

SB

219



## SENATOR FRED DYSON

### SPONSOR STATEMENT

#### SB 219—*"An Act relating to offenses against unborn children."*

In recent years, several high-profile cases from across the nation have highlighted the need for laws protecting unborn victims of criminal violence. Perhaps, most notably, the tragic deaths of Laci and Conner Peterson have focused much-needed attention on this critically important issue. Currently, thirty states provide some degree of protection for unborn victims of violence.

At common law, the killing of an unborn child was not considered a homicide unless the child was first born alive and then died as a result of a criminal prenatal act. This rule, called the "born-alive" rule, is still followed in a majority of the States that have not enacted special legislation to protect unborn children. Thus, if someone shoots a pregnant woman, killing her child, he is not subject to criminal prosecution for murder of the child unless the child is born alive and then dies as a result of the injuries which the child sustained before birth. SB 219 corrects this situation by criminalizing conduct causing the death of an unborn child. Such conduct is punishable as homicide, regardless of whether the child is born alive or is stillborn. SB 219 also criminalizes conduct causing nonfatal injury to the unborn child, and is not directed at abortions which, under current constitutional doctrine, are protected. Thus far, it has been consistently established that unborn victims laws do *not* conflict with the U.S. Supreme Court's pro-abortion decrees (*Roe v. Wade*, etc.). Many legal challenges have been brought against state unborn victims laws, based on *Roe* and other constitutional arguments, but state and federal courts have rejected all such challenges.

Twenty-nine states have enacted laws that recognize unborn children as victims of violent crimes covered by *state* laws. Recently, the U.S. Congress passed the Unborn Victims of Violence Act, and President Bush subsequently signed the bill into law. This federal law recognizes that when a person attacks a pregnant woman, and injures or kills her unborn child, the attacker has harmed two victims. The bill establishes that if an unborn child is injured or killed during the commission of a federal crime of violence, then the assailant may be charged with a second offense on behalf of the second victim, the unborn child. The exact charge would depend on which federal law is involved, the degree of harm done to the child, and other factors.

Pregnant women who have been harmed by violence, and their families, know that there are two victims -- the mother and the unborn child -- and both victims should be protected by law. SB 219 recognizes this value of life and establishes, in law, defense for the unborn victims of violent crime.

SB 219 establishes the following crimes against an unborn child: murder, manslaughter, criminally negligent homicide, and assault. Explicit exceptions from these crimes are made for legal abortion and for customary medical treatment. This bill also defines "unborn child" within the criminal statutes.

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