

**CS FOR SENATE BILL NO. 219(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 4/16/04**

**Referred: Finance**

**Sponsor(s): SENATOR DYSON**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to offenses against unborn children."**

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

3 \* **Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

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

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

8 (2) with intent to cause serious physical injury to an unborn child or to  
9 another person or knowing that the conduct is substantially certain to cause death or  
10 serious physical injury to an unborn child or to another person, causes the death of an  
11 unborn child;

12 (3) while acting alone or with one or more persons, commits or  
13 attempts to commit arson in the first degree, kidnapping, sexual assault in the first  
14 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,  
15 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled  
 2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or  
 3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in  
 4 immediate flight from that crime, any person causes the death of an unborn child;

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

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

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

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

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

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

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

25 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -  
 26 11.41.170 do not apply to acts that

27 (1) cause the death of an unborn child if those acts were committed  
 28 during a legal abortion to which the pregnant woman consented;

29 (2) are committed under usual and customary standards of medical  
 30 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy; or

31 (3) are committed by a pregnant woman against herself and her own

1 unborn child.

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

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

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

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

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

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

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

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

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

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

24 (2) are committed under usual and customary standards of medical  
25 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy; or

26 (3) are committed by a pregnant woman against herself or her own  
27 unborn child.

28 \* **Sec. 3.** AS 11.81.250(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. 4.** 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. 5.** AS 11.81.900(b) is amended by adding a new paragraph to read:

9 (63) "unborn child" means a member of the species Homo sapiens, at  
 10 any stage of development, who is carried in the womb.

11 \* **Sec. 6.** 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 kidnapping, or misconduct involving a controlled substance in the first degree shall be  
 15 sentenced to a definite term of imprisonment of at least five years but not more than  
 16 99 years. A defendant convicted of murder in the second degree **or murder of an**  
 17 **unborn child** shall be sentenced to a definite term of imprisonment of at least 10 years  
 18 but not more than 99 years. A defendant convicted of murder in the second degree  
 19 shall be sentenced to a definite term of imprisonment of at least 20 years but not more  
 20 than 99 years when the defendant is convicted of the murder of a child under 16 years  
 21 of age and the court finds by clear and convincing evidence that the defendant (1) was  
 22 a natural parent, a stepparent, an adopted parent, a legal guardian, or a person  
 23 occupying a position of authority in relation to the child; or (2) caused the death of the  
 24 child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this  
 25 subsection, "legal guardian" and "position of authority" have the meanings given in  
 26 AS 11.41.470.