

**SB**

**219**

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 5/11/03

FURTHER: Judiciary

Date of 5-Day Notice: 4/1/04  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 4/7/04

State Affairs Committee considered SENATE BILL NO. 219

### SB 219 OFFENSES AGAINST UNBORN CHILDREN

"An Act relating to offenses against unborn children."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DOL	4/5/04		✓	
DDA	4/5/04	✓		
ACS	4/6/04		✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 219  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to offenses against unborn BRU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Senator Dyson  
 Requester Senate State Affairs Component No. 1631

**Expenditures/Revenues** (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill will likely have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Creating numerous felony offenses for death or harm done to an unborn child, mostly at the felony level, will increase the caseload and workload of the Agency. Making it a felony to knowingly cause serious physical injury to an unborn child that is subsequently born alive would certainly have a fiscal impact if it includes children born after inadequate prenatal care. It is impossible however to predict with any accuracy how many new cases this legislation would generate if enacted, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
 Division: Public Defender Agency Date/Time 4/5/04 12:00 AM  
 Approved by: Kevin Jardell, Assistant Commissioner Date 4/5/2004  
 Agency: Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: SB219-LAW-CDCO-04-0  
 Bill Version: SB219  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to offenses against unborn children." RDU CRIMINAL  
 Component CDCO  
 Sponsor Senator Dyson  
 Requester Senate State Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill amends AS 11.41 by creating new felonies involving murder, manslaughter, negligent homicide or assault of an unborn child.  
  
 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
 Division: Administrative Services Date/Time 4/5/04 9:53 AM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/5/2004  
 Agency: Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB219-ACS-TC-4-6-04  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Offenses Against Unborn Children BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Senator Dyson  
 Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Senate Bill 219 creates new criminal offenses for certain acts that result in harm to unborn children. Although these new offenses will likely result in an increase in the number of cases brought before the court system, that increase is not anticipated to be significant enough to warrant a fiscal note.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 4/6/04 10:05 AM  
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/6/2004  
 Agency: Alaska Court System



## SENATOR FRED DYSON

### SPONSOR STATEMENT

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

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. Recently, this issue has saturated the media in the highly publicized case involving Scott, Laci, and Conner Peterson.

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.

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 222 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.

# The Washington Times

www.washingtontimes.com

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## Bush signs fetus-protection bill

By Joseph Curl

THE WASHINGTON TIMES

Published April 2, 2004

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President Bush yesterday signed legislation that criminalizes harming a fetus while assaulting a pregnant woman during a federal crime, the first national law granting an unborn child a status separate from the mother.

In a high-profile ceremony in the White House's East Room, attended by parents and relatives of murdered pregnant women, the president signed the Unborn Victims of Violence Act, a narrow law that mirrors statutes now in place in 29 states.

"As of today, the law of our nation will acknowledge the plain fact that crimes of violence against a pregnant woman often have two victims," Mr. Bush said.

"Under this law, those who direct violence toward a pregnant woman will answer for the full extent of the harm they have done, and for all the crimes they have committed," he said to applause.

Although the law applies only in assaults that are already federal, such as a drug-related shooting, the statute pleases social conservatives, who make up the president's political base and overwhelmingly oppose abortion. The law applies to fetuses at "any stage of development."

More than 80 percent of Americans think the murder of a pregnant woman takes two lives, according to three national public opinion polls. Fewer than 10 percent think such a crime has only one victim.

Democratic presidential candidate John Kerry voted against the bill last month in the Senate. Yesterday, his spokesman called the new law an infringement of a woman's right to choose.

"John Kerry strongly supports making it a federal crime to commit an act of violence against a pregnant woman," David Wade said. "He agrees with the vast majority of Americans who want tough punishment for anyone who would commit such heinous crimes and know we can do so without undermining a woman's right to choose."

The House passed the bill by a 245-163 vote; the Senate by a 61-38 margin.

The law states that "nothing in this section shall be construed to permit the prosecution ... of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained."

Despite that clause, Kate Michelman, president of NARAL Pro-Choice America, said Mr. Bush "is making good on his pledge to do everything in his power to restrict a woman's right to choose."

"Pro-choice Americans aren't going to forget this president's record, with its steady drumbeat of attacks on reproductive freedom," she said in a statement.

David Seldin, a spokesman for the group, said his organization supported a bill that did not establish the unborn child as a separate entity.

"What they insisted on that was so unnecessary to the goal of protecting women and punishing criminals was to grant separate legal status to embryos, fetuses and two-cell zygotes at the moment of conception," he said.

Opponents of abortion said the new law will protect unborn children and took issue with

Mr. Kerry's contention that it will infringe on a woman's right to abortion.

"If there ever was a bill to protect a woman's right to choose, it is this bill that seeks to deter violence against or at least provide justice to the pregnant woman who is choosing life for her unborn child only to see her choice deprived by a crime of violence against her and/or her child," said Samuel B. Casey, head of the Christian Legal Society.

Mr. Bush said the new statute, often referred to as the "Laci and Conner" law, after Laci Peterson, who was eight months pregnant with a boy she planned to name Conner when she was slain, simply corrects a legal "omission." Her husband, Scott, is accused of two counts of murder.

"The death of an innocent unborn child has too often been treated as a detail in one crime, but not a crime in itself," he said.

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## One Victim or Two?

The Unborn Victims of Violence Act (S. 1019) would recognize as a legal victim an unborn child who is injured or killed during commission of a *federal* crime against the baby's mother. A substitute amendment to be offered by Senator Dianne Feinstein would increase penalties for federal crimes against pregnant women – but would recognize only *one* victim, the mother, and without recognizing any loss of human life if the mother survives the assault. Sharon Rocha, mother of Laci Peterson and grandmother of Conner Peterson, has called such a single-victim proposal “a step away from justice, not toward it.” But what does the general public say? If a criminal assaults a woman who carries an unborn child, does that crime have two victims, or only one? Here are three recent national polls on that issue.

Polls	One Victim	Two Victims
<p>“If a violent physical attack on a pregnant woman leads to the death of her unborn child, do you think prosecutors should be able to charge the attacker with murder for killing the fetus?”</p> <p>Yes            79% (including 69% of “pro-choice”)            No             10%            Not sure    11%</p> <p>Fox News/Opinion Dynamics, July 15-16, 2003. (900 registered voters. Margin of error: +/- 3%.)</p>	10%	79%  <i>(includes 69% of “pro-choice”)</i>
<p>“We’re interested in how you think the criminal justice system should deal with cases involving the murder of a pregnant woman. When, if ever, do you think prosecutors should be able to bring SEPARATE murder charges against someone who kills a fetus still in the womb? In other words, try them for two murders instead of one. Do you think this should be done in ALL cases where a pregnant woman is murdered, only in cases where the fetus is viable – that is, is able to survive outside the womb, or not at all?”</p> <p>All cases            56%            Fetus Viable       28%            Not at all           9%            DK                    7%</p> <p>Newsweek/Princeton Survey Research Associates, May 29-30, 2003. (1,009 adults, age 18+. Margin of error: +/- 3%.)</p>	9%	84%  <i>(total “all cases” 56% and “fetus viable” 28%)</i>
<p>“If Scott Peterson is convicted of killing his pregnant wife Laci, do you think he should be charged with one count of homicide for murdering his wife or two counts of homicide for murdering both his wife and unborn son?”</p> <p style="text-align: right;">One</p> <p>count                7%</p> <p style="text-align: right;">Two</p> <p>counts               84%</p> <p>Something else (vol.) 1%            sure                 8%</p> <p>Fox News/Opinion Dynamics, April 22-23, 2003. (900 registered voters. Margin of error: +/- 3%.)</p>	7%	84%

To go to the main unborn victims (fetal homicide) page, please click [here](#).

## Constitutional Challenges to State Unborn Victims (Fetal Homicide) Laws

February 16, 2004

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

### California

In *People v. Davis* [872 P.2d 591 (Cal. 1994)], the California Supreme Court upheld the legislature's addition of the phrase "or a fetus" to the state murder law in 1970, but held that the term "fetus" applies "beyond the embryonic stage of seven to eight weeks." (California Penal Code 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.") In *People v. Dennis* [950 P.2d 1035 (Cal. 1994)], the California Supreme Court upheld inclusion of fetal homicide under Penal Code 190.2(3), which makes a defendant eligible for capital punishment if convicted of more than one murder.

### Georgia

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit unanimously upheld the conviction of Richard James Smith, Sr., under Georgia's "feticide" statute. Smith argued that the law conflicted with *Roe v. Wade*, but the court rejected this assertion as "without merit." The court held: "The proposition that Smith relies upon in *Roe v. Wade* -- that an unborn child is not a "person" within the meaning of the Fourteenth Amendment -- is simply immaterial in the present context to whether a state can prohibit the destruction of a fetus." *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.

## Utah

*State of Utah v. Roger Martin MacGuire*. MacGuire was charged under the state criminal homicide law with killing his former wife and her unborn child. He argued that the law, which covered "the death of another human being, including an unborn child," was unconstitutional because the term "unborn child" was not defined. The Utah Supreme Court upheld the law as constitutional, holding that "the commonsense meaning of the term 'unborn child' is a human being at any stage of development in utero. . ." MacGuire was also charged under the state's aggravated murder statute, which applies a more severe penalty for a crime in which two or more "persons" are killed; the court ruled that this law was also properly applied to an unborn victim and was consistent with the U.S. Constitution. January 23, 2004.

## Wisconsin

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