

SB

20

SENATE COMMITTEE REPORT

DATE RETURNED: 4/20/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 20

SB 20 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

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

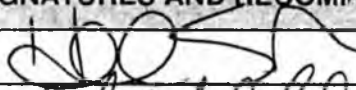
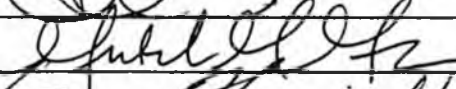
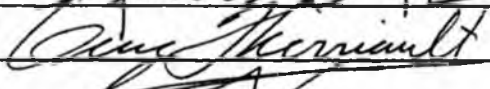

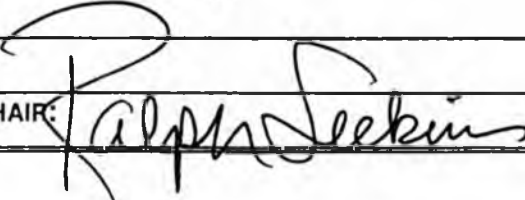
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
				X
				X
	X			
	X			
CHAIR: 	✓			

AMENDMENT #1

OFFERED IN THE SENATE
TO: CSSB 20(JUD)

BY SENATOR FRENCH

Failed

1 Page 1, following line 2:

2 Insert a bill section to read:

3 **"* Section 1.** The uncodified law of the State of Alaska is amended by adding a new
4 section to read:

5 **LEGISLATIVE INTENT.** Nothing in this Act is intended to grant personhood status
6 to an unborn child, as defined in sec. 6 of this Act, or to create any other legal basis for a
7 challenge to the U.S. Supreme Court's holding in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705,
8 35 L.Ed.2d 147 (1973)."

9

10 Page 1, line 3:

11 Delete **"Section 1"**

12 Insert **"Sec. 2"**

13

14 Renumber the following bill sections accordingly.

AMENDMENT #2

Adopted

OFFERED IN THE SENATE

TO: CSSB 20(JUD)

1 Page 2, line 7, following "life":

2 Insert "; for purposes of this paragraph, a pregnant woman's decision to remain in a
3 relationship in which domestic violence as defined in AS 18.66.990 has occurred does not, by
4 itself, constitute conduct manifesting an extreme indifference to the value of human life"

6 Page 3, line 13, following "life":

7 Insert "; for purposes of this paragraph, a pregnant woman's decision to remain in a
8 relationship in which domestic violence as defined in AS 18.66.990 has occurred does not, by
9 itself, constitute conduct manifesting extreme indifference to the value of human life"

SENATE COMMITTEE REPORT

DATE: 3/16/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 20

SB 20 OFFENSES AGAINST UNBORN CHILDREN

"An Act relating to offenses against unborn children."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
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- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

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

24-LS0197P
Crawford
4/14/05

CS FOR SENATE BILL NO. 20(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to offenses against unborn children."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

4 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the
5 crime of murder of an unborn child if the person

6 (1) with intent to cause the death of an unborn child or of another
7 person, causes the death of an unborn child;

8 (2) with intent to cause serious physical injury to an unborn child or to
9 another person or knowing that the conduct is substantially certain to cause death or
10 serious physical injury to an unborn child or to another person, causes the death of an
11 unborn child;

12 (3) while acting alone or with one or more persons, commits or
13 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
14 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
15 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled
2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
4 immediate flight from that crime, any person causes the death of an unborn child;

5 (4) knowingly engages in conduct that results in the death of an unborn
6 child under circumstances manifesting an extreme indifference to the value of human
7 life.

8 (b) A person may not be convicted under (a)(3) of this section if the only
9 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
10 and the unborn child killed is the intended victim of the defendant. However, if the
11 defendant causes the death of another unborn child, the defendant may be convicted
12 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
13 conviction of murder in the first degree or murder in the second degree, murder of an
14 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

15 (c) Murder of an unborn child is an unclassified felony.

16 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits
17 the crime of manslaughter of an unborn child if, under circumstances not amounting to
18 murder of an unborn child, the person

19 (1) intentionally or knowingly causes the death of an unborn child; or

20 (2) recklessly causes the death of an unborn child by means of a
21 dangerous instrument.

22 (b) Manslaughter of an unborn child is a class A felony.

23 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
24 person commits the crime of criminally negligent homicide of an unborn child if, with
25 criminal negligence, the person causes the death of an unborn child by means of a
26 dangerous instrument.

27 (b) Criminally negligent homicide of an unborn child is a class B felony.

28 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
29 11.41.170 do not apply to acts that

30 (1) cause the death of an unborn child if those acts were committed
31 during a legal abortion to which the pregnant woman consented or a person authorized

1 by law to act on her behalf consented, or for which such consent is implied by law; or
 2 (2) are committed under usual and customary standards of medical
 3 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

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

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

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

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

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

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

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

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

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

22 (2) that person recklessly causes serious physical injury to an unborn
 23 child by repeated assaults, even if each assault individually does not cause serious
 24 physical injury.

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

26 **Sec. 11.41.289. Applicability of and definitions for AS 11.41.280 and**
 27 **11.41.282.** (a) AS 11.41.280 and 11.41.282 do not apply to acts that

28 (1) cause serious physical injury or physical injury to an unborn child
 29 if those acts were committed during a legal abortion to which the pregnant woman
 30 consented or a person authorized by law to act on her behalf consented, or for which
 31 consent is implied by law; or

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

3 (b) In AS 11.41.280 and 11.41.282, "serious physical injury" has the meaning
4 given in AS 11.81.900 and includes physical injury that results in, except for a
5 multiple birth, the birth of a child before 37 weeks gestation if the child weighs 2,500
6 grams or less at the time of birth.

7 * Sec. 3. AS 11.81.250(a) is amended to read:

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

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

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

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

30 (4) class A misdemeanors, which characteristically involve less severe
31 violence against a person, less serious offenses against property interests, less serious

1 offenses against public administration or order, or less serious offenses against public
2 health and decency than felonies;

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

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

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

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

18 * Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

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

21 * Sec. 6. AS 12.55.035(b) is amended to read:

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

25 (1) \$500,000 for murder in the first or second degree, attempted
26 murder in the first degree, murder of an unborn child, sexual assault in the first
27 degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct
28 involving a controlled substance in the first degree;

29 (2) \$250,000 for a class A felony;

30 (3) \$100,000 for a class B felony;

31 (4) \$50,000 for a class C felony;

1 (5) \$10,000 for a class A misdemeanor;

2 (6) \$2,000 for a class B misdemeanor;

3 (7) \$500 for a violation.

4 * Sec. 7. AS 12.55.125(a) is amended to read:

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

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

13 (2) the defendant has been previously convicted of

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

16 (B) murder in the second degree under AS 11.41.110 or former
17 AS 11.15.030; or

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

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

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

26 * Sec. 8. AS 12.55.125(b) is amended to read:

27 (b) A defendant convicted of attempted murder in the first degree, solicitation
28 to commit murder in the first degree, conspiracy to commit murder in the first degree,
29 kidnapping, or misconduct involving a controlled substance in the first degree shall be
30 sentenced to a definite term of imprisonment of at least five years but not more than
31 99 years. A defendant convicted of murder in the second degree or murder of an

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

Sen Seelkus

(from Sen Green Staff)
(Kim is a prosecutor)

Premature birth weight

(1)

still have to show
reckless



+

(2)

dangerous instrument



low birth weight is
merely the symptom
you have to prove the
criminal causation

based on mental state (reckless)
and the weapon (dangerous instrument)

low birth weight
w/o (1) + (2) is not
a crime

AMENDMENT

OFFERED IN THE SENATE
TO: CSSB 20(STA)

BY SENATOR FRENCH

1 Page 1, line 1:

2 Delete all material and insert:

3 "An Act enhancing penalties for crimes committed against pregnant women."
4

5 Page 1, line 3 through page 7, line 8:

6 Delete all material and insert:

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

8 **Chapter 32. Enhanced Penalties.**

9 **Sec. 11.32.100. Penalties for crimes committed against pregnant women.**

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

14 (1) a crime defined as murder in the first degree under AS 11.41.100
15 shall be punished by a sentence of 30 - 99 years;

16 (2) a crime defined as murder in the second degree under
17 AS 11.41.110 shall be punished by a sentence of 20 - 99 years;

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

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

23 (5) a crime defined in this title as a class C felony shall be punished as

1 a class B felony in the manner provided for class B felonies in AS 12.55.125;

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

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

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

9 (1) during a legal abortion to which the pregnant woman, or a person
10 authorized by law to act on the pregnant woman's behalf, consented;

11 (2) during any medical treatment of the pregnant woman or the fetus;
12 or

13 (3) by a pregnant woman against herself.

14 (c) In this section,

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

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

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

22 (a) A defendant convicted of murder in the first degree shall be sentenced to a
23 definite term of imprisonment of at least 20 years but not more than 99 years. A
24 defendant convicted of murder in the first degree enhanced under
25 AS 11.32.100(a)(1) shall be sentenced to a definite term of imprisonment of at
26 least 30 years but not more than 99 years. A defendant convicted of murder in the
27 first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

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

31 (2) the defendant has been previously convicted of

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

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

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

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

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

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

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

30 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. AS 11.32.100, enacted by sec. 1 of this Act, and AS 12.55.125(a)
2 and (b), as amended by secs. 2 and 3 of this Act, apply to crimes committed on or after the
3 effective date of this Act."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3.01

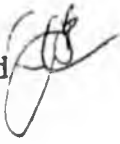
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 8, 2005

SUBJECT: CSSB 20(JUD) (Work Order No. 24-LS0197C)

TO: Senator Ralph Seekins
Attn: Brian Hove

FROM: James P. Crawford 
Assistant Revisor

Accompanying this memo is the requested committee substitute for SB 20.

Some definitional issues:

The definitions section for title 11, which is where these crimes are found, is AS 11.81.900.

In this version of the bill, the "recklessly" mental element of the manslaughter crime is being tied to use of a "dangerous instrument." The definition of "dangerous instrument" has not been augmented to include use of hands, feet, and other potentially dangerous parts of the body. Currently, 11.81.900(b)(15) defines "dangerous instrument" as "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." (Emphasis added). In light of this definition, separate reference to hands, feet or other bodily parts as they may be used to cause death is unnecessary.

I removed the reference to AS 11.71 from the term "controlled substance." AS 11.81.900(b)(8) states that "'controlled substance' has the meaning ascribed to it in AS 11.71.900(4)." Thus, the reference to AS 11.71 is unnecessary.¹

The material that was added to the definitions section for the assault crimes includes the terms "addicted," "clear indication," "fetal alcohol syndrome," and "health care professional." These terms are not defined in the bill or in AS 11.81.900. The Department of Law, through the district attorneys, will be the governmental entity responsible for prosecuting violations of these statutes. Because these terms originated with the Department itself, they are probably fine. Obviously, it is impractical to define each and every term in every statute, and all judges have legal dictionaries, cases,

¹ For its part, AS 11.71.900(4) provides that "'controlled substance' means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190."

Senator Ralph Seekins
April 8, 2005
Page 2

criminal treatises, and other reference works to assist in fleshing out the meaning of a statute.

However, if any of these terms are found to be ambiguous during a criminal proceeding, the general rule of construction relating to penal statutes is that the ambiguous term will be construed in favor of the defendant. Wurthmann v. State, 27 P.3d 762, 766 (Alaska App. 2001); 3 C. Sands, *Sutherland's Statutory Construction*, sec. 59.03 at 6-8 (4th ed. 1974). Of course, if that is consistent with your intent (or at least not inconsistent), there is no problem.

Miscellaneous Clean Up:

Both the murder and the assault section have applicability sections. In the assault applicability section, I took the liberty of changing the phrase "a pregnant woman" to "the pregnant woman" on page 3, line 31 so that it would mirror the phrase "the pregnant woman" in the murder applicability section on page 2, line 31.

JPC:med
05-241.med

Enclosure

24-LS0197C
Crawford
4/8/05

CS FOR SENATE BILL NO. 20(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to offenses against unborn children."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

4 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the
5 crime of murder of an unborn child if the person

6 (1) with intent to cause the death of an unborn child or of another
7 person, causes the death of an unborn child;

8 (2) with intent to cause serious physical injury to an unborn child or to
9 another person or knowing that the conduct is substantially certain to cause death or
10 serious physical injury to an unborn child or to another person, causes the death of an
11 unborn child;

12 (3) while acting alone or with one or more persons, commits or
13 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
14 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
15 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled
2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
4 immediate flight from that crime, any person causes the death of an unborn child;

5 (4) knowingly engages in conduct that results in the death of an unborn
6 child under circumstances manifesting an extreme indifference to the value of human
7 life.

8 (b) A person may not be convicted under (a)(3) of this section if the only
9 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
10 and the unborn child killed is the intended victim of the defendant. However, if the
11 defendant causes the death of another unborn child, the defendant may be convicted
12 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
13 conviction of murder in the first degree or murder in the second degree, murder of an
14 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

15 (c) Murder of an unborn child is an unclassified felony.

16 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits
17 the crime of manslaughter of an unborn child if, under circumstances not amounting to
18 murder of an unborn child, the person

19 (1) intentionally or knowingly causes the death of an unborn child; or

20 (2) recklessly causes the death of an unborn child by means of a
21 dangerous instrument.

22 (b) Manslaughter of an unborn child is a class A felony.

23 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
24 person commits the crime of criminally negligent homicide of an unborn child if, with
25 criminal negligence, the person causes the death of an unborn child by means of a
26 dangerous instrument.

27 (b) Criminally negligent homicide of an unborn child is a class B felony.

28 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
29 11.41.170 do not apply to acts that

30 (1) cause the death of an unborn child if those acts were committed
31 during a legal abortion to which the pregnant woman consented or a person authorized

1 by law to act on her behalf consented, or for which such consent is implied by law; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) cause serious physical injury or physical injury to an unborn child
31 if those acts were committed during a legal abortion to which the pregnant woman

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

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

5 (b) In AS 11.41.280 and 11.41.282, "serious physical injury" has the meaning
6 given in AS 11.81.900 and includes *additionally*

7 (1) except for a multiple birth, the birth of an unborn child before 37
8 weeks gestation if the child weighs 2,500 grams or less at the time of birth;

9 (2) the birth of an unborn child with any amount of a controlled
10 substance in the child's blood, unless the substance was prescribed to the mother by a
11 health care professional;

12 (3) the birth of an unborn child if the child is born addicted to a
13 controlled substance; ~~and~~ *or*

14 (4) the birth of an unborn child with alcohol in the child's blood ~~or~~ *and*
15 with a clear indication of fetal alcohol syndrome.

16 * Sec. 3. AS 11.81.250(a) is amended to read:

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

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

#1

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

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

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

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

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

18 * Sec. 4. AS 11.81.250(b) is amended to read:

19 (b) The classification of each felony defined in this title, except murder in the
20 first and second degree, attempted murder in the first degree, solicitation to commit
21 murder in the first degree, conspiracy to commit murder in the first degree, murder of
22 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
23 degree, misconduct involving a controlled substance in the first degree, and
24 kidnapping, is designated in the section defining it. A felony under Alaska law
25 defined outside this title for which no penalty is specifically provided is a class C
26 felony.

27 * Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

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

30 * Sec. 6. AS 12.55.035(b) is amended to read:

31 (b) Except as provided in AS 12.55.036, upon conviction of an offense, a

1 defendant who is not an organization may be sentenced to pay, unless otherwise
2 specified in the provision of law defining the offense, a fine of no more than

3 (1) \$500,000 for murder in the first or second degree, attempted
4 murder in the first degree, murder of an unborn child, sexual assault in the first
5 degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct
6 involving a controlled substance in the first degree;

7 (2) \$250,000 for a class A felony;

8 (3) \$100,000 for a class B felony;

9 (4) \$50,000 for a class C felony;

10 (5) \$10,000 for a class A misdemeanor;

11 (6) \$2,000 for a class B misdemeanor;

12 (7) \$500 for a violation.

13 * Sec. 7. AS 12.55.125(a) is amended to read:

14 (a) A defendant convicted of murder in the first degree or murder of an
15 unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of
16 imprisonment of at least 20 years but not more than 99 years. A defendant convicted
17 of murder in the first degree shall be sentenced to a mandatory term of imprisonment
18 of 99 years when

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

22 (2) the defendant has been previously convicted of

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

25 (B) murder in the second degree under AS 11.41.110 or former
26 AS 11.15.030; or

27 (C) homicide under the laws of another jurisdiction when the
28 offense of which the defendant was convicted contains elements similar to first
29 degree murder under AS 11.41.100 or second degree murder under
30 AS 11.41.110;

31 (3) the court finds by clear and convincing evidence that the defendant

1 subjected the murder victim to substantial physical torture; or

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

4 * **Sec. 8.** AS 12.55.125(b) is amended to read:

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



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.

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.

Updated 3/17/05

Section 1: 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 any action taken against an unborn child that is otherwise legal.

Section 2: 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 applicability of this Section to any action taken against an unborn child that is otherwise legal.

Section 3: 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 4: 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 5: Defines "unborn child" to mean a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

Section 6: 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 7: 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 8: 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.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 20(STA)
 (S) Publish Date: 3/16/05

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) 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 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 Todd Sharp Phone 907-269-4532
 Division Alaska State Troopers Date/Time 2/28/05 11:26 AM
 Approved by: Commissioner William Tandeske Date 2/28/2005
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 20(STA)
 (S) Publish Date: 3/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to offenses RDU Legal and Advocacy Services
against unborn children. Component Public Defender Agency
 Sponsor Sen. 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 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) 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 will 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 3/1/05 7:56 AM
 Approved by: Mike Tibbles, Deputy Commissioner Date 3/1/2005
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 20(STA)
 (S) Publish Date: 3/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act relating to offenses against unborn children" RDU Institutional Facilities
 Component Institution Director's Office
 Sponsor Senator Dyson
 Requester State Affairs, Judiciary Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

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
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) 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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 Due to the extremely small number of 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: Sharleen Griffin, Acting Director Phone 465-4641
 Division Administrative Services Date/Time 3/1/05 10:58 AM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/1/2005
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 74
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "Act making findings relating to marijuana use RDU Institutional Facilities
and possession; relating to marijuana and misconduct" Component Institution Director's Office
 Sponsor Rules Committee
 Requester Governor Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

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)	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Check 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)
 The legislation proposes new statutory language that delineates findings regarding the mental and physical health risks, illegality and dangers of marijuana use. The bill makes changes to AS 11.71.030, .040, .050, .060 concerning the crime of misconduct involving a controlled substance by adding additional offenses, decreasing the amount of marijuana in possession that would constitute a violation, and increasing the penalties for possession, use and delivery of marijuana. Although most of the conduct prohibited in this bill already is a crime in Alaska, changes are proposed that will increase penalties for certain criminal activity. The legislation decreases from one pound to four ounces the amount of marijuana sufficient to constitute a felony under AS 11.71.040. The bill also creates new offenses related to marijuana possession in a vehicle and raises the penalties for certain delivery offenses. (continued)

Prepared by: Sharleen Griffin, Director Phone 465-4641
 Division Administrative Services Date/Time 4/21/05 4:12 PM
 Approved by: Portia Parker, Deputy Commissioner Date 4/21/2005
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 74

ANALYSIS CONTINUATION

The penalty is increased from a misdemeanor to a class B felony for certain delivery of marijuana offenses, including any amount delivered to a person under 21 years of age. These changes may increase the number of cases and the length of some sentences upon conviction, but accurate projections are extremely difficult to assess.

In 2003 and 2004, the Department of Corrections (DOC) incarcerated the following number of offenders charged with, and/or convicted of crimes similar to those being changed or expanded under the legislation.

AS 11.71.040, Misconduct involving a controlled substance in the fourth degree, a class C felony (MICS 4): DOC data shows that in 2003, DOC booked 1,817 individuals into its facilities who were charged with an offense under AS 11.71.040, and 646 of those individuals were later convicted of a crime under AS 11.71.040. In 2004, 1599 were booked, and 618 were convicted. Convicted offenders received an average composite sentence of 1.5 years and 2.07 years respectively. The "composite sentence" is the total sentence imposed for all crimes with which a defendant was convicted, and is not the best measure of the impact of sentencing for a specific crime. To measure sentences without unduly complicating the analysis, it is best to focus on cases in which the drug crime was the most serious charge of conviction, and that was done with data supplied by the Department of Law (DOL). AS 11.71.040 covers criminal activity involving a variety of controlled substances, including cocaine, heroine, methamphetamine and other illegal drugs, in addition to marijuana. DOL data shows that only 15% of the cases where the most serious charge of conviction under AS 11.71.040 involved marijuana (with the vast majority involving growing, selling or possessing with intent to sell one ounce or more, which is not changed by the legislation). An analysis of data that focused specifically on offenders convicted of possessing more than one pound of marijuana showed that most received a suspended imposition of sentence (SIS), with only a few serving minimal jail time, and probation ranging from two to three years. It seems reasonable to conclude that sentences will be similar, or lower for possession of only 4 to 16 ounces.

AS 11.71.050, Misconduct involving a controlled substance in the fifth degree, a class A misdemeanor (MICS 5): In 2003, DOC booked 114 individuals, and 66 convictions. In 2004, 98 bookings and 186 convictions. Offenders received an average composite sentence of 1.0 years and 1.1 years respectively. Again, most cases involving marijuana were for growing, selling or possession with intent to sell. Only 10-12 cases (over the two year period) involved possession of ½ pound to one pound; offenders generally served no jail time, with some serving 10-30 days in jail, with periods of probation ranging from one to three years. Under the legislation, these dozen or so offenders may be prosecuted for MICS 4, and would probably receive sentences similar to those currently being sentenced under AS 11.71.040.

AS 11.71.060, Misconduct involving a controlled substance in the sixth degree, a class B misdemeanor (MICS 6): In 2003, DOC booked 652 individuals, and 186 convictions. In 2004, 593 bookings, and 99 convictions. Offenders received an average composite sentence of .79 years and .71 years respectively. According to DOL data, the vast majority of offenders are convicted as a result of public possession. By far the most common scenario, comprising upwards of 90% of the cases, is possession of marijuana in a motor vehicle, as a result of the driver being stopped for a traffic violation. Although the bill creates new misdemeanor penalties for having marijuana in cars, it remains to be seen if the new crimes will result in any increase in sentences in light of the fact that such conduct is already being charged under current law and very few cases result in jail time.

Cases involving in-home possession of four ounces to ½ pound of marijuana are quite rare, again because persons with that volume of marijuana are usually convicted of MICS 4 or 5 for growing, selling or possessing with intent to sell. MICS 6 cases involving in-home possession of fewer than four ounces of marijuana are rare and are generally dismissed. There is no indication that there will be a significant change in the way police agencies deal with in-home possession cases involving fewer than four ounces. Most cases will never come to the attention of prosecutors unless some other crime brings the police to the residence. In any event, cases of in-home possession of fewer than four ounces would become MICS 5 under the bill. Because MICS 5 cases involving possession of a ½ pound to one pound of marijuana ordinarily receive suspended sentences or very short periods of jail time, the department has no reason to expect any significant change in sentences for amounts involving fewer than four ounces.

Conclusion

It is unknown at this time what effect increasing the penalties for the use of marijuana may have in Alaska. According to the Department of Law, economic studies have shown that in other jurisdictions, increasing the penalties did have a deterrent effect due to the increased perception of the risk of using the drug. At this time, it cannot be predicted whether passage of this legislation will have the effect of reducing the usage of marijuana, and possibly reducing marijuana arrests and prosecutions, but it very well may. Therefore, it cannot be determined with any accuracy what the fiscal impact may be to the Department of Corrections. Although the changes proposed in the legislation likely will have some impact to the Division of Institutions, Department of Corrections, the extent of that impact is too speculative to support a defined fiscal note at this time, and therefore it is indeterminate. However, if the impact proves to be significant, the department will return to the legislature with a request for additional funding.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 74
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: "Act making findings relating to marijuana use and possession; relating to marijuana ..." RDU Probation and Parole
Probation and Parole Directors Ofc
 Sponsor: Rules Committee
 Requester: _____ Component No. 2684

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

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)	*	*	*	*	*	*
TOT. L	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Check 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)

The legislation proposes new statutory language that delineates findings regarding the mental and physical health risks, illegality and dangers of marijuana use. The bill makes changes to AS 11.71.030, .040, .050, .060 concerning the crime of misconduct involving a controlled substance by adding additional offenses, decreasing the amount of marijuana in possession that would constitute a violation, and increasing the penalties for possession, use and delivery of marijuana. Although most of the conduct prohibited in this bill already is a crime in Alaska, changes are proposed that will increase penalties for certain criminal activity. The legislation decreases from one pound to four ounces the amount of marijuana sufficient to constitute a felony under AS 11.71.040. The bill also creates new offenses related to marijuana possession in a vehicle and raises the penalties for certain delivery offenses. (continued)

Prepared by: Sharleen Griffin, Director Phone 465-4641
 Division: Administrative Services Date/Time 4/21/05 4:14 PM
 Approved by: Portia Parker, Deputy Commissioner Date 4/21/2005
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 74

ANALYSIS CONTINUATION

The penalty is increased from a misdemeanor to a class B felony for certain delivery of marijuana offenses, including any amount delivered to a person under 21 years of age. These changes may increase the number of cases and the length of some sentences upon conviction, but accurate projections are extremely difficult to assess.

In 2003 and 2004, the Department of Corrections (DOC) incarcerated the following number of offenders charged with, and/or convicted of crimes similar to those being changed or expanded under the legislation.

AS 11.71.040, Misconduct involving a controlled substance in the fourth degree, a class C felony (MICS 4): DOC data shows that in 2003, DOC booked 1,617 individuals into its facilities who were charged with an offense under AS 11.71.040, and 646 of those individuals were later convicted of a crime under AS 11.71.040. In 2004, 1599 were booked, and 618 were convicted. Convicted offenders received an average composite sentence of 1.5 years and 2.07 years respectively. The "composite sentence" is the total sentence imposed for all crimes with which a defendant was convicted, and is not the best measure of the impact of sentencing for a specific crime. To measure sentences without unduly complicating the analysis, it is best to focus on cases in which the drug crime was the most serious charge of conviction, and that was done with data supplied by the Department of Law (DOL). AS 11.71.040 covers criminal activity involving a variety of controlled substances, including cocaine, heroine, methamphetamine and other illegal drugs, in addition to marijuana. DOL data shows that only 15% of the cases where the most serious charge of conviction under AS 11.71.040 involved marijuana (with the vast majority involving growing, selling or possessing with intent to sell one ounce or more, which is not changed by the legislation). An analysis of data that focused specifically on offenders convicted of possessing more than one pound of marijuana showed that most received a suspended imposition of sentence (SIS), with only a few serving minimal jail time, and probation ranging from two to three years. It seems reasonable to conclude that sentences will be similar, or lower for possession of only 4 to 16 ounces.

AS 11.71.050, Misconduct involving a controlled substance in the fifth degree, a class A misdemeanor (MICS 5): In 2003, DOC booked 114 individuals, and 66 convictions. In 2004, 98 bookings and 186 convictions. Offenders received an average composite sentence of 1.0 years and 1.1 years respectively. Again, most cases involving marijuana were for growing, selling or possession with intent to sell. Only 10-12 cases (over the two year period) involved possession of ½ pound to one pound; offenders generally served no jail time, with some serving 10-30 days in jail, with periods of probation ranging from one to three years. Under the legislation, these dozen or so offenders may be prosecuted for MICS 4, and would probably receive sentences similar to those currently being sentenced under AS 11.71.040.

AS 11.71.060, Misconduct involving a controlled substance in the sixth degree, a class B misdemeanor (MICS 6): In 2003, DOC booked 652 individuals, and 186 convictions. In 2004, 593 bookings, and 99 convictions. Offenders received an average composite sentence of .79 years and .71 years respectively. According to DOL data, the vast majority of offenders are convicted as a result of public possession. By far the most common scenario, comprising upwards of 90% of the cases, is possession of marijuana in a motor vehicle, as a result of the driver being stopped for a traffic violation. Although the bill creates new misdemeanor penalties for having marijuana in cars, it remains to be seen if the new crimes will result in any increase in sentences in light of the fact that such conduct is already being charged under current law and very few cases result in jail time.

Cases involving in-home possession of four ounces to ½ pound of marijuana are quite rare, again because persons with that volume of marijuana are usually convicted of MICS 4 or 5 for growing, selling or possessing with intent to sell. MICS 6 cases involving in-home possession of fewer than four ounces of marijuana are rare and are generally dismissed. There is no indication that there will be a significant change in the way police agencies deal with in-home possession cases involving fewer than four ounces. Most cases will never come to the attention of prosecutors unless some other crime brings the police to the residence. In any event, cases of in-home possession of fewer than four ounces would become MICS 5 under the bill. Because MICS 5 cases involving possession of a ½ pound to one pound of marijuana ordinarily receive suspended sentences or very short periods of jail time, the department has no reason to expect any significant change in sentences for amounts involving fewer than four ounces.

Conclusion:

It is unknown at this time what effect increasing the penalties for the use of marijuana may have in Alaska. According to the Department of Law, economic studies have shown that in other jurisdictions, increasing the penalties did have a deterrent effect due to the increased perception of the risk of using the drug. At this time, it cannot be predicted whether passage of this legislation will have the effect of reducing the usage of marijuana, and possibly reducing marijuana arrests and prosecutions, but it very well may. Therefore, it cannot be determined with any accuracy what the fiscal impact may be to the Department of Corrections. Although the changes proposed in the legislation likely will have some impact to the Division of Probation and Parole, Department of Corrections due to a potential increase in the number of felons under probation and/or parole supervision, the extent of that impact is too speculative to support a defined fiscal note at this time, and therefore it is indeterminate. However, if the impact proves to be significant, the department will return to the legislature with a request for additional funding.

Pacific Solutions

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March 29, 2005

Senator Ralph Seekins
Chairman
Senate Judiciary Committee
Alaska State Senate

Dear Chairman Seekins and Members of the Senate Judiciary Committee,

Having spent most of my working life advocating for women's rights and safety I regret that I must oppose SB 20 as currently written.

Violence against women is abhorrent and is far too great a problem in our state. Women are more often victims of violence perpetrated by someone they know than they are by strangers and the physical assaults they suffer often escalate when the woman is pregnant.

The victim in every case of violence against a pregnant woman is the woman. If the assault harms her so seriously as to terminate her pregnancy the crime is more serious and the penalty should be greater but the victim is still the pregnant woman. She is the living person upon whom a crime has been perpetrated.

Our criminal laws include crimes against persons and crimes involving property. The legal definition of a "person" is and should remain a "homo sapiens who is born alive". An embryo or a fetus does not fit this definition. Until it is born alive it remains a part of a woman's body.

The term "unborn child" is neither a legal or medical term. Please do not cloud our statutes with politically charged language intended to make points with those on one side of the abortion debate. Please remove these references from the bill and put the focus of the legislation where it belongs on the safety of the pregnant woman rather than on the debate over when life begins.

I strongly urge the Judiciary Committee to replace the term "unborn child" with the correct terms "embryo", "fetus" and "viable fetus" and "miscarriage" and "stillborn" as appropriate throughout the legislation.

I very much support a sentencing aggravator for assaults on pregnant women, that allows the court to consider that a greater crime has been committed against the woman if the resulting harm includes the loss of her fetus.

The best way to protect fetuses is to protect the women who carry them within their bodies. Please put the focus of this legislation where it belongs – on the pregnant woman who is victim to a crime of violence.

Thank you very much for your consideration.

Sincerely,

Sherrie Goll

Sherrie Goll