

HB

294

Alaska State Legislature

Member

Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee

Finance Subcommittees

House Environmental Conservation
House Military & Veterans' Affairs
House Court System



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
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Juneau, AK 99801-1182

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RECEIVED

FEB 19 REC'D

February 17, 2003

To: Representative Peggy Wilson, Chairman
Health, Education and Social Services Committee

Fr: Representative Bob Lynn *BL*

Re: HB 294
"An Act relating to murder and assault of unborn children."

We would like to request HB 294 be scheduled in the Health, Education and Social Services Committee to be heard either on Friday February 27, 2004 or Monday, March 1, 2004. Attached is a copy of the Bill and supporting documents. *Please let us know if you can accommodate one of these dates.* Thank you.

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Labor and Commerce Committee
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SPONSOR STATEMENT

HB 294

"The Laci and Connor Peterson Act"

This bill amends the homicide provisions of Alaska Statute 11.41 to include the murder of an unborn child. HB 294 specifically excludes the death of an unborn child resulting from a legal abortion to which the pregnant woman consented.

Alaska needs to have a law that will permit prosecution of a person who kills an unborn baby as a result of an assault upon or the murder of a pregnant woman. California has such a law and because of this, the alleged perpetrator of Laci Peterson and her unborn child, Connor Peterson, is undergoing trial for a double murder in California.

Twenty-seven other states – including California, Minnesota, and Wisconsin – have already passed similar legislation. Both federal and state courts have rejected every legal challenge to state fetal homicide issues, consistently ruling that they do not conflict with *Roe v. Wade* that legalizes abortion.

According to three national polls, the opinion of 80% of the public is that the murder of a pregnant woman that results on the death of her unborn child is the murder of two people. HB 294 supports that view.

Your support of the "Laci and Connor Peterson Act" – HB 294 is respectfully requested.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 16, 2004



REPORT NUMBER 04.162

STATE LAWS RECOGNIZING THE DEATH OF A FETUS AS A SEPARATE CRIME

PREPARED FOR REPRESENTATIVE BOB LYNN

BY PATRICIA YOUNG, MANAGER

You asked for information on states that account for the death of a fetus as a crime separate from the death of the mother. According to a National Right to Life Committee publication dated February 2, 2004, lawmakers in 28 states have enacted laws providing for the death of a fetus as a separate crime. Laws in 15 of those states (Arizona, Idaho, Illinois, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Utah, and Wisconsin) apply to a pregnancy at any stage of development. Laws in 13 states (Arkansas, California, Florida, Georgia, Indiana, Massachusetts, Mississippi, Nevada, Oklahoma, Rhode Island, South Carolina, Tennessee, and Washington) apply to a fetus after a certain stage of development—often the point of viability, that is, the point at which the fetus could survive outside of the womb. We include a copy of this National Right to Life Committee publication, "State Homicide Laws that Recognize Unborn Victims," as Attachment A.

We also include an extensive report on the issue prepared by this agency in 1996, which you may find to be useful. See Attachment B, "Death of a Fetus During a Felony," Research Report 96.010. As Attachment C, we include a copy of a decision in the Alaska Court of Appeals on a case in which a fetus was killed along with the mother (*Yerk v. State*, 706 P.2d 341).

We note that civil libertarians and pro-choice advocates oppose legislation that recognizes any stage of prenatal development as an independent victim of a crime. Instead, groups such as the American Civil Liberties Union (ACLU) support alternative approaches to punishing violence against pregnant women, including enhanced penalties for cases in which a woman suffers harm to herself and to her pregnancy. We include as Attachment D, an ACLU memorandum regarding proposed federal legislation, the Unborn Victims of Violence Act.¹

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹ The measure before the 108th U.S. Congress is H.R. 1997.

Attachment A

**"State Homicide Laws that Recognize Unborn Victims,"
National Right to Life Committee,
February 2, 2004**



National Right to Life


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State Homicide Laws That Recognize Unborn Victims (Fetal Homicide)

National Right to Life Committee
February 2, 2004

Full-Coverage Unborn Victim States (15) (States With Homicide Laws That Recognize Unborn Children as Victims Throughout the Period of Pre-natal Development)

Arizona: The killing of an "unborn child" at any stage of pre-natal development is manslaughter. Ariz. Rev. Stat. §13-1103 (A)(5) (West 1989 & Supp. 1998). Also to be read with Ariz. Rev. Stat. § 13-702(c)(10).

Idaho: Murder is defined as the killing of a "human embryo or fetus" under certain conditions. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. Idaho Sess. Law Chap. 330 (SB1344)(2002).

Illinois: The killing of an "unborn child" at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide. Ill. Comp. Stat. ch. 720, §§5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/12-3.1. A person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any means causes bodily harm to an unborn child. Read with Ill. Rev. Stat. ch. 720 § 5/12-4.4.

Louisiana: The killing of an "unborn child" is first degree feticide, second degree feticide, or third degree feticide. La. Rev. Stat. Ann. §§14:32.5 - 14.32.8, read with §§14:2(1), (7), (11) (West 1997).

Michigan: The killing of an "unborn quick child" is manslaughter under Mich. Stat. Ann. § 28.555. The Supreme Court of Michigan interpreted this statute to apply to only those unborn children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, a separate Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that intentionally, or in wanton or willful disregard for consequences, cause a "miscarriage or stillbirth," or cause "aggravated physical injury to an embryo or fetus." (M.C.L. 756.90)

Minnesota: The killing of an "unborn child" at any stage of pre-natal development is murder (first, second, or third degree) or manslaughter, (first or second degree). It is also a felony to cause the death of an "unborn child" during the commission of a felony. Minn. Stat. Ann.

§§609.266, 609.2661- 609.2665, 609.268(1) (West 1987). The death of an "unborn child" through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. Ann. §609.21 (West 1999).

Missouri: The killing of an "unborn child" at any stage of pre-natal development is involuntary manslaughter or first degree murder. Mo. Ann. Stat. §§1.205, 565.024, 565.020 (Vernon Supp. 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. W.D. 1997).

Nebraska: The killing of an "unborn child" at any stage of pre-natal development is murder in the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-394. (2002)

North Dakota: The killing of an "unborn child" at any stage of pre-natal development is murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§12.1-17.1-01 to 12.1-17.1-04 (1997).

Ohio: At any stage of pre-natal development, if an "unborn member of the species *homo sapiens*, who is or was carried in the womb of another" is killed, it is aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 2903.07, 2903.09 (Anderson 1996 & Supp. 1998).

Pennsylvania: An individual commits criminal homicide in the first, second, or third-degree, or voluntary manslaughter of an "unborn child" if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Ann. §§ 2601 to 2609 (1998) "Unborn child" and "fetus." Each term shall mean an individual organism of the species *Homo sapiens* from fertilization until live birth."

South Dakota: The killing of an "unborn child" at any stage of pre-natal development is fetal homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. §22-16-1, 22-16-1.1, 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 1997).

Texas: Under a law signed June 20, 2003, and effective September 1, 2003, the protections of the entire criminal code extend to "an unborn child at every stage of gestation from fertilization until birth." The law does not apply to "conduct committed by the mother of the unborn child" or to "a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent." (SB 319, Prenatal Protection Act)

Utah: The killing of an "unborn child" at any stage of pre-natal development is treated as any other homicide. Utah Code Ann. § 76-5-201 *et seq.* (Supp. 1998) and UT SB 178 (2002).

Wisconsin: The killing of an "unborn child" at any stage of pre-natal development is first-degree intentional homicide, first-degree reckless homicide, second-degree intentional homicide, second-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or homicide by negligent operation of vehicle. Wis. Stat. Ann. §§939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

Partial-Coverage Unborn Victim States (13)

(States with Homicide Laws That Recognize Unborn Children as Victims, But only During Part of the Period of Pre-natal Development)

NOTE: These laws are gravely deficient because they do not recognize unborn children as victims during certain periods of their pre-natal development. Nevertheless, they are described here for informational purposes.

Arkansas: The killing of an "unborn child" of twelve weeks or greater gestation is capital murder, murder in the first degree, murder in the second degree, manslaughter, or negligent homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-101 to 5-10-105. (A separate Arkansas law makes it a battery to cause injury to a woman during a Class A misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury under conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

California: California Penal Code § 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." The words "or a fetus" were added by the legislature in 1970. The California Supreme Court later interpreted "fetus" to apply "beyond the embryonic stage of seven to eight weeks." (*People v. Davis*, 1994) In addition, Penal Code § 190.2(3) makes a defendant eligible for capital punishment if convicted of more than one murder, and the California Supreme Court ruled that fetal homicide is included under this provision as well (*People v. Dennis*, 1998).

Florida: The killing of an "unborn quick child" is manslaughter, a felony of the second degree. Fla. Stat. Ann. § 782.09 (West 1999). The killing of an unborn child after viability is vehicular homicide. Fla. Stat. Ann. § 782.071 (West 1999).

Georgia: The killing of an "unborn child" after quickening is feticide, vehicular feticide, or feticide by vessel. Ga. Code Ann. § 16-5-80 (1996); § 40-6-393.1 (1997); and § 52-7-12.3 (1997).

Indiana: The killing of "a fetus that has attained viability" is murder, voluntary manslaughter, or involuntary manslaughter. Indiana Code 35-42-1-1, 35-42-1-3, 35-42-1-4.

Massachusetts: The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn child after viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (Mass. 1989).

Mississippi: The killing of an "unborn quick child" is manslaughter. Miss. Code Ann. § 97-3-37 (1994).

Nevada: The killing of an "unborn quick child" is manslaughter. Nev. Rev. Stat. § 200.210 (1997).

Oklahoma: The killing of an "unborn quick child" is manslaughter. Okla. Stat. Ann. tit. 21, § 713 (West 1983). The killing of an unborn child after viability is homicide. *Hughes v. State*, 868 P.2d 730 (Okla. Crim. App. 1994).

Rhode Island: The killing of an "unborn quick child" is manslaughter. The statute defines "quick child" to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

South Carolina: The killing of an unborn child after viability is homicide. *State v. Horne*, 319 S.E.2d 703 (S.C. 1984); *State v. Ard*, 505 S.E.2d 328 (S.C. 1998).

Tennessee: The killing of an unborn child after viability is first-degree murder, second-degree murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. Code Ann.

539-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (1997 & Supp. 1998).

Washington: The killing of an "unborn quick child" is manslaughter. Wash. Rev. Code Ann. § 9A.32.060(1)(b) (West Supp. 1999).

Conflicting Statutes

New York: Under New York statutory law, the killing of an "unborn child" after twenty-four weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under a separate statutory provision, a "person" that is the victim of a homicide is statutorily defined as a "human being who has been born and is alive." N.Y. Pen. Law § 125.05 (McKinney 1998). See *People v. Joseph*, 130 Misc. 2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re Gloria C.*, 124 Misc.2d 313, 476 N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 N.Y.S.2d 177 (Co. Ct. 1987).

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Attachment B

Maureen Weeks,
"Death of a Fetus During a Felony,"
Legislative Research Report 96.010

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal & Research Services



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October 23, 1995

MEMORANDUM

TO:

FROM: Maureen Weeks *MW*
Legislative Analyst

RE: **Death of a Fetus During a Felony**
Research Request 96.010

You asked about state statutes which make it a felony to kill an unborn child while committing a crime, particularly a violent crime. After a brief summary, this memorandum offers a description of Alaska's law on the topic, a synopsis of statutes in other states, and a note about difficulties inherent in the language used in many of these laws. The attached table includes as many state laws as we could find which make it a crime to kill a fetus while committing another crime. All statutes discussed in this memorandum are in the attachments. We use the terms "fetus" and "unborn child" interchangeably.

Summary

Policymakers composing statutes making it a crime to unlawfully kill an unborn child have considered several questions:

- What was the state of mind of the person who caused the fatal injury?
- What was the stage of fetal development when the death occurred?
- How heinous is the act -- is it murder or manslaughter or another crime?

In Alaska, as in nearly two dozen other states, unlawfully killing an unborn child is a felony. Depending on the state, the act is considered battery, assault, manslaughter, feticide, homicide, or murder. Killing a fetus can merit as little as one year in prison (or up to ten) in Nevada, while across the state line in California, killing a fetus may earn 25 years in prison, a life sentence, or the death penalty.

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A number of states use the word "willful" to describe the act which killed the unborn child. But court opinions reflect how hard it is to define this common, even banal, word. Is a "willful" act intentional, knowing, or purposeful -- or something else? Similarly, the words "unborn child" and "fetus" occur regularly in these statutes and in subsequent court opinions. When is it a crime to kill an unborn child -- after it has been conceived, when it is no longer an embryo, when it is able to move in the womb, or when it can live outside of the womb? The answer depends on the state and the court.

Alaska Law

In Alaska, the unlawful death of a fetus falls within the definition of "serious physical injury," which is among other things, an injury that "unlawfully terminates a pregnancy." The offense is either first or second degree assault, depending on the mental state of the assailant and the way the act was committed. The penalty for first degree assault, like that for manslaughter, is a minimum sentence of five years and a maximum sentence of 20 years in prison. The penalty for second degree assault is up to ten years in prison.

The language is found by reading two sections of Alaska's criminal statutes. The first defines "serious physical injury" as (among other definitions) injury that "unlawfully terminates a pregnancy."¹ The second defines assault, which uses the term "serious physical injury."

- First degree assault is assault in which the assailant recklessly causes *serious physical injury* using a dangerous instrument; intentionally causes *serious physical injury*; knowingly engages in conduct that results in *serious physical injury* under circumstances that show extreme indifference to the value of human life; or recklessly causes *serious physical injury* by repeated assaults with a dangerous instrument, even if each assault individually does not cause serious physical injury.²
- Second degree assault is assault in which the assailant recklessly causes *serious physical injury* (without a dangerous instrument); or recklessly causes *serious physical injury* by repeated assaults (without a dangerous instrument), even if each assault individually does not cause *serious physical injury*.³

¹Alaska Statute 11.81.900(b)(51)(B)

²Alaska Statute 11.41.200

³Alaska Statute 11.41.210

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The Crime and the Punishment in Other States

This section describes the wide variation among states in classifying and punishing the offense of unlawfully killing an unborn child.

The Offense: From Battery to Murder

In some states unlawfully killing an unborn child is assault or battery (Alaska and Arkansas are examples), in others it is manslaughter (Florida, Mississippi, Oklahoma, Rhode Island, Washington), and in others it is murder (California and North Dakota).⁴ Georgia makes it feticide.⁵ South Dakota creates the crime of the Intentional Killing of a Human Fetus and Iowa calls the crime Nonconsensual Termination.⁶ Some states list the levels of the offense in detail. Minnesota, for example, provides for first, second, and third degree murder and first and second degree manslaughter of the unborn child, followed by a statute which creates the crime of killing an unborn child in the commission of a felony.⁷

The Penalty: From One Year in Prison to Death

Punishment for the crime of causing the death of a fetus varies. Willfully killing a fetus in Nevada is manslaughter, with a sentence as short as one year in prison (with no more than ten years), while across the state line in California, killing a fetus is murder, with a possible sentence of 25 years, life in prison or even the death penalty. In Georgia, feticide is a "willful" act which can be punished by a life sentence, while in Indiana, feticide is an "intentional" act punished by a sentence of four years. In Minnesota, killing an unborn child intentionally with premeditation nets a life sentence, while killing

⁴Alaska Statutes 11.41.200 and 11.81.900(B)(51); Arkansas Code Annotated 5-13-201; Florida Statutes 782.09 Killing of Unborn Child by Injury to Mother; Mississippi Code 97-3-37 Homicide; Oklahoma Statutes Annotated 21.713 Killing and Unborn Quick Child; General Laws of Rhode Island 11-23-5 Killing of Unborn Quick Child; Revised Code of Washington Annotated 9A.32.060 Manslaughter in the First Degree; Penal Code of California Section 187(a) Murder Defined; North Dakota Century Code Section 12.1-17.1-02 Murder of an Unborn Child.

⁵Official Code of Georgia Annotated 16-5-80.

⁶South Dakota Codified Laws 22-17-6; Code of Iowa 707.8.

⁷Minnesota Statutes 609.2661-.2665 Murder of an Unborn Child in the First, Second Third Degree, Manslaughter of an Unborn Child in the First, Second Degree; 609.268 Injury or Death of an Unborn Child in Commission of Crime.

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an unborn child intentionally *without* premeditation can bring up to 40 years in prison. In Louisiana, a person who kills a fetus intentionally may be sentenced to up to 15 years hard labor, while a next door neighbor who successfully argues that the fetus was killed because the mother provoked a sudden, heated passion may shorten that sentence to 10 years.

The Statutes: A Variety of Approaches

This section describes strategies used in statutes which make it a crime to unlawfully kill an unborn child while committing a felony. It also describes how some states have chosen to address the possible confusion of unlawful killing and lawful abortion.

Some statutes make it a crime to terminate a pregnancy during the commission of a felony, without elaborating on the type of felony. For example, Iowa's statute reads simply, ". . . during the commission of a felony or felonious assault . . ."⁸ Kansas and New Mexico create the crime of injury to a pregnant woman, defined as "injury to a pregnant woman during a felony or misdemeanor which causes the pregnant woman to suffer a miscarriage."⁹

Some statutes specify the felonies the defendant was to have been committing when the unborn child died. The manner of listing the specific felonies varies, as the following examples show.

- Tennessee includes the words "viable fetus" in its statutes concerning assaults and criminal homicide. This effectively makes it a crime to kill a viable fetus while committing those assaults or homicides.¹⁰
- New York and California include references to the fetus or unborn child in their definition of homicide or murder. New York defines homicide as (among other things) the death of an "unborn child with which a female has been pregnant for more than 24 weeks" under circumstances which constitute murder, manslaughter in the first degree, manslaughter in the second degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.¹¹ California includes the phrase "or a fetus" in its murder statute.¹²

⁸Code of Iowa 707.8(1).

⁹Kansas Statutes Annotated 21.195 (Senate Bill 16, approved April 22, 1995) Injury to a Pregnant Woman; New Mexico Statutes 30-3-7 Injury to Pregnant Woman.

¹⁰Tennessee Code Annotated 39-13-107 Viable Fetus as Victim.

¹¹New York Consolidated Laws 125.00 Homicide Defined.

- Minnesota creates a series of crimes relating to the unlawful death of an unborn child. They include first degree murder of an unborn child in three circumstances: (1) with premeditation and intent, (2) while committing violent criminal sexual conduct, or (3) while committing burglary, aggravated robbery, kidnapping, arson, tampering with a witness or escape, with the intention of causing the death of the unborn child or another.

Causing the death of an unborn child in Minnesota can also lead to second and third degree murder and first and second degree manslaughter, with a catalog of circumstances (including shooting the mother in the negligent belief that she is a deer or other animal.) Finally, a separate statute makes "whoever, in the commission of a felony . . . causes the death of an unborn child . . . guilty of a felony . . ."¹³

- North Dakota divides the crime of murder of an unborn child into two kinds of felonies, depending on whether the defendant was under emotional distress. It is a Class AA felony to cause the death of an unborn child "intentionally or knowingly," or with "extreme indifference to the value of the life of the unborn child or the pregnant woman," or during treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape.

It is a Class A felony to cause the death of an unborn child "if the defendant was under the influence of extreme emotional disturbance for which there is reasonable excuse." Reasonableness is judged from the "viewpoint of a person in the person's situation," and the extreme emotional disturbance is excusable if it is occasioned by "substantial provocation, a serious event or a situation for which the offender was not culpably responsible." The North Dakota statute also creates the crimes of manslaughter of an unborn child and negligent homicide of an unborn child.¹⁴

Some statutes clearly state that language which deals with the death of an unborn child does not apply to abortion. Utah's statute reads: "There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion."¹⁵ Tennessee spells out the legislature's intent "that this section shall in no way affect abortion which is legal in Tennessee."¹⁶ North

¹²California Penal Code Section 187(2)

¹³Minnesota Statutes 609.2661-.268.

¹⁴North Dakota Century Code 12.1-17.1-02.

¹⁵Utah Code Annotated 76-5-201(1)(b).

¹⁶Tennessee Code Annotated 39-13-107(c).

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Dakota excepts any acts "committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented. . ."¹⁷

Language: Can Policymakers Avoid Ambush?

This section discusses the problems inherent in language used by many state laws dealing with the unlawful death of a fetus. It cautions the reader to be wary of the word "willful," and it cites court opinions that demonstrate how difficult it is to agree on a definition of "fetus" and "unborn child."

The Word "Willful"

Several states make it a crime to willfully kill an unborn child by injuring the mother (for examples, see statutes for Florida, Georgia, Michigan, Mississippi, Oklahoma, Rhode Island).¹⁸ *Black's Law Dictionary* defines a "willful act" as one done intentionally, knowingly and purposely. In practice, however, the definition is far from clear.

An Oklahoma appellate court decision shows the problems conjured up by the word "willful." The defendant had been convicted of the murder of an unborn quick child after his wife, who was more than eight months pregnant, died from a gunshot wound to the head at close range.¹⁹ He appealed the conviction, arguing that the Oklahoma statute uses the word "willful," and that there was no proof that he *intended* to kill the unborn child.²⁰ Puzzling over the word, the appellate court found that a jury could reasonably conclude that the defendant *willfully* pulled the trigger with the *awareness* that the death of the unborn quick child would likely result, but that the statute did not require a specific *intent* to kill the unborn child.²¹

¹⁷North Dakota Century Code 12.1-17.1-07.

¹⁸Florida Statutes 782.09; Official Code of Georgia Annotated 16-5-80; Michigan Statutes Annotated 750.322; Mississippi Code 97-3-37; Oklahoma Statutes Annotated 21.713; General Laws of Rhode Island 11-23-5.

¹⁹*Black's Law Dictionary* defines a "quick child" as one which has developed so that it moves within the mother's womb.

²⁰Under Oklahoma law, the willful killing of an unborn quick child by any injury committed upon . . . the mother of such a child . . . is manslaughter.

²¹ *Tarver v. State*, Okl. Cr., 651 P.2d 1332 (1982).

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The definition of "willful" has taken on such subtle nuances that Alaska legislators expunged it from the state's criminal statutes when they rewrote the Alaska Criminal Code in 1980. Today Alaska law describes four specific states of mind during a criminal act: intentional, knowing, reckless and negligent. Other states also have steered clear of the word. Some replace it with the word "intentional," as in Washington statutes which read, ". . . intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child."²² South Dakota statutes read, ". . . who intentionally kills a human fetus by causing an injury to its mother . . . is guilty of a Class 4 felony."²³ Utah specifies several states of mind in crimes which cause the death of an unborn child, "A person commits criminal homicide if he intentionally, knowingly, recklessly, with criminal negligence . . . causes the death of . . . an unborn child."²⁴

Difficulties Defining "Fetus" and "Unborn Child"

Legislators pondering the killing of an unborn child must consider the stage of gestation at which the fetus or unborn child died. This is a difficult and murky area. Legal authorities disagree on exactly when it becomes a crime to unlawfully kill a fetus or an unborn child.

Among the states which make it a felony to unlawfully cause the death of a fetus at any time during its development are Arizona, Minnesota and North Dakota. Arizona specifically notes that the unborn child can be "at any stage of its development."²⁵ Minnesota defines the unborn child as "the unborn offspring of a human being conceived but not yet born."²⁶ North Dakota defines the unborn child as "the conceived but not yet born offspring of a human being which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive."²⁷ Some states make it a crime to unlawfully kill a fetus only after it has reached a certain stage of development. Tennessee requires that the unborn child be "viable," which means that it can survive outside the mother's womb.

²²Revised Code of Washington Annotated 9A.32.060.

²³South Dakota Codified Laws 22-17-6.

²⁴Utah Code Annotated 75-5-201.

²⁵Arizona Revised Statutes 13-1103(A)(5).

²⁶Minnesota Statutes 609.266 (a).

²⁷North Dakota Century Code 12.1-17.1-01(3).

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Several states require that the unborn child be "quick." This is a hard word to define, as experience in Michigan and Mississippi shows. Although the wording of the two statutes is virtually identical, the respective appellate courts have construed the statutes completely differently.²⁸ The Michigan Supreme Court determined that the "quick" fetus must be capable of surviving the trauma of birth, while the Mississippi Supreme Court found that the "quick" fetus must merely move in the womb.²⁹ The difference is some four months of gestation.

Definitions mutate within states as well as among them. Over the past 25 years, the California law has metamorphosed from an 1872 statute which defined murder as "the unlawful killing of a human being" (and meant the fetus had to have been born alive before it died), through court decisions that the fetus must have been able to live outside the womb, to a 1994 state supreme court decision that the fetus need be only that: a fetus of seven to eight weeks that is no longer an embryo. This definition appalled state Supreme Court Justice Stanley Mosk, who wrote in a long dissent, "I cannot believe the Legislature intended to make it murder -- indeed, capital murder -- to cause the death of an object the size of a peanut."

The controversy began in 1970, when the state supreme court filed an opinion (authored by Justice Mosk) that under the 1872 statute, a viable fetus cannot be deemed a "human being." That case involved a nearly nine-month fetus which died of a skull fracture after Robert Keeler told his ex-wife,

²⁸"The wilful killing of an unborn quick child by an[y] injury to the mother of such child, which would be murder if it resulted in the death of such mother shall be [deemed] manslaughter," with "any injury" in Mississippi versus "an injury" in Michigan, which also adds the word "deemed."

²⁹When construing the words "quick unborn child," the Michigan court dismissed the concept "quick" as mere "evidence of life" and "nothing more than discernable movement." It turned instead to the word "child": by using that word, the legislature made clear that the offense consists of destroying a human life, the court said. The court held that "[t]he word child as used in M.C.L.A. Section 750.322 . . . means a viable child in the womb of its mother; that is, an unborn child whose heart is beating, who is experiencing electronically measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of the usual medical care and facilities available in the community." *Larkin v. Cahalan* (1973) 208 N.W.2d 176, 389 Mich. 533.

Several years later, the Mississippi Supreme Court, construing the same language, concentrated on the term "quick" and came to a different conclusion. "Evidence was sufficient to show the child was 'quick' as used in the statute . . . where the state presented testimony of the husband of the victim to the effect that . . . he had placed his hand over the victim's stomach and had felt the unborn child move and that expert medical testimony showed that babies move in the womb from roughly 10th week of gestation . . ." *Willis v. State* 518 So 2d 667 (1988).

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"I'm going to stomp it out of you," and pushed his knee into her abdomen.³⁰ The legislature immediately passed a law adding the words "or a fetus" to the 100 year old statute. But the word "fetus" remained undefined until a state court of appeal in 1976, pondering the death of a 12-15 week fetus after a beating, found that the fetus must have been "viable" or its death could not be murder. It reached this conclusion by reasoning that lawmakers had placed the word "fetus" in the chapter on homicide, which is the destruction of human life. But, the court said, a 12-15 week fetus is not viable and has not attained the status of independent human life. Thus, the words "or a fetus" refer to a viable fetus, the court said.³¹ Later courts of appeal followed this interpretation.

In 1994, the question moved to the California Supreme Court, which turned the appeals court interpretation on its head. The supreme court said that when the legislature wrote "fetus," that is what it meant, and nothing more. If it had meant "viable fetus," the legislature could have said so, but it did not, the court said. Consulting a medical dictionary, the court found that an embryo becomes a fetus at "seven or eight weeks" gestation and concluded that the murder statute applies to a killing that occurs after this postembryonic period.³² With this decision, the person who unlawfully kills a fetus commits murder.

Justice Mosk wrote a passionate dissent saying the legislature which wrote "fetus" meant "viable fetus." He noted that the legislature's rapid move to change the 1970 statute was a direct response to the *Keeler* opinion that said a fetus is not a human being. If, later, the legislature had disagreed with the *Smith* opinion that said the fetus must be viable, "surely it would have spoken again, and equally vigorously," the justice wrote. The new interpretation that the fetus not only need not be viable but can be as young as "seven or eight weeks" raises difficult questions and may lead to "absurd" results, he said.

"Do my colleagues have any idea what a seven-week-old product of conception looks like?" the justice asked. He answered his rhetorical question, "To begin with, it is tiny. At seven weeks its 'crown-rump length' . . . is . . . slightly over half an inch . . . It weighs . . . about one-tenth of an ounce . . . In more familiar terms, it is roughly the size and weight of a peanut." Under the new "draconian" definition, the justice said, "the felony-murder rule makes a capital offense out of the death of even a nonviable and invisible fetus that the actor neither knew nor had reason to know existed."

This is what had happened in the case which led to the 1994 decision. On March 1, 1991, Robert Davis pulled a gun to rob Maria Flores, who was 23 to 25 weeks pregnant, of her welfare check money. When she refused to give him the purse, Davis shot her in the chest. Ms. Flores survived, but the fetus was stillborn and Davis was convicted of assault, robbery and murder and was sentenced

³⁰*Keeler v. Superior Court* 87 Cal. Rptr 481, 470 P.2d 617

³¹*People v. Karl Andrew Smith*, App. 129 Cal. Rptr. 498

³²*People v. Davis*, 30 Cal. Rptr.2d 50

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to life in prison without possibility of parole. The justice warned that the same result could happen in another, less violent, scenario: an unarmed 18-year-old with no criminal record tries to shoplift a can of spray paint but loses his nerve and bolts for the door when a security guard approaches, accidentally knocking to the floor a woman who is seven weeks pregnant, and the trauma from the fall causes the woman to miscarry. Before the 1994 supreme court decision, the youth would have been guilty of, at the most, second degree burglary in California, the justice wrote. After the decision, he could also be found guilty of murder and, wrote Justice Mosk, "I cannot believe the Legislature intended . . . so absurd a result."

I hope this information is useful to you. If you have any further questions please do not hesitate to call.

Attachments

**SELECTED STATE LAWS MAKING IT A FELONY
TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY**

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Alaska	1st Degree Assault	Recklessly, intentionally or knowingly	By serious physical injury that unlawfully terminates a pregnancy	A pregnancy	Class A Felony	5-20 years in prison	Alaska Statutes 11.41.200; Alaska Statutes 11.81.900(b)(51)(B);
	2nd Degree Assault	Recklessly	By serious physical injury that unlawfully terminates a pregnancy	A pregnancy	Class B Felony	Up to 10 years in prison	Alaska Statutes 11.41.210; Alaska Statutes 11.81.900(b)(51)(B)
Arizona	Manslaughter	Knowingly or recklessly	By injury to mother	Unborn child at any stage of its development	Manslaughter (Class 2 Felony)	7 years in prison	Arizona Revised Statutes 13-1103; penalty 13-701(C)(1)
Arkansas	1st Degree Battery	While committing a felony	By injury to mother	Irrespective of the duration of pregnancy	1st Degree Battery (Class B Felony)	5-20 years in prison	Arkansas Code Annotated 5-13-201(a)(5)(A) and (i); penalty 5-4-401
California	Murder	Malice aforethought	Not stated	Fetus	Murder	25 years to life in prison; under special circumstance, life in prison or death penalty	California Penal Code 187(a); penalty 190 (a) and (190.2(a)(17)(vii). C.f. Justice S. Mosk dissent in People v. Davis 30 Cal. Rptr. 2d 50
Florida	Killing of Unborn Child	Willfully	By injury to mother	Unborn quick child	Manslaughter (2nd Degree Felony)	Up to 15 years in prison	Florida Statutes 782.09; penalty 775.082-.084
Georgia	Feticide	Willfully	By injury to mother	Unborn quick child ("so far developed as to be ordinarily called 'quick' ")	Feticide	Life in prison	Official Code of Georgia Annotated 16-5-80(a); penalty 16-5-80(b)
	Feticide by Vehicle	Recklessly	By injury to mother	Unborn quick child ("so far developed as to be ordinarily called 'quick' ")	Feticide by Vehicle	2-15 years in prison	Georgia Annotated Statutes 40-6-393.1; penalty 40-6-393.1
	Feticide by Vessel	Under influence of alcohol or drugs	By injury to mother	Unborn quick child ("so far developed as to be ordinarily called 'quick' ")	Feticide by Vessel	2-15 years in prison	Georgia Annotated Statutes 52-7-12.3; penalty 52-7-12.3(a)(2)
Illinois	Intentional Homicide of Unborn Child	Intentionally or knowingly, or knowingly and knew the woman was pregnant	Not stated	Unborn child means any individual of human species from fertilization until birth	Intentional Homicide	Same as for 1st Degree Murder, except death penalty may not be imposed	Illinois Compiled Statutes Annotated Ch. 720.5/9-1.2(a) and (b); penalty 720.5/9-1.2(d)

**SELECTED STATE LAWS MAKING IT A FELONY
TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY**

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Indiana	Feticide	Knowingly or intentionally	Not stated	A human pregnancy	Class C Felony	4 years in prison	Indiana Statutes Annotated 35-42-1-6; penalty 35-50-2-6
Iowa	Feticide	Intentionally	Not stated	A human pregnancy after end of second trimester	Class C Felony	Up to 10 years in prison	Code of Iowa 707.7; penalty 902.9
	Nonconsensual Termination	During a felony	Terminates pregnancy without consent of pregnant person	A human pregnancy	Class B Felony	Up to 25 years in prison	Code of Iowa 707.8; penalty 902.9
Kansas	Injury to Pregnant Woman	During a felony or misdemeanor	By injury to pregnant woman	Fetus	Level 4 Person Felony	Up to 66 months in prison	Kansas Statutes Annotated Ch. 195; penalty Sentencing Guidelines 21-4704
Louisiana	1st Degree Feticide	Intentionally or during listed felonies	Not stated	An unborn child	1st Degree Feticide	Up to 15 years hard labor	Louisiana Statutes Annotated 32.6; penalty 32.6(B)
	2nd Degree Feticide	In sudden passion caused by provocation of the mother sufficient to deprive an average person of his self control; or without intent, or during felony; or when resisting arrest	Not stated	An unborn child	2nd Degree Feticide	Up to 10 years hard labor	Louisiana Statutes Annotated 32.7; penalty 32.7(B)
	3rd Degree Feticide	Negligently or while operating motor vehicle, aircraft, vessel with or without intention of causing death if under the influence of alcohol or drugs	Not stated	An unborn child	3rd Degree Feticide	Up to 5 years in prison, with or without hard labor	Louisiana Statutes Annotated 32.8; penalty 32.8(B)
Michigan	Manslaughter	Willfully	By any injury to mother	Unborn quick child	Manslaughter	Up to 15 years in prison	Michigan Compiled Laws 750.322; penalty 750.321

**SELECTED STATE LAWS MAKING IT A FELONY
TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY**

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Minnesota	1st Degree Murder of an Unborn Child	Intentionally and with premeditation, or while committing a list of felonies	Not stated	Unborn child: offspring of a human being conceived but not yet born.	1st Degree Murder	Life in prison	Minnesota Statutes 609.266(a); 609.2661; penalty 2661
	2nd Degree Murder of an Unborn Child	Intentionally without premeditation, or (without intent) while committing a felony	Not stated	Unborn child: offspring of a human being conceived but not yet born	2nd Degree Murder	Up to 40 years in Prison	Minnesota Statutes 609.266(a); 609.2662; penalty 2662
	3rd Degree Murder of an Unborn Child	Without intent, evincing depraved mind, without regard for human or fetal life	Not stated	Unborn child: offspring of a human being conceived but not yet born	3rd Degree Murder	Up to 25 years in prison	Minnesota Statutes 609.266(a); 609.2663; penalty 2663
	1st Degree Manslaughter of an Unborn Child	Intentionally in heat of passion, or committing a misdemeanor with such force that death to unborn child was foreseeable, or intentionally because coerced by threats	Not stated	Unborn child: offspring of a human being conceived but not yet born	1st Degree Manslaughter	Up to 15 years in prison	Minnesota Statutes 609.266(a); 609.2664; penalty 2664
	2nd Degree Manslaughter of an Unborn Child	Negligently	Negligently shoots the mother of the unborn child thinking she is a deer; negligently sets a snare; or negligently permits a vicious animal to run loose	Unborn child: offspring of a human being conceived but not yet born	2nd Degree Manslaughter	Up to 10 years in prison	Minnesota Statutes 609.266(a); 609.2665; penalty 2665
	Death of Unborn Child in Commission of a Crime	During felony	Not stated	Unborn child: offspring of a human being conceived but not yet born	Felony	Up to 15 years	Minnesota Statutes 609.266(a); 609.268(1); penalty 268.268(1)
Mississippi	Homicide; Killing of an Unborn Quick Child	Willfully	By injury to mother	Unborn quick child	Manslaughter	Up to 1 year in county jail; 2-20 years in penitentiary	Mississippi Code Annotated 97-3-37; penalty 97-3-25

**SELECTED STATE LAWS MAKING IT A FELONY
TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY**

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Nevada	Killing Unborn Child	Willfully	By injury to mother	Unborn quick child	Manslaughter	1-10 years in prison	Nevada Revised Statutes Annotated 200.210; penalty 200.210
New Hampshire	1st Degree Assault	Purposely or knowingly	By injury to another	Fetus	Class A Felony	Up to 15 years in prison	New Hampshire Revised Statutes Annotated 651:2
New Mexico	Injury to Pregnant Woman	While committing a felony	By injury to pregnant woman	Irrespective of duration of pregnancy	3rd Degree Felony	3 years in prison (6 years if human being dies)	New Mexico Statutes Annotated 30-3-7; penalty 31-18-15
	Injury to Pregnant Woman by Vehicle	Not stated	Driving vehicle unlawfully	Irrespective of duration of pregnancy	3rd Degree Felony	3 years in prison (6 years if human being dies)	New Mexico Statutes Annotated 66-8-101.1; penalty 31-18-15
New York	Homicide	Same as for murder, 1st and 2nd degree manslaughter, criminally negligent homicide, 1st degree abortion or 1st degree self-abortion	Not stated	An unborn child with which a female has been pregnant for more than 24 weeks	Homicide	Depends on the crime (murder, manslaughter, criminally negligent homicide, abortion or self-abortion)	New York Consolidated Laws Service 125.00
North Dakota	Murder of an Unborn Child: Class AA	Intentionally or knowingly; with extreme indifference to value of child's or woman's life; or while committing a list of felonies	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class AA Felony	Life in prison	North Dakota Century Code 12.1-17.1-02(1); penalty 12.1-32-01

**SELECTED STATE LAWS MAKING IT A FELONY
TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY**

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
(N.D. cont'd.)	Murder of an Unborn Child: Class A	Under extreme emotional disturbance for which there is a reasonable excuse; excuse is reasonable only if there is substantial provocation, a serious event or a situation for which the offender was not culpably responsible	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class A Felony	Up to 20 years in prison	North Dakota Century Code 12.1-17.1-02(2); penalty 12.1-32-01
	Manslaughter of an Unborn Child	Recklessly	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class B Felony	Up to 10 years in prison	North Dakota Century Code 12.1-17.1-03; penalty 12.1-32-01
	Negligent Homicide of an Unborn Child	Negligently	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class C Felony	Up to 5 years in prison	North Dakota Century Code 12.1-17.1-04; penalty 12.1-32-01
Oklahoma	Killing an Unborn Quick Child	Willfully	By injury to mother	Unborn quick child	1st Degree Manslaughter	Not less than 4 years in prison	Oklahoma Statutes Annotated 21.713; penalty 21.715

**SELECTED STATE LAWS MAKING IT A FELONY
TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY**

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Rhode Island	Wilful Killing of Unborn Quick Child	Willfully	By injury to mother	Unborn quick child ("quick child" means an unborn child capable of surviving the trauma of birth per General Laws of Rhode Island 11-23-5(c))	Manslaughter	Up to 30 years in prison	General Laws of Rhode Island 11-23-5; penalty 11-23-3
South Dakota	Intentional Killing of Human Fetus by Unauthorized Injury to Mother	Intentionally	By injury to mother	Human fetus	Class 4 Felony	Up to 10 years in prison	South Dakota Codified Laws 22-17-6; penalty 22-6-1
Tennessee	Viable Fetus as Victim	Not stated	During assault or criminal homicide (Tennessee Code Annotated 39-13 Assaultive Offenses and Criminal Homicide)	Viable fetus	Depends on the offense	Depends on the offense	Tennessee Code Annotated 39-13-107
Utah	Criminal Homicide	Intentionally, knowingly, recklessly, or with criminal negligence	Not stated	An unborn child	Aggravated murder (intentionally and knowingly), murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide or automobile homicide	Depends on the offense	Utah Code Annotated 76-5-201
Washington	1st Degree Manslaughter	Intentionally and unlawfully	By injury to mother	Unborn quick child	Manslaughter (Class B Felony)	Not less than 3 years	Revised Code of Washington Annotated 9A.32.060; penalty 9A Sentencing Grid

Attachment C

Yerk v. State, 706 P.2d 341

LEXSEE 706 p.2d 341

Richard C. YERK, Appellant, v. STATE of Alaska, Appellee

File No. A-748, No. 515

Court of Appeals of Alaska

706 P.2d 341; 1985 Alas. App. LEXIS 358

September 20, 1985

PRIOR HISTORY:

[**1]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge.

COUNSEL:

Paul J. Nangle, Paul J. Nangle & Associates, Anchorage, and Richard C. Yerck, in Propria Persona, Palmer, for Appellant.

Clark T. Stirling, Assistant District Attorney, Victor C. Krumm, District Attorney, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

JUDGES:

Bryner, Chief Judge, Coats and Singleton, Judges.

OPINIONBY:

COATS

OPIN'ON:

[*341] Richard Yerck was convicted, based upon his plea of no contest, of two counts of assault in the second degree, *AS 11.41.210(a)(2)*.ⁿ¹ Judge Victor Carlson sentenced Yerck to concurrent sentences of seven years with four years suspended and placed Yerck on probation for a period of five years following his incarceration. Judge Carlson also revoked Yerck's driver's license for five years although he authorized Yerck to apply for a license to drive [*342] during the course of his employment following his incarceration. Yerck appeals this sentence, arguing that it is excessive. We affirm.

ⁿ¹ *AS 11.41.210(a)(2)* provides that a person commits the crime of assault in the second degree if

(2) that person recklessly causes serious physi-

cal injury to another person.

[**2]

On April 29, 1984, Yerck was driving the wrong way on a bridge in Anchorage. He ran head on into a car driven by Rhonda Rice. She was accompanied by her husband David Rice. David Rice sustained a concussion, a fracture of the left hip, a fracture of the right jaw, and a large cut behind his left ear as a result of the collision. Rhonda Rice was twenty-eight weeks pregnant at the time of the accident; the fetus was killed in the accident. Mrs. Rice also suffered a black eye, abrasions on her chest, and bruises on her abdomen. Yerck sustained a cut over his right eye and abrasions on his arm. Two and one-half hours after the accident Yerck registered a blood alcohol level of 0.165 percent. A person is considered to be driving while intoxicated at 0.10 percent or over. *AS 28.35.030*.

At the time of the accident Yerck was forty-two and had no record of prior convictions other than two minor traffic offenses. He had a history of abuse of alcohol and cocaine, but at the time of sentencing appeared to have made substantial progress toward solving his substance abuse problems. ⁿ² However, Judge Carlson found that Yerck's offenses were particularly serious, thus he imposed a sentence [*3] of seven years with four suspended. He found that the evidence in the case would have supported a conviction of a more serious offense, assault in the first degree, a class A felony. *See AS 11.41.200*. ⁿ³

ⁿ² Yerck argues that Judge Carlson placed undue emphasis on Yerck's substance abuse problem in passing sentence. Yerck points to *AS 12.55.155(g)*, which provides that "voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor." However, a person's background of substance abuse may be considered in assessing his prospects for rehabilitation. *State v. Ahwinona*, 635 P.2d 488, 491 n.3 (Alaska App. 1981). Judge Carlson spent some time at the

sentencing proceeding discussing with Yerk his substance abuse problems. Judge Carlson appears to have concluded that Yerk had made substantial progress in solving his substance abuse problems and that this reflected favorably on Yerk's prospects for rehabilitation. Judge Carlson appears to have given proper consideration to Yerk's substance abuse background.

n3 AS 11.41.200(a)(1) provides that a person commits assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument.

***4]

We believe that the sentence which Judge Carlson imposed is supported by the record. Yerk's offense was a class B felony with a maximum sentence of ten years. The presumptive sentence for a second felony offender convicted of a class B felony is four years. AS 12.55.125(d)(1). In *Austin v. State*, 627 P.2d 657, 657-

58 (Alaska App. 1981), we indicated that "normally a first offender should receive a more favorable sentence than the presumptive sentence for a second offender. It is clear this rule should be violated only in an exceptional case." However, we have also indicated, in terms of applying the *Austin* rule, that our primary focus will be on the actual time of imprisonment imposed rather than suspended time. *Tazruk v. State*, 655 P.2d 788 (Alaska App. 1982). Thus Yerk's sentence of three years to serve does not violate the *Austin* rule. Although three years to serve for a first assault conviction, coupled with Yerk's four year period of suspended time, is a substantial sentence for a first felony offender, we believe that the facts of this case justify the sentence. The injuries which resulted from this accident, particularly the injury which resulted in ***5] the death of the fetus, are particularly appalling. Judge Carlson could properly consider the fact that this offense could have been charged as a first degree assault in considering the seriousness of the offense. We conclude the sentence was not clearly mistaken.

AFFIRMED.

Attachment D

"Interested Persons Memo on the Unborn Victims of Violence Act,"
American Civil Liberties Union,
March 27, 2002

American Civil Liberties Union

www.aclu.org

URL: <http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=10125&c=144>

Interested Persons Memo on the Unborn Victims of Violence Act (S. 480/H.R. 503)

March 27, 2002

MEMORANDUM

TO: Interested Persons

FROM: ACLU Washington National Office

RE: Unborn Victims of Violence Act (S. 480/H.R. 503)

DATE: March 27, 2002

The American Civil Liberties Union (ACLU) opposes "The Unborn Victims of Violence Act" (S. 480/H.R. 503). This legislation would amend the federal criminal code and the Uniform Code of Military Justice to create a new, separate offense if, during the commission of certain crimes, an individual causes the death of, or bodily injury to, what sponsors of the bill call a "child in utero." Because this bill explicitly applies to all stages of prenatal development, it would be the first federal law to recognize a zygote (fertilized egg), a blastocyst (pre-implantation embryo), an embryo (through week eight of a pregnancy), or a fetus as an independent "victim" of a crime, with legal rights distinct from the woman who has been harmed by criminal conduct.

The ACLU fully supports efforts to punish acts of violence against women that harm or terminate a wanted pregnancy. This bill is an inappropriate method of imposing such punishment, however, because it dangerously seeks to separate the woman from her fetus in the eyes of the law. Such separation is merely the first step toward eroding a woman's right to determine the fate of her own pregnancy and to direct the course of her own health care. For this reason, the ACLU opposes this bill, but supports alternative approaches to punishing violence against pregnant women, including enhanced penalties for cases in which a woman suffers not only harm to herself but also to her pregnancy.

This Bill Dangerously Separates the Fetus and the Pregnant Woman.

The ACLU recognizes that a woman may suffer a serious physical and emotional injury if her pregnancy is ended or harmed by an assault, a drunk driving accident, or other criminal acts. This bill, however, seeks to make a distinction between harm to a pregnant woman and harm to her pregnancy. By creating a separate offense for injury to a fetus, this bill attempts to endow the fetus with legal rights distinct from the woman who has been injured. This legislation would thus dramatically alter the existing legal framework by elevating the fetus to an unprecedented status in federal law.

Such a legal shift is not merely a matter of semantics. It would undermine the principles underlying the right to reproductive choice -- a result that is the clear aim of the sponsors of this legislation. It is no accident that anti-choice groups like the National Right to Life Committee have drafted and circulated similar legislation all across the country. In a 1984 presidential election debate, Ronald Reagan, a well-known opponent of choice, cited a California feticide law as support for regarding abortion as murder, asking, "Isn't it strange that that same woman could have taken the life of her unborn child and it was abortion, not murder, but if somebody else does it, that's murder?" These words demonstrate that this legislation is in tension with the right of reproductive choice.

This Bill Permits a Person to be Convicted of Harming a Fetus Even if He or She Did Not Know that the Woman Was

Pregnant and Lacked Criminal Intent.

This legislation explicitly disavows a mens rea (or criminal intent) requirement as an element of the crime and thus is in tension with the Constitution's Due Process guarantees. The bill permits a person to be convicted of the offense of harm to a fetus even if he or she did not know, and had no reason to know, that the woman was pregnant, and he or she did not intend to cause the harm. Furthermore, because the bill does not require a conviction for the underlying crime, the separate offense of harm to a zygote, blastocyst, embryo or fetus can be proven without any showing of intent whatsoever. Such a result undermines the Constitution's promise of due process.

Enhanced Punishment for Injury to a Pregnant Woman Can Be Achieved through Properly Crafted Legislation.

The ACLU supports properly crafted legislation aimed at punishing violence against pregnant women that recognizes the additional and significant injury a woman may suffer from loss of, or harm to, a pregnancy. Criminal interference with a woman's right to bear a child should be prevented and punished.

Legislation that imposes enhanced penalties for criminal acts against pregnant women resulting in harm to their fetuses appropriately punishes the additional injury that such acts cause without recognizing the fetus as a legal entity separate and distinct from the woman. Such legislation focuses the criminal law where it should be: on the especially devastating loss or injury to the woman that occurs when her pregnancy is compromised.

This bill ignores the unity between the pregnant woman and the fetus she carries. Penalty enhancements appropriately punish criminal behavior while embracing that unity.

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Subject: Fw: House votes Feb. 26 on Bush-backed fetal homicide bill

Date: Tue, 17 Feb 2004 06:39:17 -0900

From: Bob Lynn <boblynn@alaska.com>

To: "Fr. Tom Moffatt" <tommoffatt@aol.com>,

Forward from Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>

----- Original Message -----

From: Legfederal@aol.com

To: Legfederal@aol.com

Sent: Tuesday, February 17, 2004 6:20 AM

Subject: House votes Feb. 26 on Bush-backed fetal homicide bill

MEDIA ADVISORY AND BACKGROUNDER:

**CONGRESS TO VOTE ON UNBORN VICTIMS OF VIOLENCE ACT
(FEDERAL FETAL HOMICIDE BILL) --**

**HOUSE WILL VOTE ON BILL THURSDAY, FEBRUARY 26;
FIRST-EVER SENATE ACTION MAY FOLLOW SOON**

PRESIDENT BUSH SUPPORTS BILL -- SENATOR KERRY OPPOSES IT

WASHINGTON -- This is a media advisory from the National Right to Life Committee (NRLC), Federal Legislation Department, issued Tuesday, February 17, 2004, at 9 a.m. For further information on the Unborn Victims of Violence Act and state fetal homicide laws, visit the NRLC website at www.nrlc.org, send e-mail to Legfederal@aol.com, or call 202-626-8820.

The U.S. House of Representatives will vote on Thursday, February 26, 2004, on the Unborn Victims of Violence Act (H.R. 1997), also known as "Laci and Conner's Law." This is a bill, sponsored by Congresswoman Melissa Hart (R-Pa.), to allow federal and military prosecutors to bring charges on behalf of a "child in utero" when he or she is a victim of a violent federal or military crime. The bill defines "child in utero" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

Public attention to the fetal homicide issue has increased over the past year, due in part to widespread interest in the killing of Laci Peterson and her unborn son Conner in December, 2002. The State of California will soon place Scott Peterson on trial for two counts of murder in that case. However, abortion-rights advocacy groups such as the ACLU and Planned Parenthood say that a crime like the Peterson case has only a single victim, the pregnant woman, and they strongly oppose state and federal bills to recognize fetal homicide.

In order to pass the Unborn Victims of Violence Act, it is necessary for the House to first reject a radically different bill backed by abortion-rights advocacy groups, the "single-victim substitute

amendment" (Lofgren Substitute), which will be similar or identical to the language of H.R. 2247. The substitute would increase penalties for a federal crime that victimizes a pregnant woman if it causes "interruption" of her pregnancy, but would also write into federal law the doctrine that such a crime has only a single victim. Family members who have lost loved ones in two-victim crimes have condemned this approach.

Senate Majority Leader Bill Frist (R-Tn.) has indicated that the Senate, too, may turn to the issue very soon -- perhaps not long after House action. In the Senate, the UVVA is sponsored by Senator Mike DeWine (R-Ohio), Senator Lindsay Graham (R-SC), and 39 others. The single-victim substitute amendment will be offered by Sen. Dianne Feinstein (D-Ca.). When the Senate votes to choose between the Feinstein Substitute and the Unborn Victims of Violence Act, the outcome is in doubt. The Senate has never before considered the fetal homicide issue.

Three national polls found that about 80% of the public believes the law should recognize the killing of a "fetus" in a crime as HOMICIDE, and a solid majority believes this should be true throughout pregnancy. Only 7% to 10% said that the law should not regard the killing of a human fetus as a homicide at any stage of pregnancy -- but it is that 10% position that is incorporated into the Lofgren-Feinstein substitute amendments. The poll questions and responses are here: http://www.nrlc.org/Unborn_victims/UnbornPolls110703.html

RESOURCES:

-- NRLC has created the most extensive resource on the Internet concerning unborn victims of violence and fetal homicide laws, at http://www.nrlc.org/Unborn_victims/index.html

-- President Bush says that a crime like the Peterson case in California has two victims, and he has repeatedly urged Congress to pass the bill, most recently on January 22.

<http://www.nrlc.org/marchforlife2004remarks.html>

-- Senator John Kerry (D-Mass.) opposes the bill; his letter is here:

http://www.nrlc.org/Unborn_victims/kerryemailUVVA.html

Laci Peterson's mother, Sharon Rocha, has urged Kerry to change his mind and to reject the "single-victim" bill; her letter is here:

http://www.nrlc.org/Unborn_victims/RochatoKerry.html

-- On February 5, National Review Online posted an article by NRLC Legislative Director Douglas Johnson that is a good summary of the main points in dispute regarding the Unborn Victims of Violence Act:

<http://www.nationalreview.com/comment/johnson200402050947.asp>

-- Twenty-eight (28) states recognize fetal homicide -- 15 throughout

prenatal development, and 13 for some defined part of pregnancy. The laws are summarized here:

http://www.nrlc.org/Unborn_victims/Statehomicidelaws092302.html

-- Across the nation, federal and state courts have rejected every legal challenge to the state fetal homicide laws, consistently ruling that they do NOT conflict with Roe v. Wade. The cases are summarized here:

http://www.nrlc.org/Unborn_victims/statechallenges.html

-- Some prominent pro-Roe legal experts have in recent months declared that fetal homicide laws do not conflict with Roe -- among them, Prof. Walter Dellinger at Duke Law School, who once co-chaired a national commission to defend Roe and who later served as President Clinton's chief legal advisor on constitutional issues. Quotes from Dellinger and the other pro-Roe legal authorities are here:

http://www.nrlc.org/Unborn_victims/RoesupportersspeakUVVA.html

-- In increasing numbers, members of families who have lost loved ones -- born and unborn -- are speaking out in favor of state and federal fetal homicide legislation, and against the "single-victim" ideology. For example: On January 7, 18-year-old Ashley Lyons and her unborn son Landon were murdered in Scott County, Kentucky. Current Kentucky law regards this crime as having only a single victim. But Carol Lyons, mother of Ashley and grandmother of Landon, says: "Nobody can tell me that there were not two victims -- I placed Landon in his mother's arms, wrapped in a baby blanket that I had sewn for him, just before I kissed my daughter good-bye for the last time and closed the casket." Read the full story in "Remember Their Names," by NRLC Legislative Director Douglas Johnson, here: http://www.nrlc.org/Unborn_Victims/Remembertheirnames.html

-- The official report of the House Judiciary Committee, explaining how the Unborn Victims of Violence Act would work, including discussion of pertinent court decisions, is here (PDF file -- requires free Adobe Acrobat Reader):

http://www.nrlc.org/Unborn_victims/UVVAHJCreport2004.pdf

If you would rather not receive occasional updates on legislative issues such as this one, please REPLY to this e-mail with the word REMOVE or UNSUBSCRIBE in the subject line. Thank you.

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A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

MAY 08 2003

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May 5, 2003

To: Representative Peggy Wilson, Chairman
Health, Education and Social Services Committee

Fr: Representative Bob Lynn

Re: HB 294
"An Act relating to murder and assault of unborn children."

Please schedule HB 294 to be heard in the House Education and Social Services at your earliest convenience. Attached is a copy of the Bill and supporting documents. Thank you.

Subject: Emailing: statechallenges.htm

Date: Wed, 30 Apr 2003 21:50:38 -0800

From: Bob Lynn <boblynn@alaska.com>

To: Forward from Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>

Constitutional Challenges to State Unborn Victims Laws

April 16, 2003

(All challenges were unsuccessful. All challenges were based on *Roe v. Wade* and/or denial of equal protection, unless otherwise noted.)

California

People v. Davis, 872 P.2d 591 (Cal. 1994).

Georgia

Smith v. Newsome, 815 F.2d 1386 (11th Cir. 1987). Related state supreme court decision: *Brinkley v. State*, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).

Illinois

U.S. ex rel. Ford v. Ahitow, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, *People v. Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991).

People v. Campos, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: *appeal denied*, 602 N.E.2d 460 (Ill. 1992), *habeas corpus denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), *certiorari denied*, 514 U.S. 1024 (1995).

Louisiana

Re double jeopardy -- *State v. Smith*, 676 So.2d 1068 (La. 1996), *rehearing denied*, 679 So.2d 380 (La. 1996).

Minnesota

State v. Merrill, 450 N.W.2d 318 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990).

Re establishment clause -- *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991).

Missouri

In the 1989 case of *Webster v. Reproductive Health Services* (492 U.S. 490), the U.S. Supreme Court refused to invalidate a Missouri statute (Mo. Rev. Stat. 1.205.1) that declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law "impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion that *Roe* forbids.

In *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in this law is applicable to other statutes, including at least the state's involuntary manslaughter statute.

Pennsylvania

Commonwealth of Pennsylvania v. Corrine D. Wilcott, No. 2426 A & B of 2002 (Court of Common Pleas of Erie County, Pennsylvania, Criminal Division). Rejected challenges that Pennsylvania Crimes Against Unborn Children Act is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person." January 24, 2003.

Wisconsin

Re due process -- *State v. Black*, 526 N.W.2d 132 (Wis. 1994) (upholding earlier statute).

Subject: Emailing: Harming_fetus_in_assault_on_moP.htm

Date: Fri, 25 Apr 2003 21:16:22 -0800

From: Bob Lynn <boblynn@alaska.com>

To: Forward from Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>



THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Harming fetus in assault on mother should be federal crime, White House says

By Associated Press, 4/25/2003 17:50

WASHINGTON (AP) The White House urged Congress on Friday to pass a law making it a federal crime to harm a fetus during an assault on its mother, a subject currently in the news in connection with a California murder case.

The House passed legislation in 2001 supported by President Bush that would make it a criminal offense to injure or kill a fetus during the commission of a violent crime. The Senate never took up the measure.

Bush press secretary Ari Fleischer declined to comment specifically on the California case in which Scott Peterson has been charged with murdering his wife, Laci, and their unborn child.

But asked whether it is appropriate for the husband to be charged with two murders, Fleischer responded that the president believes that "when an unborn child is injured or killed during the commission of a crime of violence, the law should recognize what most people immediately recognize, and that is that such a crime has two victims."

Peterson pleaded innocent on Monday. Laci Peterson, who was eight months pregnant, disappeared on Christmas Eve, and the bodies washed ashore last week in San Francisco Bay, three miles from where Scott Peterson had said he was fishing.

California law permits a murder charge for a fetus if a pregnant woman is slain.

"The president calls on the House and calls on the Senate to again pass the Unborn Victims of Violence Act," Fleischer said.



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State Homicide Laws That Recognize Unborn Victim:

National Right to Life Committee
September 23, 2002

Full-Coverage Unborn Victim States (14)

(States With Homicide Laws That Recognize Unborn Children as Victims Through Period of Pre-natal Development)

Arizona: The killing of an "unborn child" at any stage of pre-natal development is manslaughter. Ariz. Rev. Stat. §13-1103 (A)(5) (West 1989 & Supp. 1998). Also to be Ariz. Rev. Stat. § 13-702(c)(10).

Idaho: Murder is defined as the killing of a "human embryo or fetus" under certain circumstances. The law provides that manslaughter includes the unlawful killing of a human embryo without malice. The law provides that a person commits aggravated battery when, by committing battery upon the person of a pregnant female, that person causes great harm, permanent disability or permanent disfigurement to an embryo or fetus. Idaho Chap. 330 (SB1344)(2002).

Illinois: The killing of an "unborn child" at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide. Comp. Stat. ch. 720, §§5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/11-1.1 person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any means causes bodily harm to an unborn child. Read with Ill. Rev. Stat. ch. 720 § 5/12-4.4.

Louisiana: The killing of an "unborn child" is first degree feticide, second degree feticide or third degree feticide. La. Rev. Stat. Ann. §§14:32.5 - 14.32.8, read with §§14:2(1), (2) (West 1997).

Michigan: The killing of an "unborn quick child" is manslaughter under Mich. Stat. Art. 28.555. The Supreme Court of Michigan interpreted this statute to apply to only those children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that interfere with or in wanton or willful disregard for consequences, cause a "miscarriage or stillbirth or aggravated physical injury to an embryo or fetus." (M.C.L. 756.90)

Minnesota: The killing of an "unborn child" at any stage of pre-natal development is first, second, or third degree murder or manslaughter, (first or second degree). It is also a crime to cause the death of an "unborn child" during the commission of a felony. Minn. Stat. §§609.266, 609.2661- 609.2665, 609.268(1) (West 1987). The death of an "unborn child"

through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. An (West 1999).

Missouri: The killing of an "unborn child" at any stage of pre-natal development is ir manslaughter or first degree murder. Mo. Ann. Stat. §§1.205, 565.024, 565.020 (Ver 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 28 App. W.D. 1997).

Nebraska: The killing of an "unborn child" at any stage of pre-natal development is the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-3

North Dakota: The killing of an "unborn child" at any stage of pre-natal developmen murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§12 to 12.1-17.1-04 (1997).

Ohio: At any stage of pre-natal development, if an "unborn member of the species / *sapiens*, who is or was carried in the womb of another" is killed, it is aggravated mu murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, agg vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 290 2903.09 (Anderson 1996 & Supp. 1998).

Pennsylvania: An individual commits criminal homicide in the first, second, or thir or voluntary manslaughter of an "unborn child" if the individual intentionally, knowi recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Anr to 2609 (1998) "Unborn child" and "fetus." Each term shall mean an individual organ species *Homo sapiens* from fertilization until live birth."

South Dakota: The killing of an "unborn child" at any stage of pre-natal developmen homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. 522-16-1, 2 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 19

Utah: The killing of an "unborn child" at any stage of pre-natal development is treat other homicide. Utah Code Ann. § 76-5-201 *et seq.* (Supp. 1998) and UT SB 178 (2002

Wisconsin: The killing of an "unborn child" at any stage of pre-natal development is degree intentional homicide, first-degree reckless homicide, second-degree intentic homicide, second-degree reckless homicide, homicide by negligent handling of dang weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or ho negligent operation of vehicle. Wis. Stat. Ann. §§939.75, 939.24, 939.25, 940.01, 94 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

Partial-Coverage Unborn Victim States (12)

(States with Homicide Laws That Recognize Unborn Children as Victims, But or Part of the Period of Pre-natal Development)

NOTE: These laws are gravely deficient because they do not recognize unborn cl victims during certain periods of their pre-natal development. Nevertheless, the described here for informational purposes.

Arkansas: The killing of an "unborn child" of twelve weeks or greater gestation is ca murder, murder in the first degree, murder in the second degree, manslaughter, or homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-10

105. (A separate Arkansas law makes it a battery to cause injury to a woman during misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury in conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

California: The killing of an unborn child after the embryonic stage is murder. Cal. § 187(a) (West 1999)

Florida: The killing of an "unborn quick child" is manslaughter, a felony of the second degree. Fla. Stat. Ann. § 782.09 (West 1999). The killing of an unborn child after viability is homicide. Fla. Stat. Ann. § 782.071 (West 1999).

Georgia: The killing of an "unborn child" after quickening is feticide, vehicular feticide by vessel. Ga. Code Ann. § 16-5-80 (1996); § 40-6-393.1 (1997); and § 52-7-1 (1997).

Massachusetts: The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn child after viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (1989).

Mississippi: The killing of an "unborn quick child" is manslaughter. Miss. Code Ann. § 97-3-1 (1994).

Nevada: The killing of an "unborn quick child" is manslaughter. Nev. Rev. Stat. § 201.030 (1997).

Oklahoma: The killing of an "unborn quick child" is manslaughter. Okla. Stat. Ann. § 11-11-1 (West 1983). The killing of an unborn child after viability is homicide. *Hughes v. State*, 91 P.2d 730 (Okla. Crim. App. 1994).

Rhode Island: The killing of an "unborn quick child" is manslaughter. The statute defines "unborn quick child" to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

South Carolina: The killing of an unborn child after viability is homicide. *State v. Hines*, 283 S.E.2d 703 (S.C. 1984); *State v. Ard*, 505 S.E.2d 328 (S.C. 1998).

Tennessee: The killing of an unborn child after viability is first-degree murder, second-degree murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. Code Ann. §§ 39-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (1997) (1998).

Washington: The killing of an "unborn quick child" is manslaughter. Wash. Rev. Code § 9A.32.060(1)(b) (West Supp. 1999).

States Without Unborn Victims Laws, Which Instead Criminalize Certain Conduct That "Terminates a Human Pregnancy" Or Causes a Miscarriage (7)

NOTE: These laws are gravely deficient, because they do not recognize unborn children as victims, nor allow justice to be done on their behalf. These laws are included here for informational purposes.

Indiana: An individual who knowingly or intentionally "terminates a human pregnancy" commits feticide. Ind. Code Ann. § 35-42-1-6 (Burns 1994 & Supp. 1998).

Iowa: An individual who intentionally "terminates a human pregnancy" without the consent of the pregnant woman commits a felony. This law also sets forth other crimes involving the termination of a human pregnancy, such as during the commission of a forcible felony. Code Ann. § 707.7 (West Supp. 1999).

Kansas: Injury to a pregnant woman during the commission of a felony or misdemeanor that causes a miscarriage results in specific levels of offense severity. Kan. Stat. Ann. § 21-5601 (1997).

New Hampshire: It is a felony to cause injury to another person that results in a miscarriage or stillbirth. N.H. Rev. Stat. Ann. §§ 631:1-631:2 (1996).

New Mexico: It is a felony to injure a pregnant woman during the commission of a felony and cause her to undergo a miscarriage or stillbirth. N.M. Stat. Ann. §§ 66-8-101.1 (Michie 1998).

North Carolina: It is a felony to injure a pregnant woman during the commission of a felony and cause her to undergo a miscarriage or stillbirth. It is a misdemeanor to cause a miscarriage or stillbirth during a misdemeanor act of domestic violence. N.C. Gen. Stat. § 14-18 (1998).

Virginia: The premeditated killing of a pregnant woman with the intent to cause a miscarriage or stillbirth is capital murder. Va. Code Ann. § 18.2-31 (Michie Supp. 1998). The unpremeditated killing of a pregnant woman with the intent to cause the termination of a pregnancy is also a crime. Va. Code Ann. § 18.2-32.1 (Michie Supp. 1998). It is a felony to injure a pregnant woman with the intent to maim or kill her or to terminate her pregnancy and she is injured or her pregnancy is terminated. Va. Code Ann. § 18.2-51.2 (Michie 1998).

New York: Conflicting Statutes

New York: Under New York statutory law, the killing of an "unborn child" after two weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under a separate statutory provision, a "person" that is the victim of a homicide is statutorily defined as a "human being who has been born and is alive." N.Y. Pen. Law § 125.05 (McKinney 1998). See *People v. Joseph*, 130 Misc. 2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re Baby Doe*, 124 Misc.2d 313, 476 N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 N.Y.S.2d 177 (Co. Ct. 1987).

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