

HOUSE BILL NO. 58

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES LYNN, GATTO, AND WILSON, Elkins, Neuman, Olson

Introduced: 1/10/05

Referred: Judiciary, Finance

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.** 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;

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

4 (3) are committed by a pregnant woman against herself and her own
5 unborn child.

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

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

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

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

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

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

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

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

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

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

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

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

1 * **Sec. 4.** AS 11.81.250(a) is amended to read:

2 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
 3 title, except murder in the first and second degree, attempted murder in the first
 4 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
 5 in the first degree, **murder of an unborn child**, sexual assault in the first degree,
 6 sexual abuse of a minor in the first degree, misconduct involving a controlled
 7 substance in the first degree, and kidnapping, are classified on the basis of their
 8 seriousness, according to the type of injury characteristically caused or risked by
 9 commission of the offense and the culpability of the offender. Except for murder in
 10 the first and second degree, attempted murder in the first degree, solicitation to
 11 commit murder in the first degree, conspiracy to commit murder in the first degree,
 12 **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor
 13 in the first degree, misconduct involving a controlled substance in the first degree, and
 14 kidnapping, the offenses in this title are classified into the following categories:

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

17 (2) class B felonies, which characteristically involve conduct resulting
 18 in less severe violence against a person than class A felonies, aggravated offenses
 19 against property interests, or aggravated offenses against public administration or
 20 order;

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

24 (4) class A misdemeanors, which characteristically involve less severe
 25 violence against a person, less serious offenses against property interests, less serious
 26 offenses against public administration or order, or less serious offenses against public
 27 health and decency than felonies;

28 (5) class B misdemeanors, which characteristically involve a minor
 29 risk of physical injury to a person, minor offenses against property interests, minor
 30 offenses against public administration or order, or minor offenses against public health
 31 and decency;

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

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

4 (b) The classification of each felony defined in this title, except murder in the
5 first and second degree, attempted murder in the first degree, solicitation to commit
6 murder in the first degree, conspiracy to commit murder in the first degree, **murder of**
7 **an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first
8 degree, misconduct involving a controlled substance in the first degree, and
9 kidnapping, is designated in the section defining it. A felony under Alaska law
10 defined outside this title for which no penalty is specifically provided is a class C
11 felony.

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

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

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

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