

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2962

Section 2

All but the last change in this section relates to natural evolution in the department's duties and technology. The department no longer has a building program that involves local governments. The department no longer sets energy standards; this is done by national standard groups and generally adopted by local government in their building codes. The addition of a new duty concerning the study of alternative financing mechanisms is important. There is a rapid change occurring in transportation finance nationally, and we believe it will become an increasingly important area of examination.

Section 3

From the department's perspective, this is the most important section in the bill. The language in this section has been the subject of litigation in state court. As now constructed it is both nearly impossible to fully comply with, and results in very expensive costs for project proponents.

The section now literally requires that the entire long-range transportation plan for the state, for all modes of transportation be updated annually. The department currently expends more than \$8 million annually on transportation planning but does not have the resources to meet even a five-year cycle of plan updating. The very lengthy process of plan preparation and the associated public process can take several years. We would not recommend enlarging the funding directed at planning nor adding the staff required to meet an annual cycle, thus we recommend the flexibility contained in this bill.

The removal of the requirement for "*consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities.*" is also vital. This requirement has been at the heart of the litigation. A judge's ruling has now confirmed that a project selected for funding by the state must fulfill this requirement. Taken literally, this means:

- Every senior van, every bus, every repair to state ferries, every maintenance project to roads and every trail project must undergo a consideration of benefits and/or costs;
- No exceptions in current law apply to emergencies such as flood damage, or earthquake repairs;
- No exception can be applied to federally funded "projects" that are not easily measured, such as training, research, planning and bridge inspection;
- No exception in the current law permits projects that meet basic needs to be exempted, such as runway lights for small villages or a "make it black" project on rural subdivision roads; and,
- No exception exists for projects authorized by direct legislative appropriation, Congressional earmark or even by the voters through bond issues.

Due to the court ruling and the current language of the statute, the department recently adopted regulations that require a cost-effectiveness study for every project in the STIP scoring process. This requirement falls heavily on local governments, which must now undertake these studies before they request federal funds. But the legal advice of the

Department of Law was that we had no choice in this action. Should SB 16 pass as written we will immediately move to strike this provision from the regulations.

Section 4

The changes in this section are recommended. They update the process of submitting a capital budget including the STIP process to more closely follow both the practice of the Legislature and the federal agencies that fund the STIP.

*Strike speaks to
a 2 year submitter*

Section 5

This change is needed to reflect the changes in time that have caused the department to no longer have a role in the setting of thermal and lighting energy standards.

Section 6

This section assists the cleanup of statutes by dropping sections that are duplicative and thus confusing to the public and the department.

Discussion on Why a Mandatory 'Costs and Benefits'
Consideration is Not Always Meaningful
Alaska Department of Transportation and Public Facilities
March 22, 2004

AS 44 42.050 (a) requires the department to: "...consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities."

On the surface, this requirement seems both reasonable and valuable. However, there are many times the department undertakes new projects but does not spend the time or money to conduct such formal costs and benefits analyses. The most common examples are projects for rural areas where long distances and a small population base would make such efforts nonsensical—basic transportation elements are routinely needed regardless of their costs.

A recent court decision on a request for a preliminary injunction found the department at fault for not using a benefit-cost (B-C) analysis* on a project linking two rural villages (summary of lawsuit attached). It is typical of many other rural projects we have undertaken, in that it provides a basic transportation system, but would not benefit from a detailed benefit-cost analysis.

Categories of transportation projects not suited to selection using B-C analysis
Rural Alaska abounds in transportation needs that are provided as a basic public service. Virtually none of these would rise to a positive benefit-cost ratio because the small population base. Examples include:

- Ferries and ferry terminals
- Airports that meet minimum standards for length, width, adequate approaches, lighting and aprons/taxiways.
- Village roads to basic community services (e.g., sewage lagoons, water sources, airports, sanitary landfills, barge landing sites).
- Trail marking.

Even in the more populated regions of Alaska many categories of transportation projects would not be expected to present a positive benefit-cost ratio. Examples of such projects include:

- Rail-highway grade separation projects

* Technically, the statute requires consideration of only "means and costs" for projects improving existing transportation modes and facilities, and consideration of "costs and benefits" for new transportation modes and facilities. In practice it is very difficult to just consider "costs" unless there is some measure of what costs are achieving, thus the department has essentially been forced to use the same type of cost and benefit consideration for all projects.

- Paving of local (residential) roads
- Landscaping and beautification projects
- Trails and amenities
- Pollution and environmental mitigation features needed to meet legal and permit requirements
- Transit investments (buses, bus stops, transit centers)

Many other transportation "projects" are undertaken to fulfill one or more mandates, none of which can be readily quantified as to their "benefits."

- Projects undertaken to meet regulatory requirements (e.g., ferry modernization, data collection of truck weights and classes, bridge scour monitoring).
- Transportation "non-project" projects such as training, EEO compliance, bridge inspection, management systems and similar.
- Programs aimed at serving disadvantaged groups such as transit vans for elderly, disabled and other groups.

Finally, the department often undertakes projects because a member of Congress or the Legislature placed them in the capital budget. Such projects do not receive the normal prior planning or detailed evaluation. The state has very little choice but to accept the project funds for the stated purpose, or to not use the funding.

Why B-C analysis would continue to be used where it makes sense

Formal benefit and cost (B-C) analysis is a tool that is most often used to evaluate among and between different alternatives for a given project or range of options. In such cases, the tool helps to compare and contrast different choices in solving a transportation requirement. For example, in the development of the Southeast Alaska Transportation Plan, a number of different B-C analyses were prepared to better understand vastly different types of system options. Even in rural Alaska, the tool is used to help identify the most "cost-effective" solution, even if the costs still outweigh the benefits.

For the project at issue in the litigation, benefit cost analysis was prepared for the bridge crossing, considering different structural systems, pier options and span length. However, we did not perform an overall benefit-cost analysis, primarily because the project in question scored very highly on other considerations.

The department and two MPOs (AMATS and FMATS) maintain several different types of management systems, such as: Bridge, Pavement, Congestion, Safety and Maintenance. Each management system is a complex "B-C tool" aiding decision makers.

Summation

B-C analysis is a good technique and is routinely used in some circumstances even where not required by statute. However, under the current construction of the transportation planning statute, and the court's recent interpretation, every new project undertaken must receive this type of analysis, including projects already in the development stage. For the reasons stated it

is not meaningful nor a prudent use of project funds to routinely require these B-C analyses on every type and scale of project.

The real issue is whether we should perform B-C analysis where it is not practicable, nor a prudent use of public funds. With the current one-size fits all statute we have no discretion, as confirmed by the court. Without some relaxation of this requirement, delayed projects and higher project costs are unavoidable.

Case Status:
In the Superior Court for the State of Alaska
Third Judicial District at Anchorage

Alaska State Council of)
Trout Unlimited, Robert B.)
Gillar)
)
Plaintiffs,)
)
vs)
)
State of Alaska, Alaska)
Department of Transportation)
and Public Facilities,)
)
Defendants.)
_____)

Filed: July 25, 2002

Case: 3AN-02-0763CI

July 25, 2002 - Plaintiffs filed suit seeking "injunctive and declaratory relief against the Alaska Department of Transportation and Public Facilities (DOT&PF) for having violated AS 44.42.020 and AS 44.42.050 by scheduling for construction in 2003 a proposed, approximately 19-mile rural road¹ and bridge project from Iliamna, Alaska to Nondalton, Alaska in Southwest Alaska...."

May 1, 2003 - Plaintiff's filed for a preliminary injunction that defendants be restrained from constructing or contracting to construct the Iliamna – Nondalton project.

January 5, 2004 – Preliminary injunction granted to Plaintiffs. DOT&PF was ordered to **cease any action to construct, contract to construct, or produce final design of the Iliamna–Nondalton road and bridge project until the economic costs of the project are considered in the next revision to the "Southwest Regional Transportation Plan" as required by AS 44.42.050, or until further order of this court.** (Emphasis added.)

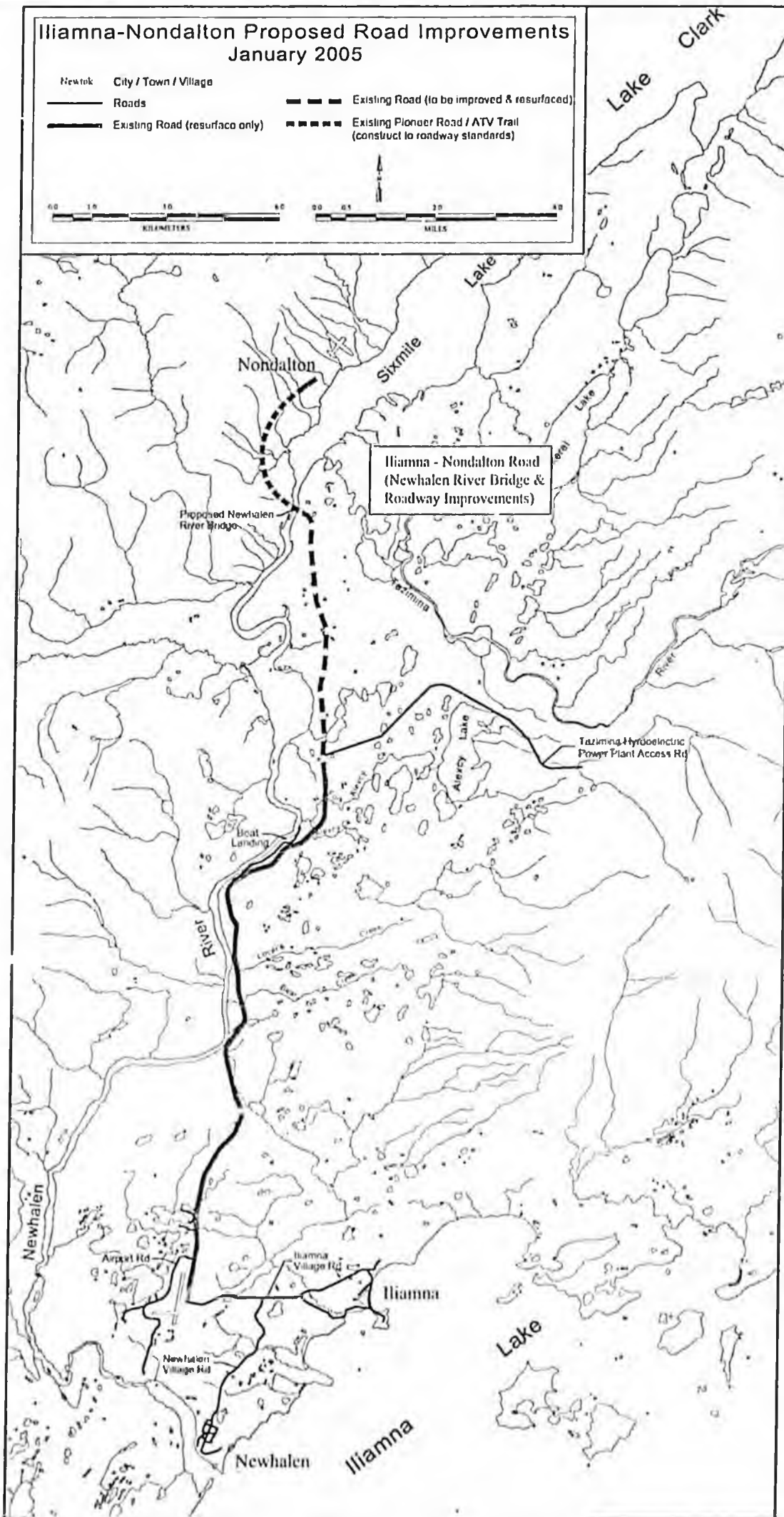
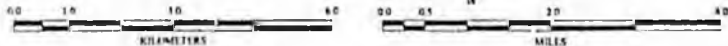
September 30, 2004 – "Southwest Alaska Transportation Plan" was revised. The revision consisted of extracting the Iliamna–Nondalton Road/Bridge project and the Aleknagik/Wood River Bridge project from the Plan baseline and subjecting them to the cost effectiveness methodology used to evaluate the other capital projects in the Plan. The two projects were subjected to an economic analysis that was incorporated into the Plan.

January 14, 2005 – The preliminary injunction was lifted. It is unclear at this time whether the remaining causes of action filed in the lawsuit will be litigated.

¹ The road already exists, in different forms and (absent the bridge), from Iliamna to Nondalton. Going north from Iliamna, roughly the first 11.5 miles is paved, the next 4.5 miles to the site of the proposed bridge is a gravel road and the remaining 2.5 miles from the other side of the river to Nondalton is in the form of a pioneer road.

Iliamna-Nondalton Proposed Road Improvements January 2005

- | | |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| <p>—●— City / Town / Village</p> <p>— Roads</p> <p>— Existing Road (resurface only)</p> | <p>— Existing Road (to be improved & resurfaced)</p> <p>— Existing Pioneer Road / ATV Trail (construct to roadway standards)</p> |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|



STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

March 17, 2005

The Honorable Gary Stevens
Alaska State Legislature
State Capitol, Room 103
Juneau, Alaska 99801-1182

Dear Senator Stevens:

Thank you for taking the time to meet with my staff on this important legislation. As you know, the state statutes governing transportation planning have recently been used in litigation to halt or at least slow down the accomplishment of strongly supported transportation improvements.

Tragically, the litigation induced delay of the project to build a road and bridge between Iliamna and Nondalton may have led to the drowning deaths of two young men who recently attempted to cross the Newhalen River and broke through the ice. A third person only narrowly averted his death by struggling back to shore.

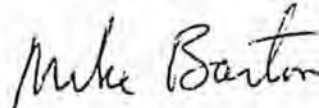
The state has spent more than \$200,000 in legal costs, and at least another \$100,000 in planning costs to comply with the court interpretation of the transportation planning duty found in AS 44.42.050(a). The current draft of CS SSSB 16 would modify this transportation planning duty to a more reasonable standard, and one that is not as readily used to halt important transportation projects. Of course, these state costs are trivial in comparison to the loss of life and physical dangers forced on Alaska citizens who must travel across thin ice in the dark of winter to seek basic consumer goods and services.

Aside from the obvious gravity of what might have been avoidable loss of life, the current statute language remains a tool available to any person or group seeking to halt or delay other needed transportation projects. This legislation is needed to ensure that the roads, buses, trails, airports, ferries and other basic transportation needs are not needlessly halted for reasons of process rather than substance.

My staff stands ready to discuss the specifics of this legislation and why we endorse its passage. I would also note that we have recently begun the administrative process to change the regulations (17 AAC 05.120-990) that govern the transportation project selection. This change, which is driven by the court ruling in question, has increased the costs of nominating projects for every community in the state. Should CS SSSB 16 become law, we will immediately take steps to remove this new and expensive regulatory burden on our communities.

I applaud your attention to this matter, and by copy of this letter to Senate leadership and committee chairs assigned to consider this legislation I hope to encourage its passage. I understand the Representative Elkins is considering introducing a companion bill, and have copied him on this letter to demonstrate our support and the statewide urgency for this legislation.

Sincerely,



Mike Barton
Commissioner

cc: Senator Ben Stevens, Senate President
Senator Charlie Huggins, Chair, Senate Transportation
Representative Jim Elkins, Chair, House Transportation
Kevin Jardell, Legislative Director, Office of the Governor
Linda Hay, Deputy Legislative Director, Office of the Governor
Nona Wilson, Legislative Liaison, DOT&PF



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gary Stevens

Current Version: CS SS SB 16 (TRA)

Contact: Doug Letch, 465-4925

Fact Sheet for: Senate Bill 16

Short Title: POWERS/DUTIES DOT&PF/TRANSPORTATION PLAN

Summary:

- Deletes the requirement that the Department of Transportation and Public Facilities participate in setting thermal and lighting energy standards.
- Includes other statutory clean-up language requested by DOT&PF.
- Deletes the requirement that the DOT&PF conduct a cost benefit study for projects where such studies are not warranted.

Benefits:

- Allows DOT&PF to proceed in a more timely manner with projects for which a cost benefit study is not required.
- Updates DOT&PF statutes to respond to circumstances as they actually exist today.

Background:

- Opponents of DOT&PF projects often manipulate obsolete statutes, such as a requirement that the department conduct a cost-benefits analysis, to halt construction of many projects vital to the health and wellbeing of Alaska residents. This has cost the state valuable time and money in litigation while significantly increasing project costs. SB 16 eliminates this requirement and cleans up other statutory language no longer appropriate to DOT&PF's functions.

Sec. 46.11.010. Thermal and lighting energy standards for public buildings.

(a) All public facilities of the state, the construction of which begins after July 1, 1980, shall be designed to comply with the thermal and lighting energy standards adopted by the Department of Transportation and Public Facilities under AS 44.42.020(a)(14).

(b) By June 30, 1988, all public facilities of the state existing on July 1, 1980 shall be modified, to the extent economically feasible, to comply with the thermal and lighting energy standards adopted by the Department of Transportation and Public Facilities under AS 44.42.020(a)(14). (§ 36 ch 83 SLA 1980)

Repealed

Sec. 46.11.020. Training of public building maintenance personnel. Persons responsible for the maintenance of public buildings designed with energy conservation or production features shall be trained by the department in the use and operation of those features. (§ 36 ch 83 SLA 1980)

Sec. 46.11.030. Energy audits. [Repealed, § 10 ch 79 SLA 1983.]

Sec. 46.11.040. Applicability of thermal and lighting energy standards to residential buildings. State financial assistance may not be approved or granted for the construction of or purchase of a loan for a residential building if construction of the building began after December 31, 1991, unless

(1) the building is in compliance with thermal and lighting energy standards;

(2) the building is in compliance with the building code of a municipality and the standards for thermal and lighting energy of the municipal building code meet or exceed the thermal and lighting energy standards;

(3) the building

(A) is constructed under an exception to the municipal building code granted because the exception will result in increased energy efficiency; or

(B) is located or is to be located in an area where thermal and lighting energy standards are not justified because of the high cost of implementation of the standards, with specific consideration given to the availability of inexpensive home heating energy sources, as determined under regulations adopted by the Alaska Housing Finance Corporation; or

(4) the applicant agrees, in writing, that the building will be brought into compliance with thermal and lighting energy standards within one year of conveyance. (§ 36 ch 83 SLA 1980; am § 7 ch 79 SLA 1983; am § 82 ch 74 SLA 1985; am § 6 ch 94 SLA 1990; am § 137 ch 4 FSSLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "Alaska Housing Finance Corporation" for "Commissioner of Community and Regional Affairs" in subparagraph (3)(B) and made a stylistic change.

Editor's notes. — Section 8, ch. 94, SLA 1990 provides that persons "responsible for administration

and management of programs in which state assistance is provided for the purchase or construction of residential buildings are encouraged to adopt and enforce the compliance standards and methods of AS 18.56.096(c)(2) within the housing programs for which they are responsible."

Sec. 46.11.050. Financing of energy efficient homes and buildings. (a) After December 31, 1980, a financial institution shall take into consideration the economic benefits of alternative energy systems, life-cycle energy costs, energy efficient building design, and energy conservation when financing homes and buildings with state financial assistance.

(b) After December 31, 1980, a financial institution that makes home mortgage loans with money provided to it by the commissioner of revenue from surplus state general fund investments authorized by AS 37.10.070, or a state agency that makes a direct home mortgage loan to an applicant, shall include estimated heating and lighting costs as determined by an energy audit in standard principal, interest, taxes, and insurance

Sec. 19.10.140. Long-range program for highway construction and maintenance. The governor shall require the department to establish a continuing, long-range program for highway construction and maintenance. The program must annually propose construction and maintenance of highways for not less than the next five years. A statement of the program shall be submitted by the governor to the legislature annually, and the long-range program shall include in detail the program prepared under AS 19.10.150. (§ 1 ch 124 SLA 1959)

Repealed

Cross references. — For responsibility of the Department of Transportation and Public Facilities for state transportation planning, see AS 44.42.050.

Sec. 19.10.150. Construction program. Before February 2 of each year, the department shall prepare a statement showing what construction work has been required and proposed and may be undertaken by the department. The statement must include a general itemization of the estimated cost for each project and the total estimated cost of all projects. The department shall adopt a construction program which must include all projects to be undertaken by it during the following construction season and shall establish project priorities. The department may increase, decrease, amend, or delete the construction program from time to time as circumstances warrant. (§ 3 art IV 152 SLA 1957)

Cross references. — For responsibility of the Department of Transportation and Public Facilities for state transportation planning, see AS 44.42.050.

Sec. 19.10.160. Standard plans and specifications; planning for future highways.

(a) The department shall prepare and adopt uniform standard plans and specifications for the establishment, construction, and maintenance of highways in the state. The department may amend the plans and specifications as it considers advisable. All standards must conform as closely as practicable to those adopted by the Association of State Highway and Transportation Officials.

(b) Design for proposed major upgrade and new construction projects for highways in federally recognized metropolitan planning areas must be conducive to safety, efficiency, and economy of maintenance and provide for capacity that will adequately serve future traffic as set out in this subsection. This subsection does not apply to highway maintenance projects. Proposed major upgrade and new construction projects that are estimated to cost

(1) less than \$5,000,000 must be designed to adequately serve planned future traffic for at least the next 10 years;

(2) \$5,000,000 or more must be designed to adequately serve planned future traffic for at least the next 20 years. (§ 1 art IV title II ch 152 SLA 1957; am § 12 ch 106 SLA 2002; am § 1 ch 67 SLA 2002; am § 1 ch 119 SLA 2004)

Cross references. — For responsibility of the Department of Transportation and Public Facilities for state transportation planning, see AS 44.42.050.

Effect of amendments. — The 2002 amendment, effective January 1, 2003, added subsection (b).

The 2004 amendment, effective June 30, 2004, in subsection (b), deleted "After December 31, 2002" at

the beginning, deleted "after construction project" at the end of paragraph (1), "or more" for "Between \$5,000,000 and \$10,000,000, inclusive" at the beginning of paragraph (2) and deleted "after construction of the project" at the end of paragraph (2), and deleted paragraph (3) relating to projects costing more than \$10,000,000.

Article 3. Construction.

Section

- 170. Construction by department
- 180. Request for public bids
- 200. Procedures for the award of contracts

Section

- 230. Method of construction of highway
- 240. Warning signs of road construction
- 250. Penalty for failure to erect warning



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602
April 5, 2005



The Honorable Gary Stevens
State Capitol, Room 103
Juneau, AK 99801-1182

Dear Senator Stevens:

I am writing to express the Lake and Peninsula Borough's support for ~~CSSSSB16~~ ^{CS}SSSB16. This bill will remove a large burden that currently impedes our ability to submit projects to Alaska Department of Transportation and Public Facilities (DOT) for inclusion in the Statewide Transportation Improvement Program. (STIP).


Under current law (AS 44.42.050), DOT must consider cost and benefits for each project it wishes to build. The burden of this statute falls most heavily on local governments which often nominate projects for STIP funding and now must have a cost benefit study done in advance of the state scoring the project.

CSSSSB16 will change that by requiring a "cost-effectiveness" analysis for projects that are new (not rehab or maintenance) and that are not serving local needs. This exempts most of the projects that local governments might request, since many projects meet one of the two exceptions. Yet, new routes of transportation will still be required to have a cost-effectiveness study. While cost-effectiveness is a less demanding type of analysis, (than a formal cost-benefit analysis), it is much more suitable for decisions that are being made 5 to 10, or even 20 years prior to implementation.

Additionally, project opponents have used the current language in litigation to halt long planned, locally supported, safety enhancement projects scheduled for construction in rural areas. Enactment of CSSSSB16 would institute a more reasonable standard and prevent future litigation and life-threatening delays of this type.

We urge you to pass this important legislation.

Sincerely,


Glen Alsworth Sr.
Mayor

cc: Governor Murkowski (Office of the Governor, P.O. Box 110001, Juneau, AK
99801-0001)

Commissioner Barton (Department of Transportation and Public Facilities, 3132
Channel Drive, Juneau, AK 99801-7898)

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/14/05

FURTHER: Finance

Date of 5-Day Notice: 3/17/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/1/05

Transportation Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 16

SB 16 POWERS/DUTIES DOTPF/TRANSPORTATION PLAN

"An Act relating to the powers and duties of the Department of Transportation and Public Facilities; repealing the requirement for a long-range program for highway construction and maintenance; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities."

and recommends:

- be replaced with _____ CS SSSB 16 (TRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
House Bill:	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DOT PF	3/21/05			✓	1
DPS	3-22-05			✓	2

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>Therriault</i> Therriault			X	
<i>Cowdery</i> Cowdery			X	
<i>French</i> French			X	
<i>Kokesh</i> Kokesh			X	
CHAIR: <i>Huggins</i> Huggins	X			

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			✓
DOA	7		✓	
DOA	8		✓	

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
<i>Beu Kerttula</i>	KERTTULA		X		
<i>M. Hamel</i>	HAMTEL				X
<i>Leo</i>	HOLM			✓	
<i>Bruce Weyrauch</i>	WEYRAUCH			X	
<i>Carl P. Moses</i>	MOSES			X	
<i>Bill Stolte</i>	STOLTE	✓			
<i>Spaulle Kelly</i>	SPULLE KELLY	✓			X
<i>Festek</i>	FESTEK	X			
Chair: <i>K. May</i>	MAY	✓			
Chair: <i>Mike Chausselet</i>	CHAUSSELET			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						
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 (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 Heide Phone: 907-269-4532
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
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	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 (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: Portia C.K. Parker, Deputy Commissioner
Agency: Department of Corrections

Phone: 907-465-3339
Date/Time: 2/14/06 12:12 PM
Date: 2/14/2006

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 children RDU Statewide Support
Sponsor Senator Dyson Component Alaska Criminal Records 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						
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 (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. REU: 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						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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 (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						
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 (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 p. 6/14/2006



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

- 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/Statehomicidelaws092302.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

- 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
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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 WATCH
REPORTS . 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).

LAWRENCE AND LEANOR WOOD
LAWRENCE WOOD

SB

20

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
APR 28 2005
SENATE FINANCE COMMITTEE

DATE RETURNED: 4/27/05

FURTHER:

DATE TURNED IN TO OFFICE: 27 April 2005

Finance 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 SB 20 (JUD)
- attached amendment(s) not 2ND JUD
- adopt Letter of Intent by _____ "R" Version mittee
- further referral to _____ passed :

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____


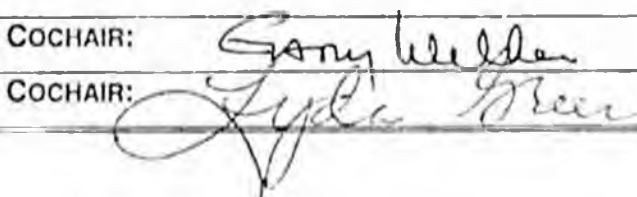
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

US FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
DPS	2/28/05			✓	#1
Admin.	3/1/05		*		#2
Corr.	3/1/05			✓	#3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			✓	
				
COCHAIR: <u>Gary Weller</u>				
COCHAIR: <u>Lyle Green</u>	✓			

APR 28 2005

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
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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
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 10:59 AM
Approved by: Portia C K Parker, Deputy Commissioner Date: 3/1/2005
Agency: Department of Corrections

COMMITTEE COPY

FISCAL NOTE



STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 20(STA)
(S) Publish Date: 3/16/05

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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)334-4316
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

PRINTED OUT
3/16/05

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
children 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 ()						
-------------------------------	--	--	--	--	--	--

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 Tandesko Date: 2/28/2005
Agency: Department of Public Safety



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 legal abortion and medical treatment related to pregnancy.

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 the applicability of this Section to legal abortion and medical treatment related to pregnancy.

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.

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;

SENATE COMMITTEE REPORT

DATE RETURNED: 4/20/05

FURTHER: Rules

DATE TURNED
IN TO OFFICE: 4/26/05

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 SB 20 (2d JVD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

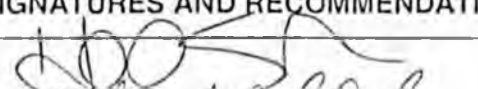

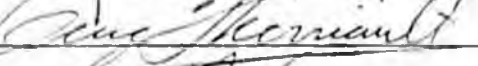

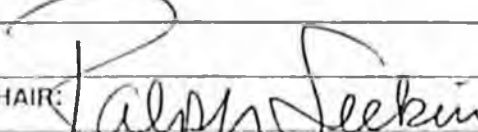
Department	Date	Fiscal	Indet.	Zero	FN#
DPS	2/28/05			✓	1
ADM	3/1/05		✓		2
COR	3/1/05			✓	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

French
Gress
Therriault
Huggins

Seekins

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

SENATE COMMITTEE REPORT

DATE: 3/16/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/19/05

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 SB 20 (YUP)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title 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#
DPS	2/28/05			✓	1
ADM	3/1/05		✓		2
COR	3/1/05			✓	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

Therriault
Huggins
Gress

Seekins

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Therriault</i>	✓			
<i>Huggins</i>	✓			
<i>Gress</i>			✗	
CHAIR: <i>Seekins</i>	✓			

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/11/05

FURTHER: Judiciary

Date of 5-Day Notice: 2/24/2005
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 3/16/2005

State Affairs 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 SB20 (STH)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DPS	2/28/05			✓	1
ADM	3/1/05		✓		2
COR	3/1/05			✓	3

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>Bettye D. Quinn</i>			X	
<i>K. J. St...</i>				✓
<i>Thomas N. ...</i>				✓
<i>[Signature]</i>				✓
CHAIR: <i>[Signature]</i>				X

Handwritten notes on the left margin:
 Use
 Bill
 Referral
 Hearing
 Staff

SB

22

HFIN

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COPIES

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 22(FIN)
(S) Publish Date: 5/03/05

Revision Date/Time (Note if correction): Rev 4/27/05 12:30p Dept. Affected: Health & Social Services

Title: ADDING BIRTH CENTERS TO FACILITIES PAID BY MEDICAID RDU: Health Care Services
Component: Medicaid Services

Sponsor: DAVIS

Requester: _____ Component No. 2077

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
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: _____
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Position	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is a great deal of uncertainty in calculating the cost differential between birth center and hospital births. There are potential savings and costs, but with the large number of variables involved, we cannot determine the net amount. Therefore, the fiscal note is for zero dollars. The number of Medicaid eligible women who might choose a birthing center instead of a hospital is unknown. In Alaska, about 2% of all births occur in a birthing center compared to less than 1% nationally. The rate of Medicaid deliveries in birthing centers would probably be lower than the statewide rate since birthing centers do not provide adequate care for high-risk pregnancies. Medicaid babies are generally the most at-risk because of their circumstances. An independent study found that the facility cost for a birthing center delivery is about 22% less than a hospital. The cost savings for 100 births is approximately \$40,000.00.

(Continued on page 2)

Prepared by: Janet Clarke, Assistant Commissioner Phone: 465-1633
Division: Finance and Management Services Date/Time: 03/30/2005
Approved by: Joel S. Gilbertson, Commissioner Date: 04/28/2005
Agency: Department of Health and Social Services

FISCAL NOTE
FN # 2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

ANALYSIS CONTINUATION

If a serious complication resulted in the mother's or baby's transfer to a hospital, there would be additional costs which would reduce and possibly offset any savings. The birthing center would still be paid it's facility fee and the hospital would be paid a facility fee as well. Additionally, if emergency transport was required, those costs would have to be factored in. In contrast, a hospital birth with serious complications would not incur the birthing center fee or the transport fee.

There is a question whether birthing centers are an allowable federal Medicaid service. If birthing centers do not qualify for Medicaid reimbursement, the cost would be all GF. If they do qualify, the regular matching rate would apply.

Alaska State Legislature

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Senator Bettye Davis

Senate Bill 22

" An Act adding birthing centers to the list of health facilities eligible for payment of medical assistance for needy persons."

Sponsor Statement

Currently in Alaska, Medicaid does not cover licensed birthing center facility fees, often forcing pregnant women to choose a hospital birth where costs to the state are significantly greater than those at a birthing center. The average cost from four hospitals in Anchorage, Fairbanks and Juneau of a "natural" birth is \$3,667.00. This figure does not include epidural anesthesia or the use of pitocin to enhance the strength of labor, internal fetal monitoring and forceps or vacuum assisted deliveries. A cesarean section on average would cost an additional \$4,385.75. The facility fees for three birthing centers in Alaska averages \$1,400.00.

If birthing center facility fees were to be reimbursed by Medicaid or Denali KidCare, the option of a birth center birth could be made available to even more women. It's a logical step towards saving the state money and allowing families on the Denali KidCare program to choose their preferred location to give birth. I urge you to support the passage of this legislation

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Senator Bettye Davis

Memorandum

To: Member, House Finance Committee
From: Senator Bettye Davis
Date: May 8, 2005
RE: Senate Bill 22

The following figures illustrate the state's likely cost savings by passing SB 22, making birth center facility fees a qualified expense under Medicaid. Based on testimony from the Department of Health & Social Services, these numbers assume the federal government will refuse to participate, requiring the state to pay the facility fee from state funds. Although this does not take into account the raising of Midwives' fees, the state still saves money.

Birth Center Costs:

Facility	City	Cost of care	Facility Fee	Newborn Care	Grand Total
The Midwives BC	Anchorage	\$3665	\$1200	\$390	\$5255
Geneva Woods BC	Anchorage	\$4225	\$1500	\$610	\$6335
AK Family Health & BC	Fairbanks	\$4220	\$1600	\$615	\$6435
Juneau Family BC	Juneau	\$4200	\$1800	\$818 ^{5 exams}	\$6818
Mat-Su Midwifery	Wasilla	\$4251	\$1800	\$517	\$6568
Woman's Way Midwifery	Soldotna	\$3400	\$1250	\$650	\$5300
Frontier Midwifery	Soldotna	\$3650	\$1200	\$580	\$5430

"Cost of care" includes prenatal, postpartum, and birth charges. It excludes labs. "Newborn Care" includes immediate care at delivery and four newborn exams, except where noted.

MD/OB Costs:

City	MD/OB Cost	Notes
Anchorage	\$5100	
Anchorage	\$4600	Includes postpartum
Anchorage	\$4358	
Wasilla	\$3700	includes postpartum
Wasilla	\$3685	7-9 prenatal visits
Soldotna	\$3082	
Soldotna	\$2940	Includes labs and ultrasound
Homer	\$2940	

Except where noted, "MD/OB costs" include 10 prenatal visits, but do not include labs, postpartum maternal care, or immediate (at delivery) newborn care.

Hospital Costs:

City	Cost of 1 day stay	Routine Nursery Care	Epidural
Anchorage	\$4000		\$2000
Anchorage	\$3932	\$575 per night	
Fairbanks	\$3200	\$900-\$1800	\$3200
Juneau	\$3200 (approx)		
Soldotna	\$5000-\$7000	\$1800-\$2500	

These numbers understate hospital birth costs by excluding charges such as oral or topical pain medications, episiotomy, perineal repair, fetal monitoring, or hospital materials charges (e.g.: gloves, gauze, sterile bedclothes, etc). Birthing centers either do not perform or do not charge separately for these.

Grand Totals and cost to the state:

City	Hospital Grand Totals (low)	Hospital Grand Totals (high)	Hospital Medicaid (GF only) low	Hospital Medicaid (GF only) high	Bcenter Medicaid (GF only) low	Bcenter Medicaid (GF only) high
Anchorage	\$9,365	\$10,175	\$4,683	\$5,088	\$3,228	\$3,918
Fairbanks	\$8,585	\$9,500	\$4,293	\$4,750	\$4,018	
Juneau	\$8,285	\$9,200	\$4,143	\$4,600	\$4,309	
Wasilla	\$9,017	\$10,000	\$4,509	\$5,000	\$4,184	
Soldotna	\$10,240	\$13,082	\$5,120	\$6,541	\$3,275	\$3,315

Chart assumes a 25% epidural rate in hospitals. National average is 40% for small hospitals, 66% for large.

Where epidural cost is not available for a city, the Anchorage rate was used.

Where any other cost was unavailable for a given city, the statewide median was used.

Chart assumes the federal government pays 50% of all hospital charges

Chart assumes the federal government pays 50% of all birthcenter charges except the facility fee, in which the federal government may not participate. This chart therefore assumes birthcenter facility fees are 100% GF.

Special Note:

Since the original hearing on this bill:

As amended by the Senate Finance CS, the bill now has a provision that only allows the state to implement the program if the federal government authorizes coverage under a new amended state plan for items covered under Medicaid. The department of Health & Social Services is charged

with submitting an amended plan in order to receive an answer from CMS (Centers for Medicare & Medicaid) on this issue. If they deny the request, we will have two possible methodologies in order to accomplish the desired result of covering the facility fees for Birthing Centers.

The Legislature can authorize HSS to fund it entirely through GF. We might also raise the rates paid to midwives who use Birthing Centers to reflect the cost of that use.

The following information has been gathered and presented in this form for your information and use on that issue:

Senator Murkowski has received correspondence from constituents who are interested in the passage of SB 22. She has received the following information from the Congressional Liaison Office of Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS), which she is sending to the constituents:

Medicaid does not provide reimbursement of stand-alone birthing centers. They are not a 1905 recognized provider. Medicaid does reimburse nurse-midwives. However, the state can authorize a higher reimbursement to midwives who can then split their fee with their facility. Payment must be recognized to be on behalf of the recognized provider -- the midwife.

Nurse mid-wife services are recognized under section 1905(a)(17) of the SSA.

In general, states determine provider reimbursement rates but they must meet the payment requirements of section 1902(a)(30(A) which requires that payments are consistent with efficiency, economy, and quality of care.

While CMS wouldn't match payments above a provider's actual costs, we would recognize the costs to the nurse midwife of providing services in a birthing center, which might include the administrative, and other reasonable costs associated with practicing in these centers, thus the higher reimbursement rate.

If the Centers for Medicare and Medicaid Services feel this would be appropriate, I would like to see the department look into this possibility if both CMS and the Legislature do no act in a positive manner.

Patricia W. Stone
Patricia Hinton Walker

Cost-Effectiveness Analysis: Birth Center vs. Hospital Care

Increasingly nursing will need to prove the cost effectiveness of alternative models of care. A cost-effectiveness analysis, using a decision analysis format, compared a birthing center to a hospital for low-risk deliveries. Results indicate that a birth center is a cost-effective model of nursing care.

There is increasing emphasis and interest in the economic evaluation of health care. There is a great deal of confusion about the labels (cost-effectiveness analysis or cost-benefit analysis) and sometimes the methodologies used to evaluate programs or treatment alternatives from an economic perspective. In the past, many of these economic studies have been conducted by economists or medical researchers; however, more studies need to be conducted by nurses to measure the impact of care provided by nurses. Dumas (1993) indi-

cates that nurses with advanced practice preparation (such as midwives, nurse practitioners, and clinical specialists) must continue to demonstrate the capability to provide high-quality, cost-effective care. She further states that, "Nurses are powerful resources for health care reform. But the full impact of their capabilities has yet to be realized. . ." (p. 311). Studies evaluating alternative approaches to care provided by advanced practice nurses (APNs) such as nurse practitioners (NPs) and certified nurse midwives (CNMs) are critical for the advancement of the nursing profession. "The remaining questions in any assessment of NPs' and CNMs' current and potential contributions to alleviating pressing health problems, of course, is cost effectiveness" (Safriet, 1992, p. 434).

What is cost-effectiveness analysis? How does this differ from cost-benefit analysis? What are the methodologies used to

evaluate the economic effectiveness of a particular program or choice for care? In cost-effectiveness analysis, according to Drummond, Stoddart, and Torrance (1987), both the costs and the consequences of specific health programs or treatments are examined. Weimer and Vining (1992) identify two ways to measure cost effectiveness: "The first method is to choose a given level of expenditures (say \$10 million) and find the policy alternative that will provide the greatest benefits... The second method is to specify a given level of benefit (however defined) and then to choose the policy alternative that achieves the benefit at the lowest cost" (p. 197). Cost-benefit analysis, on the other hand, is a technique used to systematically estimate the efficiency affects of policies, usually with everything reduced to dollars. According to Weimer and Vining (1992), "Its appropriateness as a decision rule depends on whether

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efficiency is the only relevant value and the extent to which important impacts can be monetized" (p. 239). To summarize, the distinction between cost effectiveness and cost benefit is subtle, but important. Sox, Blatt, Higgins, and Marton (1988) state that, "Cost-benefit analysis provides a means for deciding if a program is worth undertaking at all. Cost-effectiveness analysis is a method for comparing several strategies whose benefits can be measured in the same units. Costs are usually measured in units of currency and benefits are measured in clinical measures such as quality outcomes" (p. 329).

Cost-effectiveness analysis is the form of economic evaluation presented in this article and the particular methodological approach used is decision analysis. There is more than one method used to measure cost effectiveness. Two common methodological approaches to estimate potential cost savings have previously been highlighted in the literature: MD-replacement and relative-cost ratios to derive a dollar amount of saving from hypothetical replacement of physicians by NPs have been computed (McGrath, 1990; Poirier-Elliott, 1984; Touger & Butts, 1990); and Nichols (1992) used a more sophisticated methodology, estimating actual costs of inefficient use of primary care NPs.

Further research that examines the cost-effective analysis of a mix of APNs and MDs in various types of practice settings, in types of newly emerging health care delivery systems (such as birthing centers), and with specific patient populations (such as low-risk mothers) is needed. The purpose of this article is to present a cost-effectiveness analysis of a birthing

center versus hospitalization for maternity care of low-risk mothers.

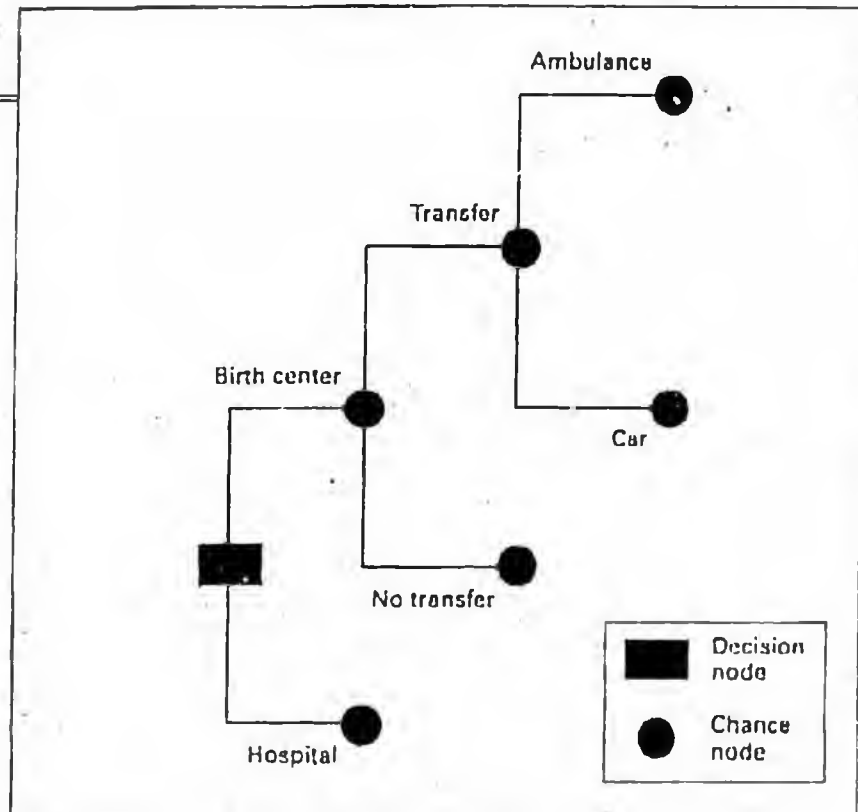
Alternative Childbirth Facility

Freestanding community birth centers are a relatively new phenomenon. A birth center is a diagnostic and treatment center organized to provide care to low-risk mothers during pregnancy, labor, and delivery, and who require a stay of less than 24 hours after birth. Currently CNMs are the dominant providers of intrapartum care at birth centers (Declercq, 1993). Many researchers have found CNMs to provide safe prenatal and intrapartum care to the low-risk pregnant women (Brown & Grimes, 1993; Buhler, Glick, &

Sheps, 1988; Levy, Wilkinson, & Marino, 1971; MacVicar et al., 1993; Mayes et al., 1987; Office of Technology Assessment, 1986; Scupholme, DeJoseph, Strobino, & Paine, 1992; Thompson, 1986). At a birth center, the CNM, with physician back-up if needed, provides care to low-risk women during pregnancy and stays with her during labor from the time of admission to the birth center through the immediate postpartum period. The philosophy of a birth center is to view childbirth as a natural process with an emphasis on preventive care.

Increasingly women are choosing less interventive approaches to childbirth (Inforum, 1991). In 1989

Figure 1.
The Decision Identified



in the United States, 14,273 infants were born in freestanding birth centers (Declercq, 1993). Responding to growing interest in finding innovative ways to provide quality health care that is cost effective, and to this increased market for less interventive childbirth, many health corporations are considering opening a community birth center. Administrative reasons for opening an alternative childbirth facility include providing economical and safe health care during pregnancy, birth, labor, and childbirth for the mother; the same quality of care for the baby; and also, well woman care.

However, there is opposition in many arenas to birthing centers as an alternative to hospital care, and there are policy questions to be answered. In one community, after a birth center's opening, the local insurance providers raised objections to the birth center as an alternative strategy to low-risk childbirth. The insurer's argument was that the birth center was a duplication of services already provided in the hospital, therefore, increasing costs without providing economical benefits. Another area of uncertainty was that if women needed to be transferred out of the birth center to the hospital for any reason, there would be an increase in costs because of using increased resources.

As a method for analyzing the cost-effectiveness issues related to these problems, the authors used decision analysis to answer the following questions:

- Is the birth center a cost effective choice for delivering a baby?
- Below what percentage of transfers to the hospital is optimal to make the birth center an economical choice with the current charges?

- What costs would need to be accrued by admitting a woman to the birth center and then needing to transfer her to the hospital to make the birth center an economical choice?

Decision Analysis

Clinicians and policymakers need a general approach to decision making when the outcome is uncertain, and there is a need to formulate a policy that has applicability into the future. Decision analysis is a quantitative approach that was first developed by Raiffa at the Harvard Business School (1968). Decision analysis has been used successfully in medicine to reduce uncertainty in clinical management (Cantor, Clover, & Thompson 1994; Elstein 1989; Fuaker & Kassiror, 1987). In nursing, the usefulness of decision analyses to assess complex patient problems has also been demonstrated (Lanza & Bantly, 1991; Panniers & Walker, 1994). As a tool to assess cost effectiveness of alternative strategies of care, decision analysis has been proven to be an objective approach for the economic evaluation of alternative health care programs (Beattesson, Bergqvist, Jendteg, Lindgren & Persson, 1989; Drummond et al., 1987; Eisenman, Jones, McClatchey, & Borlase, 1989).

When using decision analysis, the analyst must create a decision tree which includes the following steps: (a) formulating the decision problem or questions (identified previously), (b) identifying the decision alternatives, (c) identifying the possible clinical outcomes of each of the decision alternatives and representing the events leading to these outcomes with a series of chance nodes and decision nodes, (d) measuring the outcomes, and (e) assigning probabili-

ties and calculating the expected value of each decision alternative.

A decision tree format (using SMLTREE computer software) was used to model this cost-effectiveness analysis of a birth center versus hospital care. SMLTREE has the advantage of being developed specifically for clinical decision analysis. By using computerized decision analysis, a complex decision tree more reflective of reality was constructed. In analyzing the decision tree, the computer easily and accurately calculates the average cost effectiveness of the competing strategies. The purpose of this analysis was to answer questions regarding the cost and quality outcomes of labor and delivery care in birth centers compared to hospitals, when care is provided by a CNM in both settings.

The Decision Tree

Identifying the decision alternatives may be done by developing a decision tree. A decision tree is a chronological schematic method for representing all of the logical events to be considered in the analysis. For example, Figure 1 depicts the beginning structure of the decision tree. The square node denotes the decision to admit a woman to a freestanding birth center or a hospital for a low-risk delivery. The decision maker then determines the "chance events" that might occur after the decision is made. A chance event is any phenomenon that has a probability of occurring. For example, if a woman is admitted to a birth center, she may stay in the birth center for the entire labor, delivery, and postpartum period or she may need to be transferred. Figure 2 diagrams the branches of the decision tree that represent the important chance events to be considered for the woman who is not

Table 1.
The Major Costs Associated with Low-Risk Delivery
At a Birth Center and a Hospital

	Birth Center	Hospital
Hotel costs (vaginal delivery)	\$1,962	\$2,791
Hotel costs (cesarean delivery)	NA	\$4,916
CNM fee prenatal care	\$700	\$700
CNM fee vaginal delivery and postpartum care	\$224	\$224
MD fee cesarean delivery	NA	\$1,365
Ambulance	\$100	NA
Ambulance (advanced life support)	\$250	NA

transferred from the birth center.

Subtrees are an identical order of chance events that may occur in more than one place of the decision tree. For example, Figure 3 illustrates the subtree that is attached to a transfer from a birth center either by ambulance or car. This same subtree is found when a woman is directly admitted into the hospital. However, the quantification of the events will be different depending on the location of the subtree.

The associated costs and measurement of quality will be different when the woman is admitted directly into the hospital or transferred from the birth center.

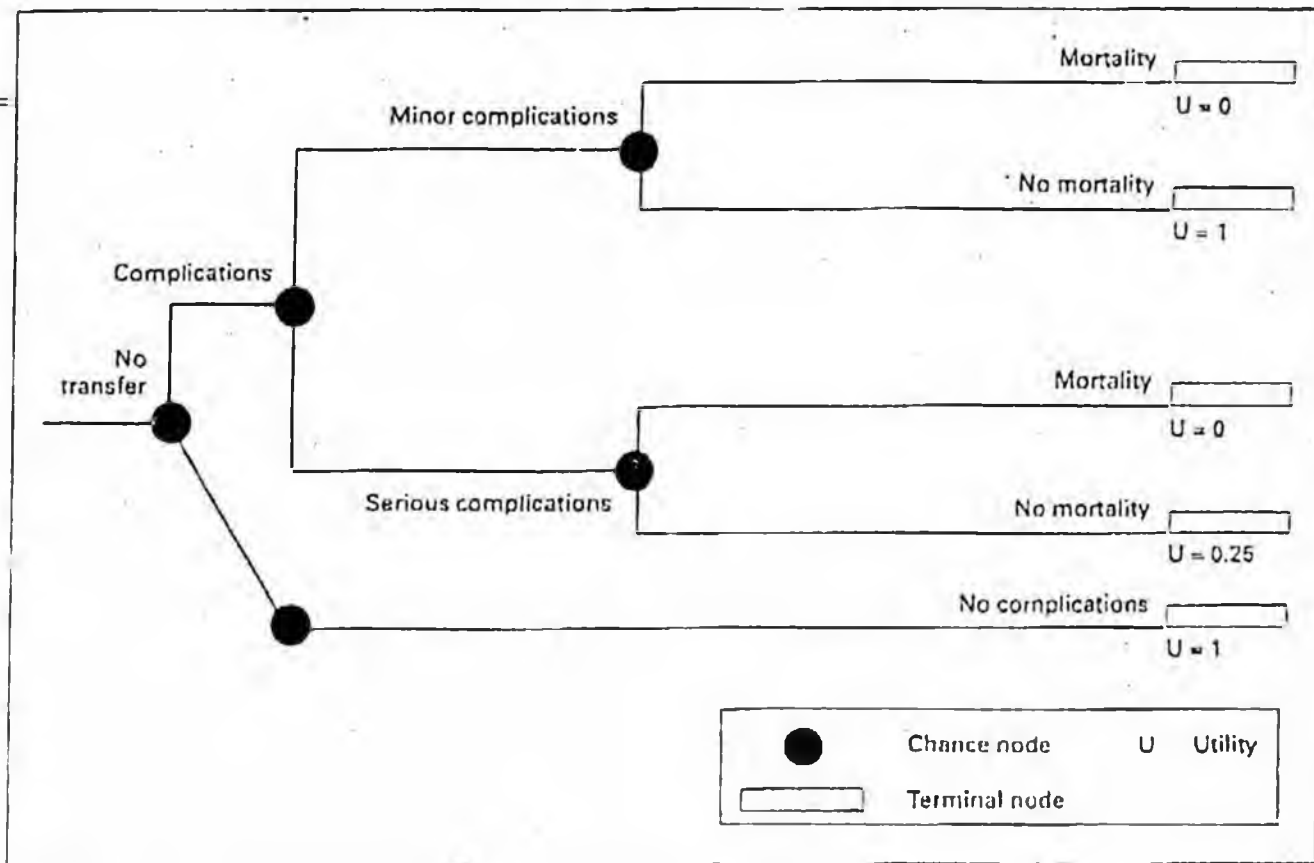
Measuring Cost Outcomes

Costs of different alternatives for delivery of health care fall into two categories: *direct costs* are the costs directly related to the care (such as cost of interventions and fee of providers), and *indirect costs* (such as fixed equipment costs and cost of education of clinician). Field research, in the form of interviews, was conducted to collect data on the costs of the alternatives. Interviews with financial managers of the obstetric department and the birth center provided data on patient charges. Interviews with local ambulance companies were also conducted to obtain an average billing charge for services. Charges billed, at the health corporation, reflect a 4-year projection of average direct costs per patient with fixed costs amortized. Table 1 lists the direct cost data pertinent to this analysis. Published averages of charges for maternity care services confirm the accuracy of those numbers (Conzales, 1993; Health Insurance Association of American, 1991). The Certificate of Need (1991) determined the fixed costs of the

Table 2.
The Birth Center Research Compared to the Low-Risk
Hospital Research

	Birth Center Study	Hospital Comparison
Number of subjects	11,814	2,256
% of births managed by CNMs	78.7%	78
Number of births at birth center	10,343 (87.5%)	NA
Total number of transfers	1,869 (15.8%)	NA
Serious labor and delivery complications	1,076 (10%) 353 (3.4% were transferred)	272 (12%)
Cesarean sections	455 (4.4%)	214 (9.5%)
Minor complications treated	5,167 (49%)	495 (21%)

Figure 2.
The Chance Events that Occur if a Woman Delivers at a Birth Center



birth center to be relatively minimal with the cost of the moveable equipment needed to open the birth center totalling only \$18,125 and the annual building lease being \$42,000.

In this analysis, costs are defined as the economic impact of charges to the insurer and/or patient. It is important to note that charges do not necessarily reflect costs in many situations (Finkler, 1982). However, since the birth center and hospital in this study are owned by the same health care corporation (as previously mentioned), an assumption was made that the hospital policy and procedures, as well as intervention and billing practices for all cases

would be similar.

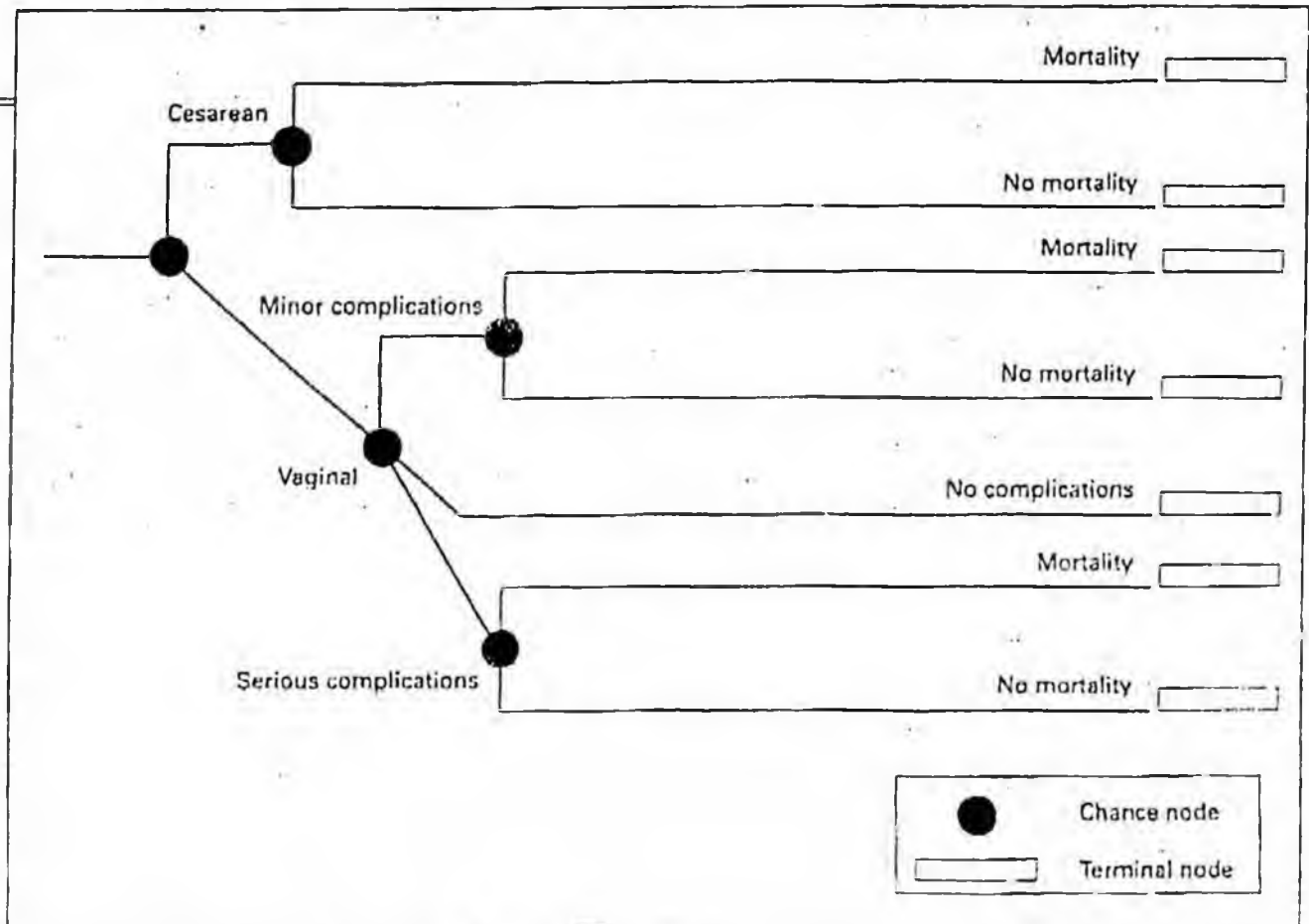
One advantage of using decision analysis is the ability to perform "sensitivity analysis" on a specific variable. A sensitivity analysis is a method for testing the validity of the conclusion over a range of probabilities or costs. With the use of diagnosis-related groupings (DRGs), only one charge can be generated for the diagnosis of normal labor and delivery. Therefore, although cases may start in the birth center and are then transferred to the hospital, the charge billed is the same for a case that began at the hospital. The costs of possible transfers have been added into the 4-year projections of costs and are reflected in

"hotel costs" or facility charges of the birth center. A sensitivity analysis on the hotel costs of the birth center will examine how critical this charge is to the overall conclusion of the analysis.

Measuring Quality Outcomes

To identify the logical outcomes to consider in this analysis a literature review was conducted. Much of the research on modern freestanding birth centers had been primarily descriptive (Biro & Lumley, 1991; Eakins, 1989; Paxson & Franklin, 1974; Reinke, 1982). The most comprehensive investigation, the National Birth Center Study, compiled statistics on essentially the entire popula-

Figure 3.
A Subtree of Events that Occur Once a Low-Risk Woman is Admitted into a Hospital



tion of birth center births from 1985 to 1987 (Rooks et al., 1989; Rooks, Weatherby & Ernst, 1992a, 1992b, 1992c). Using the same data collection instrument, a retrospective comparison study collected data on low-risk hospital births (Fullerton & Severino, 1992). These investigations provided data on the probabilities of chance events occurring and the possible outcomes of each strategy were obtained. Important statistics, similarities, as well as differences of the outcomes of care between birth centers and hospitals are listed in Table 2.

Following the standard found in the literature for reporting complications, in this cost-effective analysis, maternal and infant clinical (quality) outcomes have been grouped according to seriousness of complications. Serious delivery complications are defined as maternal and infant outcomes that would be best managed in the hospital (Fullerton & Severino, 1992). Although the research revealed that hospitals have a slightly higher serious complication rate than birth centers ($p=.10$ and $p=.12$ respectively), to meet the assumption that the birth center is an

alternative to the hospital for the same low-risk population, the same probability ($p=.10$) was used for both strategies. Because of the severity of serious delivery complications, an assumption was made in this analysis that all serious complications occurring in a birth center would need to be transferred to the hospital by an advanced life support ambulance.

Cost effectiveness may be expressed as the cost incurred per unit of outcome achieved. In health care, output may be defined as utility, additional years of life, or additional cases of newly

Table 3.
Measuring Quality Outcomes in Units of Utility

	Birth Center	Car Transfer	Ambulance Transfer	Hospital
Vaginal delivery no complications	1.0	0.5	0.5	0.75
Vaginal delivery minor complications	1.0	0.5	0.5	0.75
Vaginal delivery serious complications	0.25	0.5	0.5	1.0
Cesarean section	NA	0.5	0.5	1.0
Maternal or infant mortality	0.0	0.0	0.0	0.0

detected disease (Sox et al., 1988). When using decision analysis for clinical management, utility may be a measure of the patient's preference or satisfaction with outcome. When using decision analysis as a tool for policy analysis, the utility must reflect the appropriateness of care for the aggregate population. The utilities in this analysis consider the appropriateness of the place of birth with regard to the clinical outcome. For example, as can be seen in Table 3, the highest utility is assigned to the birth center when the outcome is without complications or minor complications.

If the situation arises where a woman needs to be transferred from the birth center, the utility is less than using the hospital as the original birth site option. The exception is in the case of serious complications where it would be most appropriate for the woman to have been originally admitted to the hospital, or at least transferred to the hospital from the birth center prior to delivery. Consequently, the outcomes with serious complications have the highest utility when the woman was directly

admitted to the hospital and the lowest utility if the woman was not transferred from the birth center.

All available literature sources agree that maternal mortality is very low for low-risk births (Lilford, Van Coeverden De Groot, Moore, & Bingham, 1990; Miller, 1988; Petitti, 1985; Sachs et al., 1988). Maternal mortality is so rare that no maternal deaths were reported in either the hospital or birth center samples. Therefore, the probability of maternal mortality was estimated from the relative risk of mortality associated with cesarean sections ($p=.0006$) and vaginal deliveries ($p=.0001$) in hospitals controlling for women with pre-existing medical disorders (Lilford et al., 1990).

Available data also suggest a very favorable infant mortality rate of 1.3/1,000 births for infants in the birth center population. Other reports have calculated infant mortality of uncomplicated pregnancies in hospitals to be between 1.9 to 3.4 (Eden, Seifert, Winogar, & Spellacy, 1987; Fullerton & Severino, 1992; Koppel, Huuser, & Plucek, 1986; Leveno, Cunningham, & Nelson, 1986). Since one of

the underlying assumptions was that both alternatives in this analysis would serve the same population and therefore involve similar risks of death, the birth center infant mortality rate was used to calculate the probability of mortality for serious delivery complications in both approaches ($p=.0013$). The argument that birth centers will increase the risk of infant mortality is not substantiated by the evidence and therefore was not included in this analysis.

The Cost-Effectiveness of the Birth Center

The results of this analysis suggest that a birth center is a cost-effective strategy for labor and delivery of low-risk women. The average cost of a delivery at the birth center is less, \$3,385 compared to the average cost of labor and delivery at the hospital which is \$4,673. The effectiveness or appropriateness of setting for the average low-risk birth was greater in the birth center than at the hospital (0.92492 and 0.79507 respectively). On average the hospital was 38% more expensive and a less appropriate model of care for