

**SB**

**20**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPC T

(11)

Date Referred to Committee: April 21, 2006

FURTHER REFERRALS:

Date of Committee Action: 4/25/06

The FINANCE Committee considered:

CSSB 20(JUD)

CS FOR SENATE BILL NO. 20(JUD)

OFFENSES AGAINST UNBORN CHILDREN

"An Act relating to offenses against unborn children."

Recommends it be replaced with  HCS or  CS for SB 20 (FIN)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of  
Abbrev  
for  
Depts.:

- ADM
- CEC
- COR
- CRT
- EED
- DEC
- DEG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOC	4			✓
AK CT.	5			✓
DPS	6			✓
DBA	7		✓	
DDA	8		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Bea Kerttula</i>	KERTTULA		X		
<i>Mark Hamel</i>	HAMEL				X
<i>Leo</i>	HOLM			✓	
<i>Bruce Weyrauch</i>	WEYRAUCH			X	
<i>Carl P. Moses</i>	MOSES			X	
<i>Bill Stolte</i>	STOLTE	✓			
<i>Spaul</i>	SPULLE			-	X
<i>Kelly</i>	KELLY	✓			
<i>Festeck</i>	FESTECK	X			
Chair: <i>K. May</i>	MAY	✓			
Chair: <i>John Chausse</i>	CHAUSSE			X	

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB20CS(2nd JUD)-DPS-AST-2-22-06  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title: "An Act relating to offenses against unborn children." RDU: Alaska State Troopers  
Sponsor: Senator Dyson Component: AST Detachments  
Requester: House Judiciary Committee Component No.: 2325

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Passage of this bill will have no fiscal impact on the Department of Public Safety.

Provisions of this bill create new sections in AS 11.41 for the murder of an unborn child, manslaughter of an unborn child, criminally negligent homicide of an unborn child, and assault of an unborn child in the first and second degree. It also creates a definition for "unborn child" and outlines penalties for convictions of these offenses.

Prepared by: Lieutenant James Heiber Phone: 907-269-4533  
Division: Alaska State Troopers Date/Time: 2/22/06 8:54 AM  
Approved by: Commissioner William Tanduske Date: 2/22/2006  
Agency: Department of Public Safety

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: HCS CSSB 20(JUD)  
(H) Publish Date: 4/21/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
Title: "An Act relating to offenses against unborn children." RDU: Institutional Facilities  
Sponsor: Senator Dyson Component: Institution Director's Office  
Requester: House Judicial Component No.: 524

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<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>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Due to the small number of potential criminal cases that may be impacted by the proposed changes in the bill, passage of this legislation is not expected to have a significant fiscal impact on the Department of Corrections.

Prepared by: Sharileen Griffin, Director  
Division: Administrative Services  
Approved by: Reeta C.K. Parker, Deputy Commissioner  
Agency: Department of Corrections

Phone: 907-465-5339  
Date/Time: 2/14/06 12:12 PM  
Date: 2/14/2006

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: HCS CSSB 20(JUD)  
(H) Publish Date: 4/21/06

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

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The court system does not anticipate any fiscal impact from the passage of CSSB20(2d JUD). This bill creates new crimes against unborn children. Although these new crimes will likely result in new or enhanced prosecutions coming before the court system, absent evidence that there will be a significant number of these cases the court will be able to address them with existing resources.

Prepared by: Doug Wooliver, Administrative Attorney  
Division: Alaska Court System  
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director  
Agency: Alaska Court System

Phone: 463-4750  
Date/Time: 3/13/06 12:33 pm  
Date: 3/13/2006

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 6  
Bill Version: HCS CSSB 20(JUD)  
(H) Publish Date: 4/21/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title An Act relating to offenses against unborn RDU Statewide Support  
children Component Alaska Criminal Records  
Sponsor Senator Dyson and Identification  
Requester House Judiciary Committee Component No. 1190

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill creates new sections in Title 11 regarding unborn children and the crimes of manslaughter, criminally negligent homicide, and assault.

This bill will require updates to the Uniform Offense Citation Table (UOCT), the list of criminal offenses that is maintained by the Department of Public Safety and used by many agencies. However, this is routine maintenance, and will not result in any fiscal impact on the Department.

Prepared by: Director David Schade Phone: 907-269-0202  
Division: Statewide Services Date/Time: 2/21/06 1:13 PM  
Approved by: Commissioner William Tandeske Date: 2/21/2006  
Agency: Department of Public Safety

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 7  
Bill Version: HCS CSSB 20(JUD)  
(H) Publish Date: 4/21/06

Revision Date/Time (Note if correction): 3/10/06 / 10:40 a.m. Dept. Affected: Administration  
Title: An act relating to offenses against unborn children. RE U: Legal and Advocacy Services  
Component: Office of Public Advocacy  
Sponsor: Senator Dyson  
Requester: (H) JUD Component No.: 43

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*	*	*	*	*	*
Travel						
Contractual	*	*	*	*	*	*
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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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 (FY2006) cost: 00  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This legislation creates numerous felony offenses for death or harm done to unborn child. To the extent individuals may be charged with offenses under this legislation that would previously not had been charged, this may increase appointments to OPA and have a fiscal impact on the agency. However, it is not possible to predict with any accuracy any such increase in cost, thus an indeterminate fiscal note is submitted.

Prepared by: Joshua P. Fink, Director Phone: (907) 269-3500  
Division: Office of Public Advocacy Date/Time: 3/10/06 at 10:40 a.m.  
Approved by: Mike Tibbles, Deputy Commissioner Date: 3/13/2006  
Agency: Administration

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 8  
Bill Version: HCS CSSB 20(JUD)  
(H) Publish Date: 4/21/06

Revision Date/Time (Note if correction): 3/11/06 / 9:30 a.m. Dept. Affected: Administration  
Title: An act relating to offenses against unborn children. RDU: Legal and Advocacy Services  
Sponsor: Senator Dyson Component: Public Defender Agency  
Requester: (H) JUD Component No.: 1631

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*	*	*	*	*	*
Travel						
Contractual	*	*	*	*	*	*
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*
<b>CAPITAL EXPENDITURES</b>						
<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>	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation creates numerous felony offenses for death or harm done to unborn child. To the extent individuals may be charged with offenses under this legislation that would not have been previously charged, this would increase appointments to the Agency and have a fiscal impact. It is, however, not possible to predict with any accuracy any such increase in cost; thus an indeterminate fiscal note is submitted.

Prepared by: Quinlan Steiner, Director  
Division: Public Defender Agency  
Approved by: Mike Tibbles, Deputy Commissioner  
Agency: Administration

Phone: (907) 334-4414  
Date/Time: 3/11/06 / 9:30 a.m.  
Date: 3/13/2006

*adepsteel*

*4/25*

AMENDMENT

Senate Bill 20  
Version 24-LS0197AT

House Finance Committee

April 25, 2006

By Representative Mike Kelly

Page 1, line 7 & 8

Delete:

[Constitution of the United States and the Constitution of the State of Alaska]

Insert:

United State Supreme Court

Amended, line 7 will now read "guaranteed by the United States Supreme Court."

*Facileed*

AMENDMENT 2

*Kertula*

OFFERED IN THE HOUSE  
TO: HCS CSSB 20(JUD)

1 Page 1, line 1:

2 Delete all material and insert:

3 ""An Act relating to sentencing factors and penalties for crimes against pregnant  
4 women.""

6 Page 1, line 3, through page 7, line 20:

7 Delete all material and insert:

8 ""\* Section 1. AS 11 is amended by adding a new chapter to read:

9 **Chapter 32. Enhanced Penalties.**

10 **Sec. 11.22.100. Penalties for crimes committed against pregnant women.**

11 (a) Notwithstanding another provision of this title or AS 12, if a person commits a  
12 crime defined in this title against a pregnant woman who the person knew or should  
13 have known to be pregnant that results in a miscarriage or stillbirth, the crime shall be  
14 punished in the following manner:

15 (1) a crime defined as murder in the first degree under AS 11.41.100  
16 shall be punished by a sentence of 40 - 99 years;

17 (2) a crime defined as murder in the second degree under  
18 AS 11.41.110 shall be punished by a sentence of 30 - 99 years;

19 (3) a crime defined in this title as a class A felony shall be punished as  
20 an unclassified felony in the manner provided for unclassified felonies in  
21 AS 12.55.125;

22 (4) a crime defined in this title as a class B felony shall be punished as  
23 a class A felony in the manner provided for class A felonies in AS 12.55.125;

1 (5) a crime defined in this title as a class C felony shall be punished as  
2 a class B felony in the manner provided for class B felonies in AS 12.55.125;

3 (6) a crime defined in this title as a class A misdemeanor shall be  
4 punished as a class C felony in the manner provided for class C felonies in  
5 AS 12.55.125;

6 (7) a crime defined in this title as a class B misdemeanor shall be  
7 punished as a class A misdemeanor in the manner provided for class A misdemeanors  
8 in AS 12.55.135.

9 (b) The penalties in (a) of this section do not apply to acts committed

10 (1) during a legal abortion to which the pregnant woman, or a person  
11 authorized by law to act on the pregnant woman's behalf, consented or for which the  
12 consent is implied by law;

13 (2) during any medical treatment of the pregnant woman or the fetus;  
14 or

15 (3) by a pregnant woman against herself.

16 (c) In this section,

17 (1) "miscarriage" means the interruption of the normal development of  
18 the fetus, other than by a live birth or by an induced abortion, resulting in the complete  
19 expulsion or extraction of the fetus from a pregnant woman;

20 (2) "stillbirth" means the death of a fetus before the complete  
21 expulsion or extraction from a woman, other than by an induced abortion, irrespective  
22 of the duration of the pregnancy.

23 \* Sec. 2. AS 12.55.125(a) is amended to read:

24 (a) A defendant convicted of murder in the first degree shall be sentenced to a  
25 definite term of imprisonment of at least 20 years but not more than 99 years. A  
26 defendant convicted of murder in the first degree enhanced under  
27 AS 11.32.100(a)(1) shall be sentenced to a definite term of imprisonment of at  
28 least 40 years but not more than 99 years. A defendant convicted of murder in the  
29 first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

30 (1) the defendant is convicted of the murder of a uniformed or  
31 otherwise clearly identified peace officer, fire fighter, or correctional employee who

1 was engaged in the performance of official duties at the time of the murder:

2 (2) the defendant has been previously convicted of

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

5 (B) murder in the second degree under AS 11.41.110 or former  
6 AS 11.15.030; or

7 (C) homicide under the laws of another jurisdiction when the  
8 offense of which the defendant was convicted contains elements similar to first  
9 degree murder under AS 11.41.100 or second degree murder under  
10 AS 11.41.110;

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

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

15 \* Sec. 3. AS 12.55.125(b) is amended to read:

16 (b) A defendant convicted of attempted murder in the first degree, solicitation  
17 to commit murder in the first degree, conspiracy to commit murder in the first degree,  
18 kidnapping, or misconduct involving a controlled substance in the first degree shall be  
19 sentenced to a definite term of imprisonment of at least five years but not more than  
20 99 years. A defendant convicted of murder in the second degree or a class A felony  
21 enhanced under AS 11.32.100(a)(3) shall be sentenced to a definite term of  
22 imprisonment of at least 10 years but not more than 99 years. A defendant convicted  
23 of murder in the second degree shall be sentenced to a definite term of imprisonment  
24 of at least 20 years but not more than 99 years when the sentence is enhanced under  
25 AS 11.32.100(a)(2) or when the defendant is convicted of the murder of a child under  
26 16 years of age and the court finds by clear and convincing evidence that the  
27 defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or  
28 a person occupying a position of authority in relation to the child; or (2) caused the  
29 death of the child by committing a crime against a person under AS 11.41.200 -  
30 11.41.530. In this subsection, "legal guardian" and "position of authority" have the  
31 meanings given in AS 11.41.470.

1 \* Sec. 4. AS 12.55.155(c) is amended to read:

2 (c) The following factors shall be considered by the sentencing court if proven  
3 in accordance with this section, and may allow imposition of a sentence above the  
4 presumptive range set out in AS 12.55.125:

5 (1) a person, other than an accomplice, sustained physical injury as a  
6 direct result of the defendant's conduct;

7 (2) the defendant's conduct during the commission of the offense  
8 manifested deliberate cruelty to another person;

9 (3) the defendant was the leader of a group of three or more persons  
10 who participated in the offense;

11 (4) the defendant employed a dangerous instrument in furtherance of  
12 the offense;

13 (5) the defendant knew or reasonably should have known that the  
14 victim of the offense was particularly vulnerable or incapable of resistance due to  
15 advanced age, disability, ill health, or extreme youth or was for any other reason  
16 substantially incapable of exercising normal physical or mental powers of resistance;

17 (6) the defendant's conduct created a risk of imminent physical injury  
18 to three or more persons, other than accomplices;

19 (7) a prior felony conviction considered for the purpose of invoking a  
20 presumptive range under this chapter was of a more serious class of offense than the  
21 present offense;

22 (8) the defendant's prior criminal history includes conduct involving  
23 aggravated or repeated instances of assault behavior;

24 (9) the defendant knew that the offense involved more than one victim;

25 (10) the conduct constituting the offense was among the most serious  
26 conduct included in the definition of the offense;

27 (11) the defendant committed the offense under an agreement that the  
28 defendant either pay or be paid for the commission of the offense, and the pecuniary  
29 incentive was beyond that inherent in the offense itself;

30 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for  
31 another felony charge or conviction or for a misdemeanor charge or conviction having

1 assault as a necessary element;

2 (13) the defendant knowingly directed the conduct constituting the  
3 offense at an active officer of the court or at an active or former judicial officer,  
4 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,  
5 emergency medical technician, paramedic, ambulance attendant, or other emergency  
6 responder during or because of the exercise of official duties;

7 (14) the defendant was a member of an organized group of five or  
8 more persons, and the offense was committed to further the criminal objectives of the  
9 group;

10 (15) the defendant has three or more prior felony convictions;

11 (16) the defendant's criminal conduct was designed to obtain  
12 substantial pecuniary gain and the risk of prosecution and punishment for the conduct  
13 is slight;

14 (17) the offense was one of a continuing series of criminal offenses  
15 committed in furtherance of illegal business activities from which the defendant  
16 derives a major portion of the defendant's income;

17 (18) the offense was a felony

18 (A) specified in AS 11.41 and was committed against a spouse,  
19 a former spouse, or a member of the social unit made up of those living  
20 together in the same dwelling as the defendant;

21 (B) specified in AS 11.41.410 - 11.41.458 and the defendant  
22 has engaged in the same or other conduct prohibited by a provision of  
23 AS 11.41.410 - 11.41.460 involving the same or another victim; or

24 (C) specified in AS 11.41 that is a crime involving domestic  
25 violence and was committed in the physical presence or hearing of a child  
26 under 16 years of age who was, at the time of the offense, living within the  
27 residence of the victim, the residence of the perpetrator, or the residence where  
28 the crime involving domestic violence occurred;

29 (19) the defendant's prior criminal history includes an adjudication as a  
30 delinquent for conduct that would have been a felony if committed by an adult;

31 (20) the defendant was on furlough under AS 33.30 or on parole or

1 probation for another felony charge or conviction that would be considered a prior  
2 felony conviction under AS 12.55.145(a)(1)(B);

3 (21) the defendant has a criminal history of repeated instances of  
4 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,  
5 similar in nature to the offense for which the defendant is being sentenced under this  
6 section;

7 (22) the defendant knowingly directed the conduct constituting the  
8 offense at a victim because of that person's race, sex, color, creed, physical or mental  
9 disability, ancestry, or national origin;

10 (23) the defendant is convicted of an offense specified in AS 11.71 and

11 (A) the offense involved the delivery of a controlled substance  
12 under circumstances manifesting an intent to distribute the substance as part of  
13 a commercial enterprise; or

14 (B) at the time of the conduct resulting in the conviction, the  
15 defendant was caring for or assisting in the care of a child under 10 years of  
16 age;

17 (24) the defendant is convicted of an offense specified in AS 11.71 and  
18 the offense involved the transportation of controlled substances into the state;

19 (25) the defendant is convicted of an offense specified in AS 11.71 and  
20 the offense involved large quantities of a controlled substance;

21 (26) the defendant is convicted of an offense specified in AS 11.71 and  
22 the offense involved the distribution of a controlled substance that had been  
23 adulterated with a toxic substance;

24 (27) the defendant, being 18 years of age or older,

25 (A) is legally accountable under AS 11.16.110(2) for the  
26 conduct of a person who, at the time the offense was committed, was under 18  
27 years of age and at least three years younger than the defendant; or

28 (B) is aided or abetted in planning or committing the offense by  
29 a person who, at the time the offense was committed, was under 18 years of  
30 age and at least three years younger than the defendant;

31 (28) the victim of the offense is a person who provided testimony or

1 evidence related to a prior offense committed by the defendant;

2 (29) the defendant committed the offense for the benefit of, at the  
3 direction of, or in association with a criminal street gang;

4 (30) the defendant is convicted of an offense specified in AS 11.41.410  
5 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
6 the victim in furtherance of the offense with the intent to make the victim  
7 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
8 AS 11.41.470;

9 (31) the defendant's prior criminal history includes convictions for five  
10 or more crimes in this or another jurisdiction that are class A misdemeanors under the  
11 law of this state, or having elements similar to a class A misdemeanor; two or more  
12 convictions arising out of a single continuous episode are considered a single  
13 conviction; however, an offense is not a part of a continuous episode if committed  
14 while attempting to escape or resist arrest or if it is an assault upon a uniformed or  
15 otherwise clearly identified peace officer; notice and denial of convictions are  
16 governed by AS 12.55.145(b), (c), and (d);

17 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the  
18 offense occurred on school grounds, on a school bus, at a school-sponsored event, or  
19 in the administrative offices of a school district if students are educated at that office;  
20 in this paragraph,

21 (A) "school bus" has the meaning given in AS 11.71.900;

22 (B) "school district" has the meaning given in AS 47.07.063;

23 (C) "school grounds" has the meaning given in AS 11.71.900;

24 (33) the defendant is convicted of an offense specified in AS 11.41  
25 and the offense involved physical injury to a pregnant woman.

26 \* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 APPLICABILITY. AS 11.32.100, enacted by sec. 1 of this Act, and AS 12.55.125(a)  
29 - (e), as amended by secs. 2 - 4 of this Act, apply to crimes committed on or after the effective  
30 date of this Act."

*Fail*

24-LS0197AT.1  
Mischel  
4/24/06

AMENDMENT 3

OFFERED IN THE HOUSE  
TO: HCS CSSB 20(JUD)

1 Page 5, lines 29 - 30:

2 Delete all material and insert:

3 "(64) "unborn child" means a member of the species Homo sapiens  
4 that has attained viability; in this paragraph, "viability" means the ability to live  
5 outside of the mother's womb."



SENATOR FRED DYSON

SPONSOR STATEMENT

SB 20—*"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. 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.

Recently, a publicized case in Michigan has the citizens of the state closely evaluating Michigan laws and the related ethical implications. A 16 year old, who was entitled to get a legal abortion, had her boyfriend beat her stomach with a miniature baseball bat over the course of three weeks until she miscarried the baby. A similar scenario is playing out in the State of Texas.

SB 20 amends the Alaska Criminal Code to afford protection to an unborn child at a level that is reasonably equivalent to protection afforded to live born persons in comparable circumstances. Nothing in this law shall apply to legal abortion or to usual and customary medical practice related to pregnancy. This bill also defines "unborn child" within the criminal statutes.

In 2004, 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. It is narrowly drafted in that it only applies when death or injury of an unborn child is the result of a federal crime. The federal act does not supersede state unborn victim laws, nor does it impose such a state law on a state, like Alaska, that has not yet acted. Thirty two states currently have legislation protecting unborn children.

Pregnant women who have been harmed by violence, and their families, know that there are two victims -- the mother and the unborn child -- and that both victims should be protected by law. Pregnant women are already protected by Alaska Criminal Code. SB 20 affords similar protection to unborn victims.

1 | Page | 4/26/06



## SENATOR FRED DYSON

### Sectional Analysis SB 20

Revised 4/2006

#### Section 1: A new section:

- Statement of legislative intent that SB 20 is not intended to limit or alter a woman's right to choose the outcome of her pregnancy as guaranteed by the decision of the U.S. Supreme Court.

#### Section 2: A new section:

- 11.41.150 Defines Murder of an unborn child that contains the elements of criminal code applicable to First and Second Degree murder. Murder of an unborn child is established as an unclassified felony.
- 11.41.160 Defines Manslaughter of an unborn child and establishes it as a Class A felony.
- 11.41.170 Defines Criminally negligent homicide of an unborn child and establishes it as a Class B felony.
- 11.41.180 Exempts the applicability of this Section to legal abortion, medical treatment related to pregnancy, and acts committed by a pregnant woman against herself and her own unborn child.

#### Section 3: A new section:

- 11.41.280 Defines Assault of an unborn child in the first degree and establishes it as a Class A felony.
- 11.41.282 Defines Assault of an unborn child in the second degree and defines it as a Class B felony.
- 11.41.289 Exempts the applicability of this Section to legal abortion, medical treatment related to pregnancy, and acts committed by a pregnant woman against herself and her own unborn child.

**Section 4: Amends AS 11.81.250(a)** to include "Murder of an unborn child" in the list of other serious crimes that are considered unclassified for purposes of sentencing.

**Section 5: Amends AS 11.81.250(b)** to include "Murder of an unborn child" in the list of other serious unclassified crimes that is exempted from being classified in the section that defines them.

**Section 6: Defines "unborn child"** to mean a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

**Section 7: Amends 12.55.035(b)** to include "Murder of an unborn child" in the list of other unclassified crimes for purposes of setting a guideline for fines.

**Section 8: Amends 12.55.125(a)** to include "Murder of an unborn child" as defined in AS 11.41.150(a)(1) with murder in the first degree for purposes of determining the imprisonment guideline for sentencing.

**Section 9: Amends 12.55.125(b)** to include "Murder of an unborn child" as defined in AS 11.41.150(a)(2)-(4) with murder in the second degree for purposes of determining the imprisonment guideline for sentencing.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

## Key Facts on the Unborn Victims of Violence Act ("Laci and Conner's Law") (H.R. 1997)

*Published by the National Right to Life Committee*  
Updated April 1, 2004

For more information on unborn victims of violence (or "fetal homicide" laws), visit the NRLC website at [http://www.nrlc.org/Unborn\\_victims\\_index.html](http://www.nrlc.org/Unborn_victims_index.html)

- The Unborn Victims of Violence Act (also known as "Laci and Conner's Law"), signed into law by President George W. Bush on April 1, 2004, was enacted after a five-year effort led by the National Right to Life Committee (NRLC). This bill was sponsored in the House of Representatives by Congresswoman Melissa Hart (R-Pa.). A Senate companion bill (S. 1019) was sponsored by Senator Mike DeWine (R-Ohio). The House of Representatives approved the bill on February 26, 2004 (254-163) and the Senate approved it on March 25, 2004 (61-38).
- The Unborn Victims of Violence Act recognizes that when a criminal attacks a pregnant woman, and injures or kills both her and her unborn child, he has claimed *two* human victims. The bill would establish that if a "child in utero" is injured or killed during the commission of certain federal crimes 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. The law applies this two-victim principle to 68 existing federal laws dealing with acts of violence. These laws cover a considerable number of activities defined as federal crimes wherever they occur, including interstate stalking, kidnapping, bombings, and offenses related to major drug trafficking, and attacks on federal employees. In addition, these laws cover federal geographical jurisdictions, such as federal lands and tribal lands, and the military justice system.
- Prior to enactment of this law, an unborn child was *not* recognized as a victim with respect to violent crimes. Thus, for example, if a criminal beat a woman on a military base, and killed her unborn child, he would be charged only with the battery against the woman, because the unborn child's loss of life was not recognized by the law. Likewise, a bombing that injured a woman and killed her unborn child was not recognized as involving any loss of human life. This gap in federal law resulted in grave injustices, some real-world examples of which were described by former Congressman Charles Canady (R-Fl.) at a July 21, 1999 House Judiciary Constitution Subcommittee hearing on the issue. To read Congressman Canady's summary statement, go to: <http://nrlc.org/news/1999/NRI899/cana.html>.
- The law covers the "child in utero," defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." The law explicitly provides that it *does not apply* to any abortion to which a woman has consented, to any act of the mother herself (legal or illegal), or to any form of medical treatment. The National Right to Life Committee strongly supported enactment of the law because it achieved other pro-life purposes that are worthwhile in their own right: The protection of unborn children from acts of violence *other than* abortion, the recognition that unborn children may be victims of such violent criminal acts, and the just punishment of those who harm unborn children while engaged in federally prohibited acts of violence.
- As of April 20, 2006, thirty-two (32) states have laws that allow a homicide charge to be brought for the unlawful killing of an "unborn child" or "fetus" in a *state* crime. Of these, 20 provide this protection throughout the period of in utero development, while the other 12 provide protection during certain specified stages of development, which varies from state to state. These laws are sometimes referred to as "fetal homicide" laws. For detailed information on state unborn victims laws, see the NRLC factsheet "State Homicide Laws That Recognize Unborn Victims," at: [http://www.nrlc.org/Unborn\\_victims/Statehomicidelaw092302.html](http://www.nrlc.org/Unborn_victims/Statehomicidelaw092302.html)
- Enactment of the federal Unborn Victims of Violence Act did not supersede state unborn victims laws, nor did it apply such a law for state crimes in a state that has not enacted one. Rather, the federal law applies only to unborn children injured or killed during the course of the *federal* crimes of violence that are listed in the law.
- It is well established that unborn victims laws (also known as "fetal homicide" laws) do *not* conflict with the Supreme Court's pro-abortion decrees (*Roe v. Wade*, etc.). The state laws mentioned above have had no effect on the practice of

legal abortion. Criminal defendants have brought many legal challenges to the *state* unborn victims laws, based on *Roe* and other constitutional arguments, but all such challenges have been rejected by state and federal courts. To cite just one example, the Minnesota Supreme Court ruled: "*Roe v. Wade* . . . does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus." [*State v. Merrill*, 450 N.W.2d 318 (Minn. 1990)]. For a summary of these court decisions, see: [http://www.nrlc.org/Unborn\\_victims\\_statechallenges.html](http://www.nrlc.org/Unborn_victims_statechallenges.html)

- Moreover, in the 1989 case of *Webster v. Reproductive Health Services*, the U.S. Supreme Court refused to invalidate a Missouri statute 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* (including criminal 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 ruled that Missouri's law "impermissibly" adopted "a theory of when life begins," and blocked its enforcement, but the Supreme Court nullified that ruling, allowing the law to go into effect so long as the state did not use it to restrict abortion.
- In Congress, some opponents objected to the bill's recognition of the "child in utero" as a member of the human family who can be harmed in a crime. Yet, on July 25, 2000, the House passed on a vote of 417-0 a bill that contained *the same definition* of "child in utero" and that embodied the *same basic legal principle*. That bill, the Innocent Child Protection Act, said that no state or federal authority may "carry out a sentence of death on a woman while she carries a child in utero. . . ." "child in 'utero' means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb." The principle embodied in the Innocent Child Protection Act was obvious -- *carrying out the execution would take two human lives, including one convicted of no crime*. The Unborn Victims of Violence Act extended that same principle to the rest of the federal criminal code, recognizing that when a criminal attacks a woman, injuring or killing her *and* injuring or killing her unborn child, he has claimed *two* victims.
- The Unborn Victims of Violence Act has been vehemently attacked by pro-abortion groups such as NARAL, Planned Parenthood, and the ACLU. Even though this law deals with acts of violence other than abortion, the pro-abortion lobby's ideology apparently compels it to deny the very existence of unborn human beings in *any* area of the law. Senator Dianne Feinstein (D-Cal.) and Congresswomen Zoe Lofgren (D-Cal.), who were allied with these groups, offered "single-victim substitute" proposals. These bills would have codified the doctrine that a crime against a pregnant woman has only a single victim, while also creating a new federal crime of "interruption to the normal course of the pregnancy." Supporters of the Unborn Victims of Violence Act strongly opposed this "single-victim" doctrine, arguing that when an unborn child loses his or her life in a criminal attack, the parents and society mourn the death of a separate individual, rather than viewing it simply as an additional injury to the mother. Both houses rejected the single-victim substitute amendments. In the Senate, the Feinstein Substitute Amendment failed 49-50 (March 25, 2004).
- Arguments in favor of the single-victim proposals were internally inconsistent and illogical, and the proposals themselves may have been legally invalid. Supporters of the single-victim approach insisted that when a criminal *injures* a mother and *kills* her unborn child, there has been only a compound injury to the mother but no loss of any human life -- yet, the single-victim substitutes would have imposed a penalty (up to life in prison) commensurate with loss of human life. Also, advocates of the single-victim approach argued that when a criminal assailant kills a pregnant woman, the assailant should receive double punishment: Once for killing the mother and then again for depriving her of her "pregnancy" -- but if there is only *one* victim, it is difficult to see why this would not be a duplicative criminal charge, since legally speaking a woman who has been murdered cannot herself suffer an additional "loss," nor can the law punish as if for two homicides if there was only a single victim.
- While the Unborn Victims of Violence Act and the single-victim substitutes were being considered in Congress, Sharon Rocha -- whose daughter Laci and unborn grandson Conner were murdered in California -- wrote that "adoption of such a single-victim amendment would be a painful blow to those, like me, who are left alive after a two-victim crime, because Congress would be saying that Conner and other innocent unborn victims like him are not really victims -- indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun."
- Some opponents of the Unborn Victims of Violence Act charged that the law would punish harm to the unborn child while "utterly ignoring the harm to the pregnant woman." Others charged that the law would "separate the mother from her fetus." These objections reflect misunderstandings or misrepresentations of how the law is structured. In reality, the law allows the government to prosecute for harm to an unborn child *only* if the offender violated one of 68 enumerated federal laws *that already cover the mother*. Thus, the prosecutor would charge the offender first for the harm to the

mother, under any of the existing federal laws dealing with crimes of violence, then a second time for the harm done to the unborn child, under the Unborn Victims of Violence Act.

- Some opponents of the law have charged that it would allow defendants to be convicted without a showing of intent to do harm. This is false. It is necessary to *prove beyond a reasonable doubt* that a defendant had intent to do criminal harm towards somebody. *If* such criminal intent towards one victim (most often, the mother) is proved, *then* the defendant also can be held responsible for the harm done to the unborn baby, or to any others, under the legal doctrine of "transferred intent." As the House Judiciary Committee explained in its official report on the bill, transferred intent is a long-established principle in the law. (Under this doctrine, for example, if a man shoots at a woman with intent to kill, and the bullet misses her, passes through a wall, and kills a child who the shooter did not know was there, he can be convicted of the homicide of the child.) As the Minnesota Supreme Court ruled in upholding the Minnesota unborn victims law, "The possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude." [*State v. Merrill*, 450 N.W.2d 318 (Minn. 1990)].

- In order to win a conviction under the law, it would be necessary for the prosecution to (1) *prove beyond a reasonable doubt* that a member of the species homo sapiens existed and was "carried in the womb," which would be utterly impossible until after the embryo had implanted in the womb and sent out the chemical signals that announce his or her presence (i.e., after implantation); and (2) *prove beyond a reasonable doubt* that a defendant acted with criminal malice towards some victim (most often, the mother) and violated one of the federal laws dealing with crimes of violence; and (3) *prove beyond a reasonable doubt* that the defendant's criminal conduct *caused* the death of the child in utero. The mere possibility or even the strong likelihood that a defendant's criminal conduct caused the death of a child in utero would not suffice, because the law requires *proof beyond a reasonable doubt*.



This is a photo of Tracy Marciniak Seavers, holding the body of her son Zachariah. The photo was taken at Zachariah's funeral. Tracy was seriously injured, and Zachariah was killed, by an assault during the ninth month of the pregnancy. Do you think this photograph shows one victim, or two?



Ashley Lyons, age 18, and her unborn son Landon were murdered in Scott County, Kentucky, on January 7, 2004. In the eyes of Kentucky law, the crime had a single victim.



This is an ultrasound image of Landon Lyons, the unborn son of Ashley Lyons. It was made on the morning of January 7, 2004, when Landon was estimated to be between 21 and 22 weeks of development. Later that day, Ashley and Landon were murdered. For video clip, [click here](#).

### ***Unborn Victims of Violence: Remember Their Names***

By Douglas Johnson  
NRLC Legislative Director  
[Legfederal@aol.com](mailto:Legfederal@aol.com)

**February 5, 2004**

Some pro-abortion leaders, like Planned Parenthood president Gloria Feldt, and some United States senators, like John Kerry of Massachusetts, believe that there are no unborn victims of violence.

Carol Lyons of Scott County, Kentucky, knows better. Her 18-year-old daughter, Ashley, and her unborn grandson, Landon, died together at the hands of a murderer on January 7.

**"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 goodbye for the last time and closed the casket," Mrs. Lyons said.**

When Ashley learned she was pregnant last September, she was excited about becoming a mother. Immediately, she began writing a private journal to her unborn baby. Early on, she wrote that she could not consider abortion.

"You are the child I have always dreamed about," she wrote in October. "I know that it will be a long time before I meet you but I can't wait to hold you for the first time. I love you more everyday. Always, Mommy."

On January 7, Ashley's doctor gave her an ultrasound video of her baby, and she learned he was a boy. Ashley named him Landon. She couldn't wait to show the video to her mother, father Buford, and brother Chris.



"She said, 'Mom, come watch the ultrasound movie,'" Mrs. Lyons later related. "I saw the baby's heartbeat. I saw all of his little parts -- all of his little legs, fingers, toes. . . . She pointed out every part of that baby to me. And the whole time the baby's heart was just beating."

In the ultrasound, Landon was at about 21 weeks, meaning that his lungs were just two or three weeks short of so-called "viability," the point at which, if delivered prematurely, he would probably have survived long term.

But only hours after the family viewed the ultrasound video, Buford Lyons found his daughter in her car, shot to death. His unborn grandson was also dead.

The murderer has not yet been arrested. But when the killer is apprehended, only a single homicide charge will be filed.

In the eyes of Kentucky law, Landon never existed.

Carol and Buford Lyons have appealed to the Kentucky legislature to enact a fetal homicide bill, so that in the future, grieving family members in Kentucky will never again be told that a slain unborn child was not a legal victim.

"When we find her killer, we can't prosecute him for Landon," Carol Lyons told a state senate committee on January 15. "But Landon was alive. She [Ashley] wrote to him. She sang to him. She said, 'Momma, what was *my* favorite lullaby?' She was so excited over this child."

(To view the video of this compelling testimony on your computer, click [HERE](#) and click through to the Kentucky state Senate Judiciary Committee hearing of January 15.)

(On February 12, 2004, *The Montel Williams Show*, a nationally televised program, will feature a taped interview with Carol Lyons and state Rep. Stan Lee, author of one of the Kentucky fetal homicide bills.)

For about 18 years, Kentucky Right to Life, the state NRLC affiliate, had been urging the legislature to adopt fetal homicide bills -- but all such bills had been blocked, in large part because of objections from the ACLU and other groups that believe a crime like the Lyons killing involves one victim, not two.

This year, however, following the Lyons' appeal, and at the urging of newly elected pro-life Governor Ernie Fletcher (R), both houses have passed comprehensive fetal homicide bills -- the Senate on January 22, 31-6, and the House on January 30, 88-5.

"After almost two decades of lobbying, we are now close to getting a law that will allow justice to be served for future unborn victims of homicide like Landon Lyons," said Margie Montgomery, executive director of the Kentucky Right to Life Association, on February 5. "We hope that the bill will reach Governor Fletcher soon, and when he signs it, it will take effect immediately."

When that happens, it means that Kentucky will join 28 other states that already recognize unborn children as victims of violent crimes. In 15 of these states, that recognition applies throughout pre-natal development, while 13 apply coverage at some defined point in pre-natal development.

(For a summary of the 28 state fetal homicide laws, click [here](#).)

Unborn victims bills are currently under consideration in at least nine states besides Kentucky.

"It's a big deal, and it's becoming a bigger deal," Allison Cook of the National Conference of State Legislatures told the *Lexington Herald-Leader* (January 30).

This surge in activity grows, in part, of the great public interest in the approaching trial of Scott Peterson, who is charged in California with the murder of his wife Laci and their unborn son Conner. Sharon Rocha, the mother of Laci and grandmother of Conner, has emerged as a forceful advocate for fetal homicide legislation. A late January Gallup poll found that 57% of Americans are following the case closely.

### **Will the Senate Act?**

Soon, the U.S. Senate will consider -- for the first time ever -- whether when a criminal injures or kills an unborn child while committing a federal or military crime against the mother, a second charge should be brought on behalf of the unborn victim.

President Bush says that he thinks such crimes have two victims, and he has repeatedly called for action on the Unborn Victims of Violence Act (S. 1019, H.R. 1997), sponsored by Senator Mike DeWine (R-Ohio) and Rep. Melissa Hart (R-Pa.).

In his delivered by phone to the March for Life in Washington, the President said, "I strongly support the Unborn Victims of Violence Act, which the House Judiciary Committee approved yesterday. And now the entire Congress should act on this bill so I can sign it into law."

The House of Representatives passed the bill in 1999 and 2001, but it has never reached the floor in the Senate, due entirely to objections from pro-abortion advocacy groups, including NARAL, the Planned Parenthood Federation of America, the ACLU, and like-minded groups.

Soon, however, Republican leaders in both houses are expected to schedule votes on the bill. Senate Majority Leader Bill Frist (R-Tn.) has given indications that his patience is nearly exhausted with the back-room obstructionist tactics by which a group of Senate Democrats that have kept the bill off the floor for many months -- notwithstanding public statements by Democratic Leader Tom Daschle, starting last summer, that the issue should be considered "expeditiously." (See "Senate Democrats Stall UVVA," August *NRL News*, page 1.)

"If Democratic senators want to filibuster Laci and Conner's Law, they will have to do so in the open, and then try to explain that to their constituents," one Senate Republican leadership aide said in early January.

### **Federal Crimes**

Under current federal and military law, there are no unborn victims. This gap in federal law is illustrated by the fact that the three unborn children killed in the 1995 bombing of the Murrah Federal Building in Oklahoma City do not appear on the official federal list of victims, but the State of Oklahoma is prosecuting Terry Nichols for killing Amber Denise Huff, an unborn child who died with her mother, Robbin Ann, and many others in the blast.

Thus, if a pregnant woman survives being attacked on a military base or within some other federal jurisdiction, but loses her baby, it is treated as a battery or other lesser crime, not the taking of a human life. Interstate stalkers, terrorist bombers, and those who kill as part of major

drug offenses are subject to federal prosecution -- but as of today, no charges may be brought on behalf of the unborn victims of these criminals.

Under the bill, all that would change. If a pregnant woman is a victim of any of 68 federal crimes, and her unborn child is injured or killed, the bill would allow the prosecutor to bring a second charge on behalf of the second victim. The penalty would depend on which federal crime was committed, the degree of harm done, and on the type of criminal intent involved. In some cases a life sentence could be imposed, but the federal bill specifically excludes the death penalty.

### **Abortion Not the Issue**

The bill would apply to a "child in utero," defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." When quoting this definition, critics of the bill usually fail to quote the "carried in the womb" phrase, which excludes any application of the bill to embryos in the laboratory or prior to the point of a provably established pregnancy.

The bill explicitly excludes abortions for which lawful consent has been given, or any action by a woman that results in harm to the unborn child whom she carries.

Despite the exclusion of abortion, opposing groups insist that it must "really" be aimed at abortion -- why else would groups like Right to Life support such legislation, they ask? But, although many journalists disregard it, we call ourselves "Right to Life," not "anti-abortion."

NRLC supports fetal homicide bills because we recognize that abortion, while a critical issue, is not the only pro-life issue. Landon Lyons, Conner Peterson. Amber Denise Huff, and many other have been absolutely deprived of their right to life through acts that were not abortions. A law that allows true justice to be done on behalf of such innocent victims, and that hopefully deters such crimes in the future, is a worthwhile law in its own right.

The issue also differs from abortion in that there are no court-created obstacles to protecting unborn children from violent crimes. Indeed, federal and state courts have rejected over a dozen legal challenges to state fetal homicide laws.

The only obstacles to such laws are political obstacles, engendered by the pro-abortion advocacy groups and their insistence that the law, in every area, must be blind to the existence of members of the human family prior to complete live birth.

In the rigid ideological construct of these groups, crimes like the Peterson murder and the Lyons murder have only a single victim -- the pregnant woman.

### **One Victim, or Two?**

This is, indeed, the heart of the matter -- one victim, or two?

When veteran interviewer Warren Olney of KCRW-FM (a Los Angeles NPR affiliate) politely insisted that Gloria Feldt, president of the Planned Parenthood Federation of America, squarely answer whether the Peterson crime involved one victim or two, Feldt replied pointedly that Laci was *the* victim."

Asked essentially the same question in January on a radio program in Lynchburg, the head of the Virginia ACLU, Kent Willis, replied, "That baby was *not* a murder victim."

(However, the state of California disagrees, and has charged Scott Peterson with two homicides, utilizing a fetal homicide law enacted in 1970 and repeatedly upheld by the California Supreme Court.)

One victim, or two? In Arkansas in 1999, Shiwona Pace, just one day short of her predicted delivery date, was brutally attacked by three men. They had been paid \$400 by her former boyfriend specifically to kill her unborn baby, who was named Heaven Lashay. The thugs knocked Shiwona to the ground, stuck a gun in her mouth, and, as she pleaded for them to stop, kicked her again and again in the abdomen.

"As they beat me, one said, "Your baby is dying tonight," Shiwona Pace said later.

Fortunately for those interested in justice, the Arkansas fetal homicide law had gone into effect just a month earlier (over the usual objections) -- so the three attackers, and the man who hired them, were all convicted of first-degree murder.

In 2001, commenting on the resistance by certain lawmakers to enactment of the federal bill, Shiwona Pace observed that they were "really saying that nobody died that night. And that is a lie."

### Public Opinion

Three national opinion polls in 2003 found truly overwhelming public support for laws authorizing a separate homicide charge to be filed on behalf of a murdered unborn child.

A May 2003 *Newsweek* poll found that 84% of Americans believe that an offender should be charged "for two murders instead of one," including 56% who believe this should apply "in all cases where a pregnant woman is murdered" and another 28% "where the fetus is viable -- that is, is able to survive outside the womb." Only 9% were opposed to any charge for fetal murder.

A July 2003 Opinion Dynamics/Fox News poll asked, "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?" 79% replied in the affirmative -- including 69% of those who labeled themselves as "pro-choice."

In all three polls, only 7 to 10% supported the position that the law must *never* view the unborn child as a legal victim -- which is the position that PPFA, NARAL, and the ACLU are pressing on lawmakers.

Members of Congress allied with these groups have put forward a counter-proposal, usually referred to as the "single-victim substitute," sponsored by Congresswoman Zoe Lofgren (D-Ca.) and Senator Dianne Feinstein (D-Ca.). This legislation would sharply increase penalties for any federal crime in which the victim happens to be pregnant, if "interruption" of the pregnancy results. It would also codify the doctrine that such crimes have only a single victim.

The theory behind the proposal is that the pregnant woman suffers an additional harm if she loses her "pregnancy," and that this warrants more severe punishment. This proposal is legally incoherent. Even when the mother survives, the substitute would allow a life sentence if an

attack causes a miscarriage or even a premature live birth -- yet the sponsors insist that in that circumstance, there has been no loss of human life. Why a life sentence, if nobody died? On the other hand, if the mother herself dies in the crime, how then can she be said to have suffered an additional injury?

And what about the cases in which the baby survives, but is born with disabilities resulting from the crime? No matter -- there is still just one victim, the mother, under the Lofgren-Feinstein proposal.

### **John Kerry's Position**

In letters to constituents, Senator John Kerry (D-MA) has come out against the Unborn Victims of Violence Act, while saying he would support increasing sentences for crimes against pregnant women.

In a letter, Sharon Rocha urged him to reconsider, writing that "adoption of such a single-victim proposal would be a painful blow to those, like me, who are left to grieve after a two-victim crime, because Congress would be saying that Conner and other innocent victims like him are not really victims -- indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun."

Regarding Kerry's support for more severe penalties, Rocha concluded, "This is a question not only of severity, but of justice. . . . If this single-victim bill were the law in California, there would be no second homicide charge for the murder of Conner. But there were two bodies that washed up in San Francisco Bay, and the law should recognize that reality."

Equally compelling was testimony given on June 8, 2003, before the House Judiciary Constitution Subcommittee, by Tracy Marciniak of Wisconsin, who described the brutal attack in the ninth month of her pregnancy that killed her unborn son Zachariah.

She showed the panel a powerfully moving photograph, taken at Zachariah's funeral, holding her baby for the last time -- a photo that in a sense distills the entire debate over fetal homicide legislation

Referring to the single-victim substitute, Marciniak testified, "If you vote for that bill . . . you would be saying to all of the future mothers, fathers, and grandparents, who lose their unborn children in future federal crimes, 'You didn't really lose a baby.' . . . Please don't tell me that my son was not a real murder victim. If you really think that nobody died that night, if you really think there is no dead baby in the picture, then vote for the Lofgren bill. But please remember Zachariah's name and face when you decide."

When the time comes for each U.S. senator, each U.S. representative, each state legislator to vote on whether the law will recognize unborn victims of violence, let us hope that he or she will be mindful of the pleas of Tracy Marciniak and of all of those who have lost unborn loved ones, such as Carol and Buford Lyons, Sharon Rocha, and Shiwona Pace.

Let us also hope that they remember the names of those who were slain before birth -- Zachariah, Conner, Amber, Heaven, Landon -- and cast their votes for justice.

## Definitions

A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

A person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

A person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

A person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

"extreme indifference" Undefined and used only for second degree murder and first degree assault, both times in reference to the value of human life.

"serious physical injury" means (A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or (B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy.

"dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;



**Christian Science Committee on Publication for Alaska**

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**Memo**

TO: Representative Mike Chenault, Co-Chair  
Representative Kevin Meyer, Co-Chair  
Members of the House Finance Committee  
Representative Bill Stoltze, Vice-Chair  
Representative Richard Foster  
Representative Mike Hawker  
Representative Jim Holm  
Representative Mike Kelly  
Representative Bruce Weyhrauch  
Representative Beth Kerttula  
Representative Reggie Joule  
Representative Carl Moses

FROM: Beverly Smith, Christian Science Committee on Publication for Alaska  
DATE: April 24, 2006  
RE: SB 20  
*An Act relating to offenses against unborn children*

The Christian Science Committee on Publication for Alaska respectfully requests two amendments to SB 20:

**FIRST:**

In the bill, on page 2, line 10, ADD a new sentence in subsection (4) of section 11.41.150 "Murder of an unborn child" to read:

"(4) . . . . For purposes of this paragraph, a pregnant woman's decision to reasonably rely on spiritual means through prayer for the healthy development of her unborn child, in lieu of medical care, does not, of itself, constitute conduct manifesting an extreme indifference to the value of human life."

**SECOND:**

In the bill, on page 3, line 19, ADD a new sentence after the semi-colon in subsection (3) of section 11.41.280 "Assault of an unborn child in the first degree" to read:

"(3) . . . . ; for purposes of this paragraph, a pregnant woman's decision to reasonably rely on spiritual means through prayer for the healthy development of her unborn child, in lieu of medical care, does not of itself, constitute conduct manifesting an extreme indifference to the value of human life."

**EXPLANATION**

- The healthy development of an unborn child is a paramount concern. When it comes to the healthy development of an unborn child, responsible and law-abiding pregnant women should be allowed to consider every reasonable health care method- including effective, prayer-based, spiritual healing.
- Parents, prosecuting attorneys, judges or juries might consider, but not be limited to, the following factors to determine if the use of spiritual healing is reasonable:
  - a. Whether the pregnant woman exhibits clear symptoms of a condition that is life-threatening or would result in serious injury to the unborn child;
  - b. The length of time during which the pregnant mother experiences the condition;
  - c. The likelihood that medical treatment will succeed in remedying the pregnant woman's and her unborn child's condition including consideration of the risks of harm or negative side effects associated with undergoing medical treatment and the risks of harm from failure to provide medical treatment;
  - d. The past experience of the pregnant woman in relying upon medical treatment; and,
  - e. The past experience of the pregnant woman in relying upon spiritual means through prayer.
- Christian Science healing has been systematically practiced successfully in my family as well as in other Alaskan families for well over a century, sometimes through many generations. If it becomes a duty of

the state is to ensure the health and well being of unborn children, the state should impose on responsible pregnant women the means through which health and well-being must be achieved for their unborn children. And it is certainly not to impose medical treatment on responsible pregnant women who based on **past successful experience** choose to rely on Christian Science healing for their well being and the healthy development of their unborn children.

- Mandating only traditional medical means of health care **unnecessarily limits parental choice of other responsible health care methods**. Limiting health care to only a medical approach does not reflect the current trends in health care delivery, the pluralism of society's health care practices, or the clinical validation of other approaches such as the beneficial effects of spirituality on health.
- There is a long history in this country and in Alaska of accommodating religious beliefs. **Forty-five states, including Alaska, plus the District of Columbia, have at least one such religious accommodation in their civil or criminal laws** relating to the health and well-being of children. There is also a religious accommodation in Alaska Statutes Section 18.15.150 relative to prenatal blood testing requirements. Similarly, there should be religious accommodations for a pregnant woman's reasonable use of spiritual healing through prayer for the healthy development of her unborn child as addressed in our amendments.
- Pregnant women must have access to non-medical health care that historically has been shown to be effective and beneficial to them and the development of their unborn children. Our experience and conviction is that **spiritual healing is, when wisely and responsibly practiced, appropriate today for the healthy development of an unborn child, as well as the health and well-being of the expectant mother.**

I look forward to discussing this amendment further with you. I have also attached two pages of supporting documents you might find helpful.

Here are a few Alaska Statutes that allow accommodation based on religious belief and/or spiritual treatment through prayer.

**Sec. 18.15.150. Taking of blood sample.**

Each licensed physician and in the absence of a licensed physician each licensed graduate nurse who attends a pregnant woman for conditions relating to the pregnancy during the period of gestation or at delivery shall take, or have taken, a sample of the blood of the woman at the time of the woman's first professional visit or within 10 days after the visit, unless the serological test is contrary to the tenets or practice of the religious creed of which the woman is an adherent. The blood specimen shall be submitted to an approved laboratory or clinic for a standard serological test of syphilis. Any other person permitted by law to attend pregnant women but not permitted by law to take blood samples shall have a sample of blood taken by a licensed physician, or on order of a licensed physician, and shall submit the sample to an approved laboratory or clinic for a standard serological test for syphilis.

**Sec. 11.51.120. Criminal nonsupport.**

(a) A person commits the crime of criminal nonsupport if, being a person legally charged with the support of a child the person knowingly fails, without lawful excuse, to provide support for the child.

(b) As used in this section "support" includes necessary food, care, clothing, shelter, medical attention, and education. There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

**Sec. 47.10.085. Medical treatment by religious means.**

"In a case in which the minor's status as a child in need of aid is sought to be based on the need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under AS 47.10.020(a)."2

Cite as: Alaska Stat. § 47.10.085 (2004).

Testimony of healing as a result of spiritual treatment from a Christian Science Practitioner

This appeared in the Christian Science Sentinel, May 1, 2006

FEATURES MOVIES BOOKS MUSIC TV SENTINEL WATER  
SPORTS . NEWS OF HEALING LETTERS PARENTING

## PRAYER HARMONIZES A TROUBLED PREGNANCY

In 2005, my wife and I discovered that we would have our second child. But unlike our first pregnancy, which was normal and without incident, we found that this time things would not be so smooth.

Early in the pregnancy, my wife experienced bleeding, which doctors predicted would likely end in a miscarriage. The doctors diagnosed the condition as one that required strict bed rest.

We contacted a Christian Science

practitioner for help. Over time, with much prayer affirming that the source and care for all life and creation are with God alone, the situation improved. The doctors saw progress, and allowed my wife to move around and go for walks. Eventually, the bleeding stopped, and the placenta moved upward to its normal position contrary to the doctors' predictions.

Then, toward the end of the pregnancy, we learned that the fetus was in the wrong position and the umbilical cord was wrapped around his neck. This prognosis, along with the fear of premature separation of the placenta, led to the decision that a Caesarean section would have to be performed for the baby's safety. My wife opposed this, and in discussing the situation, we decided that we would put our trust in God to see it resolved. Working closely with the practitioner, we saw that step by step, each problem was resolved—to the amazement of the doctor. First, the baby turned over just in time to his right position. Second, the umbilical cord unwound and was also in its proper position.

During the final weeks of the pregnancy, my wife began to feel more

relaxed about a normal birth. The doctors seemed to go along with this, and when the time came, my wife gave birth normally to a healthy baby boy. There were no side effects or difficulties resulting from the pregnancy at all. We are grateful to the doctors who worked with us, and especially to the practitioner, who prayed for us through this whole experience.

Christian Science shows that we can rely on God's laws to adjust any situation, regardless of our position, experience, history, or understanding. For my wife and me, this incident was a demonstration of Mary Baker Eddy's statement: "Truth has no consciousness of error. Love has no sense of hatred. Life has no partnership with death. Truth, Life, and Love are a law of annihilation to everything unlike themselves, because they declare nothing except God" (*Science and Health*, p. 243).

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