended by adding a new section to read:

16 Sec. 11.41.255. DEFENSES TO ASSAULTS INVOLVING FETUSES;
17 DEFINITION. (a) AS 11.41.200 - 11.41.255 do not apply to an injury suffered by a
18 fetus

19 (1) caused by the mother of the fetus while bearing the fetus; or

20 (2) occurring during

21 (A) a legal abortion to which the mother of the fetus or her
22 legal guardian has consented or that was performed in an emergency; or

23 (B) diagnostic testing or therapeutic treatment during which
24 usual and customary standards of medical practice were used.

25 (b) In AS 11.41.200 - 11.41.255, "fetus" has the meaning given in
26 AS 11.41.140.