

SB

20

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

February 11, 2005

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Senator Fred Dyson
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Dyson:

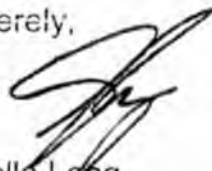
On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 20, relating to offenses against unborn children.

The APOA State Board and Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

This legislation provides for the protection of the unborn child against criminal acts. There is currently no law that addresses this issue, and sadly, this has allowed for those who have committed such crimes to go unpunished. This bill allows for justice to be sought for those victims without a voice.

Thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,



Angella Long
State President



SENATOR FRED DYSON

MEMORANDUM

February 23, 2005

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senator Fred Dyson

A handwritten signature in cursive that reads "Fred Dyson" with a circled "WLL" underneath.

RE: Hearing Request, SB 20

I respectfully request the scheduling of SB 20, "An Act Related to Crimes Against the Unborn" at your earliest convenience. Thank You.



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.

SB 20 amends the Alaska Criminal Code to make the killing or injury of an unborn child¹ criminal under the same circumstances in which the killing or injury of a person born alive would be criminal. Nothing in this law shall apply to an act committed by the mother of an unborn child, to a medical procedure performed by a physician or other licensed medical professional at the request of a mother of an unborn child, or to the lawful dispensation or administration of lawfully prescribed medication. This bill also defines "unborn child" within the criminal statutes.

Recently, the U.S. Congress passed the Unborn Victims of Violence Act, and President Bush subsequently signed the bill into law. This federal law recognizes that when a person attacks a pregnant woman, and injures or kills her unborn child, the attacker has harmed two victims. 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 both victims should be protected by law. Pregnant women are already protected by our Criminal Code; SB 20 includes the same protection for unborn victims. SB 20 establishes, in law, defense for the unborn victims of violent crime.

Updated 2/1/05



Alaska State Legislature

Senate Majority Web: <http://www.akrepublicans.org>

Sponsor: Senator Fred Dyson
Current Version: SB 20
Contact: Wes Keller. 465-2199

Fact Sheet for: Senate Bill 20

Short Title: OFFENSES AGAINST UNBORN CHILDREN

Summary:

- Establishes the following crimes against an unborn child: murder, manslaughter, negligent homicide, and assault.
- Exempts legal abortion, consequences of actions resulting from therapeutic treatment or diagnostic testing, and a pregnant woman's actions against herself or her own unborn child.
- Defines "unborn child" for application of criminal law.

Benefits:

- Provides protection for unborn children.
- Clarifies Alaska Criminal law in the context of newly passed federal law of similar intent.

Background:

The federal H.R. 1997 passed at the end of January, 2004 and became Public Law 108-212 March 1, 2004. Known as the Unborn Victims of Violence Act of 2004, or Laci and Conner's Law, it provides that persons who commit certain federal violent crimes and thereby cause the death of, or bodily injury to, a child who is in utero is guilty of a separate offense. The federal law is limited in that it applies to crimes committed on federal property.

First Degree Assault

Amended SB 20 VF

AS 11.41.200 - AS 11.41.230

- recklessly + serious physical injury + dangerous instrument
- Intent to cause serious physical injury + serious physical injury
- knowingly + extreme indifference + serious physical injury
- recklessly + dangerous instrument + serious physical injury by repeated lesser assaults

- Recklessly + serious physical injury to include premature birth + dangerous instrument
- Intent to cause serious physical injury to include premature birth + serious physical injury
- knowingly + extreme indifference + serious physical injury
- Recklessly + dangerous instrument + serious physical injury to include premature birth by repeated lesser assaults

Second Degree Assault

B Felony

Second Degree Assault of an Unborn Child

- intent to cause physical injury + physical injury + dangerous instrument
- recklessly + serious physical injury
- recklessly + serious physical injury by repeated lesser assaults

- intent to cause physical injury + physical injury that requires medical treatment
- recklessly + serious physical injury to include pre mature birth

Third Degree Assault

C Felony

Third Degree Assault of an Unborn Child

- recklessly + in fear of serious physical injury + dangerous instrument
- recklessly + physical injury + dangerous instrument
- recklessly + physical injury to child requiring medical attention (- recklessly + knowingly >10)
- recklessly + physical injury to child more than once
- intent + fear + repeated threats
- criminal negligence + dangerous instrument + serious physical injury + protracted health, impairment, disfigurement, or illegal abortion

- Intentionally places a pregnant woman in fear of serious physical energy or death of her unborn child
- Recklessly + physical injury that reasonably requires medical treatment

Fourth Degree Assault

A Misd.

Fourth Degree Assault of Unborn Child

- recklessly + physical injury
- criminal negligence + physical injury + dangerous instrument
- recklessly + fear of imminent physical injury

- With criminal negligence places a pregnant woman in fear of serious physical energy or death of her unborn child
- criminal negligence + physical injury that reasonably requires medical treatment



Position Paper Senate Bill 20

Planned Parenthood of Alaska (PPA) denounces all acts of violence against women. Our mission includes working for positive public policy and protecting the women and families in Alaska.

Planned Parenthood would like to thank Senator Dyson for his years of service and his commitment to families and children. Planned Parenthood agrees that the loss of a wanted pregnancy due to an act of violence is a tragic event. The perpetrators of such crimes need to answer for the loss suffered by the woman and her family. **But Planned Parenthood is unable to support the bill as currently written.**

Our concerns with SB 20:

This bill does not address the criminal penalties for violence against women.

Acts of violence against women, including pregnant women, are tragic and should be punished. In fact, women – the principal victims of the violent attacks that sometimes result in the loss of a pregnancy– are not addressed in this legislation. The better approach is to strengthen Alaska's laws relating to violence against pregnant women.

As written, this bill threatens a woman's reproductive choice.

Though the bill exempts a pregnant woman from prosecution who gives consent to an abortion, it lays a foundation of giving separate legal rights to embryos and fetuses. If enacted, this legislation would be the first Alaska law to recognize an embryo or fetus as a person who can be an independent victim of a crime, and is directly contrary to existing Alaska law that defines a "person" as "a human being who has been born and was alive at the time of the criminal act." We view this as part of a national trend designed to erode the foundation of a woman's right to choose as set forth in *Roe v. Wade* by elevating the legal status of all stages of prenatal development under state law.

Solutions we would support:

Strengthen Alaska's laws relating to violence against pregnant women.

PPFA recommends amending SB20 to provide enhanced penalties for those who perpetrate violence against a pregnant woman that results in miscarriage or stillbirth. There is room to address this type of crime in existing aggravator statutes. Successful legislation should acknowledge that the primary victim of the attack is the woman but also considers and additionally punishes the perpetrator for the loss a pregnant woman experiences when her choice to be pregnant is cut short by violence inflicted upon her.

Legislation that does not undermine *Roe v. Wade*

We cannot support legislation trying to give separate, legal standing to embryos and fetuses as persons. We support approaches that result in greater penalties for attacking a pregnant woman that results in the loss of her pregnancy. Planned Parenthood of Alaska believes that all women should have reproductive freedom including the right to a legal abortion. Women must also have the freedom to have a child if they wish, and the right to access reproductive health care and accurate information about their reproductive health. **We are eager to work with the committee to craft language that adequately punishes attackers, while avoiding an unnecessary fight about the legality of reproductive rights.**

Summary

Planned Parenthood is confident that middle ground can be identified and that the main objective of criminalizing an attack on a pregnant woman that results in a miscarriage or stillbirth can be accomplished. We believe this should be viewed as an issue about violence against women and are eager to discuss the issue in that vein. We sincerely hope to work with legislators to craft language that will protect women and their families and respects our cherished reproductive freedoms.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB020-DPS-ASTD-2-28-05
 () 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
 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

Section 1: A new section that:

- 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 that:

- 11.41.280 Defines Assault of an unborn child in the first degree and establishes it as a Class B felony.
- 11.41.284 Defines Assault of an unborn child in the second degree and defines it as a Class A misdemeanor.
- 11.41.287 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 crimes that are not classified in the section defining 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.