

HOUSE BILL NO. 294

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES LYNN, Heinze, Dahlstrom, Wilson, Meyer

Introduced: 5/1/03

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to murder and assault of unborn children."**

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 SHORT TITLE. This Act may be known as the Laci and Connor Peterson Victims of
6 Violence Act.

7 * **Sec. 2.** AS 11.41 is amended by adding new sections to article 1 to read:

8 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the
9 crime of murder of an unborn child if the person

10 (1) with intent to cause the death of an unborn child or of another
11 person, causes the death of an unborn child;

12 (2) with intent to cause serious physical injury to an unborn child or to
13 another person or knowing that the conduct is substantially certain to cause death or
14 serious physical injury to an unborn child or to another person, causes the death of an
15 unborn child;

1 (3) while acting alone or with one or more persons, commits or
 2 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
 3 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
 4 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the
 5 first or second degree, robbery in any degree, or misconduct involving a controlled
 6 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
 7 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
 8 immediate flight from that crime, any person causes the death of an unborn child;

9 (4) knowingly engages in conduct that results in the death of an unborn
 10 child under circumstances manifesting an extreme indifference to the value of human
 11 life.

12 (b) A person may not be convicted under (a)(3) of this section if the only
 13 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
 14 and the unborn child killed is the intended victim of the defendant. However, if the
 15 defendant causes the death of another unborn child, the defendant may be convicted
 16 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
 17 conviction of murder in the first degree or murder in the second degree under
 18 AS 11.41.110(a)(1) or (2) or of any other crime, including manslaughter or burglary.

19 (c) Murder of an unborn child is an unclassified felony.

20 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits
 21 the crime of manslaughter of an unborn child if the person intentionally, knowingly, or
 22 recklessly causes the death of an unborn child under circumstances not amounting to
 23 murder of an unborn child.

24 (b) Manslaughter of an unborn child is a class A felony.

25 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
 26 person commits the crime of criminally negligent homicide of an unborn child if, with
 27 criminal negligence, the person causes the death of an unborn child.

28 (b) Criminally negligent homicide of an unborn child is a class B felony.

29 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
 30 11.41.170 do not apply to acts that

31 (1) cause the death of an unborn child if those acts were committed

1 during a legal abortion to which the pregnant woman consented; or

2 (2) are committed under usual and customary standards of medical
3 practice during diagnostic testing or therapeutic treatment.

4 * **Sec. 3.** AS 11.41 is amended by adding new sections to article 2 to read:

5 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A
6 person commits the crime of assault of an unborn child in the first degree if the person
7 knowingly causes serious physical injury to an unborn child and that child is
8 subsequently born alive.

9 (b) In this section, "serious physical injury" has the meaning given in
10 AS 11.81.900 and includes the birth of an unborn child before 37 weeks gestation if
11 the child weighs 2,500 grams or less at the time of birth.

12 (c) Assault of an unborn child in the first degree is a class C felony.

13 **Sec. 11.41.284. Assault of an unborn child in the second degree.** (a) A
14 person commits the crime of assault of an unborn child in the second degree if the
15 person

16 (1) by words or other conduct intentionally places a pregnant woman
17 in fear of death of her unborn child; or

18 (2) intentionally causes physical injury to an unborn child and that
19 child is subsequently born alive.

20 (b) Assault of an unborn child in the second degree is a class A misdemeanor.

21 **Sec. 11.41.287. Applicability of AS 11.41.280 and 11.41.284.** AS 11.41.280
22 and 11.41.284 do not apply to acts that

23 (1) cause serious physical injury or physical injury to an unborn child
24 if those acts were committed during a legal abortion to which a pregnant woman
25 consented; or

26 (2) are committed pursuant to usual and customary standards of
27 medical practice during diagnostic testing or therapeutic treatment.

28 * **Sec. 4.** AS 11.41.250(a) is amended to read:

29 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
30 title, except murder in the first and second degree, attempted murder in the first
31 degree, solicitation to commit murder in the first degree, conspiracy to commit murder

1 in the first degree, **murder of an unborn child**, sexual assault in the first degree,
 2 sexual abuse of a minor in the first degree, misconduct involving a controlled
 3 substance in the first degree, and kidnapping, are classified on the basis of their
 4 seriousness, according to the type of injury characteristically caused or risked by
 5 commission of the offense and the culpability of the offender. Except for murder in
 6 the first and second degree, attempted murder in the first degree, solicitation to
 7 commit murder in the first degree, conspiracy to commit murder in the first degree,
 8 **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor
 9 in the first degree, misconduct involving a controlled substance in the first degree, and
 10 kidnapping, the offenses in this title are classified into the following categories:

11 (1) class A felonies, which characteristically involve conduct resulting
 12 in serious physical injury or a substantial risk of serious physical injury to a person;

13 (2) class B felonies, which characteristically involve conduct resulting
 14 in less severe violence against a person than class A felonies, aggravated offenses
 15 against property interests, or aggravated offenses against public administration or
 16 order;

17 (3) class C felonies, which characteristically involve conduct serious
 18 enough to deserve felony classification but not serious enough to be classified as A or
 19 B felonies;

20 (4) class A misdemeanors, which characteristically involve less severe
 21 violence against a person, less serious offenses against property interests, less serious
 22 offenses against public administration or order, or less serious offenses against public
 23 health and decency than felonies;

24 (5) class B misdemeanors, which characteristically involve a minor
 25 risk of physical injury to a person, minor offenses against property interests, minor
 26 offenses against public administration or order, or minor offenses against public health
 27 and decency;

28 (6) violations, which characteristically involve conduct inappropriate
 29 to an orderly society but which do not denote criminality in their commission.

30 * **Sec. 5.** AS 11.81.250(b) is amended to read:

31 (b) The classification of each felony defined in this title, except murder in the

1 first and second degree, attempted murder in the first degree, solicitation to commit
 2 murder in the first degree, conspiracy to commit murder in the first degree, **murder of**
 3 **an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first
 4 degree, misconduct involving a controlled substance in the first degree, and
 5 kidnapping, is designated in the section defining it. A felony under Alaska law
 6 defined outside this title for which no penalty is specifically provided is a class C
 7 felony.

8 * **Sec. 6.** AS 11.81.900(b) is amended by adding a new paragraph to read:

9 (63) "unborn child" means the unborn offspring of a human being
 10 conceived but not yet completely born.

11 * **Sec. 7.** AS 12.55.125(b) is amended to read:

12 (b) A defendant convicted of attempted murder in the first degree, solicitation
 13 to commit murder in the first degree, conspiracy to commit murder in the first degree,
 14 **murder of an unborn child**, kidnapping, or misconduct involving a controlled
 15 substance in the first degree shall be sentenced to a definite term of imprisonment of at
 16 least five years but not more than 99 years. A defendant convicted of murder in the
 17 second degree shall be sentenced to a definite term of imprisonment of at least 10
 18 years but not more than 99 years. A defendant convicted of murder in the second
 19 degree shall be sentenced to a definite term of imprisonment of at least 20 years but
 20 not more than 99 years when the defendant is convicted of the murder of a child under
 21 16 years of age and the court finds by clear and convincing evidence that the
 22 defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or
 23 a person occupying a position of authority in relation to the child; or (2) caused the
 24 death of the child by committing a crime against a person under AS 11.41.200 -
 25 11.41.530. In this subsection, "legal guardian" and "position of authority" have the
 26 meanings given in AS 11.41.470.