

**SPONSOR SUBSTITUTE FOR 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: 4/7/05**

**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 Conner 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, murder of an  
 18 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

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 a person authorized  
2 by law to act on her behalf consented, or for which such consent is implied by law; or

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

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

6 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A  
7 person commits the crime of assault of an unborn child in the first degree if

8 (1) that person recklessly causes serious physical injury to an unborn  
9 child by means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to an unborn child or to  
11 another person, that person causes serious physical injury to an unborn child;

12 (3) that person knowingly engages in conduct that results in serious  
13 physical injury to an unborn child under circumstances manifesting extreme  
14 indifference to the value of human life; or

15 (4) that person recklessly causes serious physical injury to an unborn  
16 child by repeated assaults using a dangerous instrument, even if each assault  
17 individually does not cause serious physical injury.

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

19 **Sec. 11.41.282. Assault of an unborn child in the second degree.** (a) A  
20 person commits the crime of assault of an unborn child in the second degree if

21 (1) with intent to cause physical injury to an unborn child or to another  
22 person, that person causes serious physical injury to an unborn child;

23 (2) that person recklessly causes serious physical injury to an unborn  
24 child; or

25 (3) that person recklessly causes serious physical injury to an unborn  
26 child by repeated assaults, even if each assault individually does not cause serious  
27 physical injury.

28 (b) Assault of an unborn child in the second degree is a class B felony.

29 **Sec. 11.41.289. Applicability of and definitions for AS 11.41.280 and**  
30 **11.41.282.** (a) AS 11.41.280 and 11.41.282 do not apply to acts that

31 (1) cause serious physical injury or physical injury to an unborn child

1 if those acts were committed during a legal abortion to which a pregnant woman  
 2 consented or a person authorized by law to act on her behalf consented, or for which  
 3 consent is implied by law; or

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

6 (b) In AS 11.41.280 and 11.41.282, "serious physical injury" has the meaning  
 7 given in AS 11.81.900 and includes the birth of an unborn child before 37 weeks  
 8 gestation if the child weighs 2,500 grams or less at the time of birth.

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

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

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

25 (2) class B felonies, which characteristically involve conduct resulting  
 26 in less severe violence against a person than class A felonies, aggravated offenses  
 27 against property interests, or aggravated offenses against public administration or  
 28 order;

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

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

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

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

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

12 (b) The classification of each felony defined in this title, except murder in the  
13 first and second degree, attempted murder in the first degree, solicitation to commit  
14 murder in the first degree, conspiracy to commit murder in the first degree, **murder of**  
15 **an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first  
16 degree, misconduct involving a controlled substance in the first degree, and  
17 kidnapping, is designated in the section defining it. A felony under Alaska law  
18 defined outside this title for which no penalty is specifically provided is a class C  
19 felony.

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

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

23 \* **Sec. 7.** AS 12.55.035(b) is amended to read:

24 (b) Except as provided in AS 12.55.036, upon conviction of an offense, a  
25 defendant who is not an organization may be sentenced to pay, unless otherwise  
26 specified in the provision of law defining the offense, a fine of no more than

27 (1) \$500,000 for murder in the first or second degree, attempted  
28 murder in the first degree, **murder of an unborn child**, sexual assault in the first  
29 degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct  
30 involving a controlled substance in the first degree;

31 (2) \$250,000 for a class A felony;

- 1 (3) \$100,000 for a class B felony;  
 2 (4) \$50,000 for a class C felony;  
 3 (5) \$10,000 for a class A misdemeanor;  
 4 (6) \$2,000 for a class B misdemeanor;  
 5 (7) \$500 for a violation.

6 \* **Sec. 8.** AS 12.55.125(a) is amended to read:

7 (a) A defendant convicted of murder in the first degree **or murder of an**  
 8 **unborn child under AS 11.41.150(a)(1)** shall be sentenced to a definite term of  
 9 imprisonment of at least 20 years but not more than 99 years. A defendant convicted  
 10 of murder in the first degree shall be sentenced to a mandatory term of imprisonment  
 11 of 99 years when

12 (1) the defendant is convicted of the murder of a uniformed or  
 13 otherwise clearly identified peace officer, fire fighter, or correctional employee who  
 14 was engaged in the performance of official duties at the time of the murder;

15 (2) the defendant has been previously convicted of

16 (A) murder in the first degree under AS 11.41.100 or former  
 17 AS 11.15.010 or 11.15.020;

18 (B) murder in the second degree under AS 11.41.110 or former  
 19 AS 11.15.030; or

20 (C) homicide under the laws of another jurisdiction when the  
 21 offense of which the defendant was convicted contains elements similar to first  
 22 degree murder under AS 11.41.100 or second degree murder under  
 23 AS 11.41.110;

24 (3) the court finds by clear and convincing evidence that the defendant  
 25 subjected the murder victim to substantial physical torture; or

26 (4) the defendant is convicted of the murder of and personally caused  
 27 the death of a person, other than a participant, during a robbery.

28 \* **Sec. 9.** AS 12.55.125(b) is amended to read:

29 (b) A defendant convicted of attempted murder in the first degree, solicitation  
 30 to commit murder in the first degree, conspiracy to commit murder in the first degree,  
 31 kidnapping, or misconduct involving a controlled substance in the first degree shall be

1 sentenced to a definite term of imprisonment of at least five years but not more than  
2 99 years. A defendant convicted of murder in the second degree **or murder of an**  
3 **unborn child under AS 11.41.150(a)(2) - (4)** shall be sentenced to a definite term of  
4 imprisonment of at least 10 years but not more than 99 years. A defendant convicted  
5 of murder in the second degree shall be sentenced to a definite term of imprisonment  
6 of at least 20 years but not more than 99 years when the defendant is convicted of the  
7 murder of a child under 16 years of age and the court finds by clear and convincing  
8 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a  
9 legal guardian, or a person occupying a position of authority in relation to the child; or  
10 (2) caused the death of the child by committing a crime against a person under  
11 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of  
12 authority" have the meanings given in AS 11.41.470.