Informed Consent/Abortion Info

AS 08.64.105. Regulation of abortion procedures.
The board shall adopt regulations necessary to carry into effect the provisions of AS 18.16.010 and shall define ethical, unprofessional, or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions, and establish procedures and set standards for facilities, equipment, and care of patients in the performance of an abortion.

12 A.A.C. 40.070
Unless otherwise provided in 12 AAC 40.060 (Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under 18 years of age, in which case the request must be made by her parent or guardian.), a written informed consent shall be obtained from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical sequelae of the procedure.

History: Eff. 12/20/70, Register 36; am 8/29/73, Register 47

Sec. 18.16.010. Abortions.

(a) An abortion may not be performed in this state unless

(1) the abortion is performed by a physician or surgeon licensed by the State Medical Board under AS 08.64.200 ;

(2) the abortion is performed in a hospital or other facility approved for the purpose by the Department of Health and Social Services or a hospital operated by the federal government or an agency of the federal government;

(3) before an abortion is knowingly performed or induced on an unmarried, unemancipated woman under 17 years of age, consent has been given as required under AS 18.16.020 or a court has authorized the minor to consent to the abortion under AS 18.16.030 and the minor consents; for
purposes of enforcing this paragraph, there is a rebuttable presumption that a woman who is unmarried and under 17 years of age is unemancipated; and

(4) the woman is domiciled or physically present in the state for 30 days before the abortion.

(b) Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion under this section.

(c) A person who knowingly violates a provision of this section, upon conviction, is punishable by a fine of not more than $1,000, or by imprisonment for not more than five years, or by both.

(d) [Repealed, Sec. 6 ch 14 SLA 1997].

(e) A person who performs or induces an abortion in violation of(a)(3) of this section is civilly liable to the pregnant minor and the minor's parents, guardian, or custodian for compensatory and punitive damages.

(f) It is an affirmative defense to a prosecution or claim for a violation of (a)(3) of this section that the pregnant minor provided the person who performed or induced the abortion with false, misleading, or incorrect information about the minor's age, marital status, or emancipation, and the person who performed or induced the abortion did not otherwise have reasonable cause to believe that the pregnant minor was under 17 years of age, unmarried, or unemancipated.

(g) It is an affirmative defense to a prosecution or claim for violation of (a)(3) of this section that compliance with the requirements of (a)(3) of this section was not possible because an immediate threat of serious risk to the life or physical health of the pregnant minor from the continuation of the pregnancy created a medical emergency necessitating the immediate performance or inducement of an abortion. In this subsection, "medical emergency" means a condition that, on the basis of the physician's or surgeon's good faith clinical judgment, so complicates the medical condition of a pregnant minor that

(1) an immediate abortion of the minor's pregnancy is necessary to avert the minor's death; or

(2) a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the pregnant minor.

Sec. 18.16.020. Consent required before minor's abortion.

A person may not knowingly perform or induce an abortion upon a minor who is known to the person to be pregnant, unmarried, under 17 years of age, and unemancipated unless, before the abortion, at least one of the following applies:

(1) one of the minor's parents or the minor's guardian or custodian has consented in writing to the performance or inducement of the abortion;

(2) a court issues an order under AS 18.16.030 authorizing the minor to consent to the abortion without consent of a parent, guardian, or custodian, and the minor consents to the abortion; or

(3) a court, by its inaction under AS 18.16.030 , constructively has authorized the minor to consent to the abortion without consent of a parent, guardian, or custodian, and the minor consents to the abortion.

Sec. 18.16.030. Judicial bypass for minor seeking an abortion.

(a) A woman who is pregnant, unmarried, under 17 years of age, and unemancipated who wishes to have an abortion without the consent of a parent, guardian, or custodian may file a complaint in the superior court requesting the issuance of an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian.

(b) The complaint shall be made under oath and must include all of the following:

(1) a statement that the complainant is pregnant;

(2) a statement that the complainant is unmarried, under 17 years of age, and unemancipated;

(3) a statement that the complainant wishes to have an abortion without the consent of a parent, guardian, or custodian;

(4) an allegation of either or both of the following:

(A) that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion without the consent of a parent, guardian, or custodian; or

(B) that one or both of the minor's parents or the minor's guardian or custodian was engaged in physical abuse, sexual abuse, or a pattern of emotional abuse against the minor, or that the consent of a parent, guardian, or custodian otherwise is not in the minor's best interest;

(5) a statement as to whether the complainant has retained an attorney and, if an attorney has been retained, the name, address, and telephone number of the attorney.

(c) The court shall fix a time for a hearing on any complaint filed under (a) of this section and shall keep a record of all testimony and other oral proceedings in the action. The hearing shall be held at the earliest possible time, but not later than the fifth business day after the day that the complaint is filed. The court shall enter judgment on the complaint immediately after the hearing is concluded. If the hearing required by this subsection is not held by the fifth business day after the complaint is filed, the failure to hold the hearing shall be considered to be a constructive order of the court authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian, and the complainant and any other person may rely on the constructive order to the same extent as if the court actually had issued an order under this section authorizing the complainant to consent to the performance or inducement of an abortion without such consent.

(d) If the complainant has not retained an attorney, the court shall appoint an attorney to represent the complainant.

(e) If the complainant makes only the allegation set out in (b)(4)(A) of this section and if the court finds by clear and convincing evidence that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of

an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint.

(f) If the complainant makes only the allegation set out in (b)(4)(B) of this section and the court finds that there is clear and convincing evidence of physical abuse, sexual abuse, or a pattern of emotional abuse of the complainant by one or both of the minor's parents or the minor's guardian or custodian, or by clear and convincing evidence the consent of the parents, guardian, or custodian of the complainant otherwise is not in the best interest of the complainant, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint.

(g) If the complainant makes both of the allegations set out in (b)(4) of this section, the court shall proceed as follows:

(1) the court first shall determine whether it can make the finding specified in (e) of this section and, if so, shall issue an order under that subsection; if the court issues an order under this paragraph, it may not proceed under (f) of this section; if the court does not make the finding specified in (e) of this section, it shall proceed under (2) of this subsection;

(2) if the court under (1) of this subsection does not make the finding specified in (e) of this section, it shall proceed to determine whether it can make the finding specified in (f) of this section and, if so, shall issue an order under that subsection; if the court does not make the finding specified in (f) of this section, it shall dismiss the complaint.

(h) The court may not notify the parents, guardian, or custodian of the complainant that the complainant is pregnant or wants to have an abortion.

(i) If the court dismisses the complaint, the complainant has the right to appeal the decision to the supreme court, and the superior court immediately shall notify the complainant that there is a right to appeal.

(j) If the complainant files a notice of appeal authorized under this section, the superior court shall deliver a copy of the notice of appeal and the record on appeal to the supreme court within four days after the notice of appeal is filed. Upon receipt of the notice and record, the clerk of the
supreme court shall place the appeal on the docket. The appellant shall file a brief within four days after the appeal is docketed. Unless the appellant waives the right to oral argument, the supreme court shall hear oral argument within five days after the appeal is docketed. The supreme court shall enter judgment in the appeal immediately after the oral argument or, if oral argument has been waived, within five days after the appeal is docketed. Upon motion of the appellant and for good cause shown, the supreme court may shorten or extend the maximum times set out in this subsection However, in any case, if judgment is not entered within five days after the appeal is docketed, the failure to enter the judgment shall be considered to be a constructive order of the court authorizing the appellant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian, and the appellant and any other person may rely on the constructive order to the same extent as if the court actually had entered a judgment under this subsection authorizing the appellant to consent to the performance or inducement of an abortion without consent of another person. In the interest of justice, the supreme court, in an appeal under this subsection, shall liberally modify or dispense with the formal requirements that normally apply as to the contents and form of an appellant's brief.

(k) Each hearing under this section, and all proceedings under (j) of this section, shall be conducted in a manner that will preserve the anonymity of the complainant. The complaint and all other papers and records that pertain to an action commenced under this section, including papers and records that pertain to an appeal under this section, shall be kept confidential and are not public records under AS 40.25.110 - 40.25.120.

(l) The supreme court shall prescribe complaint and notice of appeal forms that shall be used by a complainant filing a complaint or appeal under this section. The clerk of each superior court shall furnish blank copies of the forms, without charge, to any person who requests them.

(m) A filing fee may not be required of, and court costs may not be assessed against, a complainant filing a complaint under this section or an appellant filing an appeal under this section.

(n) Blank copies of the forms prescribed under (l) of this section and information on the proper procedures for filing a complaint or appeal shall be made available by the court system at the official location of each superior court, district court, and magistrate in the state. The information required
under this subsection must also include notification to the minor that

(1) there is no filing fee required for either form;

(2) no court costs will be assessed against the minor for procedures under this section;

(3) an attorney will be appointed to represent the minor if the minor does not retain an attorney;

(4) the minor may request that the superior court with appropriate jurisdiction hold a telephonic hearing on the complaint so that the minor need not personally be present.

Sec. 18.16.050. Partial-birth abortions.

(a) Notwithstanding compliance with AS 18.16.010 , a person may not knowingly perform a partial-birth abortion unless a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury and no other medical procedure would suffice for that purpose. Violation of this subsection is a class C felony.

(b) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section or under any other law if the prosecution is based on this section.

(c) In this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

Sec. 18.16.090. Definitions.

In this chapter,

(1) "abortion" means the use or prescription of an instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant, except that "abortion" does not include the termination of a pregnancy if done with the intent to

(A) save the life or preserve the health of the unborn child;

(B) deliver the unborn child prematurely to preserve the health of both the pregnant woman and the woman's child; or

(C) remove a dead unborn child;

(2) "unemancipated" means that a woman who is unmarried and under 17 years of age has not done any of the following:

(A) entered the armed services of the United States;

(B) become employed and self-subsisting;

(C) been emancipated under AS 09.55.590 ; or

(D) otherwise become independent from the care and control of the woman's parent, guardian, or custodian.

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Facsimile Number: 907-465-2646

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Subject:

Number of Pages (including coverage sheet): 6 + 1 = 7

ADDITIONAL COMMENTS:

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Patient Fact Sheet/ Medical Abortion

Comparison of Medical Abortion with Surgical (Suction) Abortion

Medical Abortion	Surgical Abortion
Can be done early: Available from when you first find out that you are pregnant up to 9 weeks (63 days) from your last period	Available in the office setting from the 5th week of pregnancy from your last period through the 13th week
Cannot change your mind once the mifepristone has been given; possible birth defects are expected	Cannot change your mind after the laminaria are placed; there is a significant risk of infection and/or miscarriage
Must remain within one hour drive of AWHS until the abortion is complete	Must remain overnight in the Anchorage Area after the laminaria is placed
Some people feel "more in control", it feels more "natural", like a miscarriage	Some people prefer the physician to have a major role
No anesthesia or surgery. Pills, when used in combination, causes the contents of the uterus to be expelled. Feels less "invasive"	Removal of the uterine contents through a tube that is inserted in the cervix.
More privacy: May have the abortion at home	Wants fast results and greater certainty of abortion.
Requires at least 2-3 visits. 1-3 additional visits may be required to confirm that the pregnancy tissue has all passed.	Requires 1-2 visits to the clinic for the actual procedure and then a follow-up visit 2-3 weeks later
Usually requires 3-4 days to complete the abortion, but may require up to 2-4 weeks.	Takes 10-15 minutes for the surgical procedure, but requires 2-4 hours in the clinic. Women complete the abortion during the procedure.
Pain is typically described as cramping and is more intense during expulsion, most commonly over a 1-3 hour period, after which the pain typically subsides. On average, women may expect to have bleeding and/or spotting for 9-16 days. Women may pass clots, ranging in size. It is typically heavier than your period.	A local anesthetic (pain killer) may be injected into the cervix but some women still feel the pain and nausea during and after the procedure; bleeding occurs on the average 7-14 days following the surgical procedure.
95% effective. 5% of women will need to have a surgical (suction) abortion.	Almost 100% effective
Extremely safe	Extremely safe
Possible complications: infection, heavy bleeding, incomplete abortion and the possible need for a surgical (suction) abortion.	Possible complications: infection, perforation (one of the instruments go through the wall of the uterus) and incomplete abortion and the possible need for a surgical (suction) abortion.
Cost: Essentially the same	Cost: Essentially the same

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SURGICAL ABORTION CONSENT

PATIENT Information and Consent Form for:
Demo, Demo
01/15/1976

What is a surgical abortion?
A surgical abortion is a surgical procedure that terminates an early pregnancy. Early surgical abortion is completed by vaccum aspiration, either with a syringe device or an electric machine. Our office offers both methods.
A local anesthetic, Novocaine, is first injected into your cervix to numb the discomfort. This is the same numbing medicine used at your dentist's office. The doctor then gradually opens the cervix by using a series of long narrow rods called dilators. Each dilator is a little wider in size. The cervix is opened approximately to the size of a drinking straw. In addition, to further soften the cervix, the doctor may instruct you to place 3 misopristol tablets into your upper vagina next to your cervix several hours before the procedure. The doctor may also choose to open the cervix by inserting a laminaria (a slim roll of absorbent material placed into the cervix) the day prior to the procedure.In either case, you need to return to the clinic on the instructed day to complete the surgical abortion to avoid complications. After the cervix is dilated by the combination of the above techniques (misopristol or laminaria followed by cervical dilators), a blunt tipped tube is inserted into the uterus. This is attached to the aspiration device (either syringe or electric machine) and suction is applied. After the the uterus has been emptied completely, a spoon shaped curette may be used for final cleaning of the lining of the uterus.

What are the possible complications of a surgical abortion?
Possible problems can occur with vacuum aspiration. However the complications most likely to occur are encountered in only a small number of cases. The most common complications are:

1. **Incomplete abortion**-when the tissue is retained. This could be associated with severe cramps, heavy bleeding, & /or infection and is generally apparent within several hours or days after the surgical abortion. Incomplete abortions occur in approximately 5% of all first trimester abortions. To remove the tissue, sometimes a repeat procedure at the office or hospital is necessary.
2. **Infection**- caused by bacteria entering the uterus. An infection occurs in about 2% of all early surgical abortions but can be decreased with the use of antibiotic prophylaxis. These are the antibiotic pills, doxycycline, that we will instruct you to take before and after the procedure. An infection will usually respond quickly to antibiotics, but in some cases hospitalization is required. If the infection is very serious or prolonged, surgery may be required that may result in loss of your reproductive organs. This is a very rare complication.
3. **Perforation**- is when an instrument goes through the wall of the uterus. This occurs in about one out of 400 abortions. Should this be recognized, the patient will require close observation, sometimes hospitalization and/or surgical repair.
4. **Laceration**- when the cervical opening is torn durindg dilation. When this occurs, sometimes surgical repair (stitches) and/or hospitalization is required.
5. **Local anesthetic reaction**- when an allergic reaction to a Novocaine or a derivative occurs. If you know that you are allergic to Novocaine, it is VERY important to tell the nurse or doctor.
6. **Vasovagal reaction**- a fainting episode. Some women react very strongly to the emotional impact and physical procedure of surgical termination. Sometimes, a woman will become anxious, lightheaded, nauseated, and even pass out during or after the procedure. We will try to keep you calm as possible and take good care of you to minimize this reaction. Oral Valium tablets are available if you feel that it would help your anxiety before the procedure is performed.
7. **Continued Pregnancy**- when the pregnancy was not terminated by the surgical abortion. Sometimes there is more than one pregnancy in a woman's body (either in the tube or an undiagnosed twin pregnancy). That is why a post abortion exam is important to determine that the procedure was completed. If you still shows signs of pregnancy at the post abortion visit (unusual bleeding or pain), then further testing and treatment may be necessary.

You will be given post abortion and emergency instructions. It is VERY IMPORTANT that you call us if you suspect any complications.

PATIENT Information and Consent Form for
SURGICAL ABORTION PROTOCOL

PATIENT Information and Consent Form for:
Demo, Demo
01/15/1976

My initials & signature below certifies that:

Initials

_____ I have read the information about surgical abortion.

_____ I understand that in order to receive a surgical abortion in the State of Alaska I must be a resident or physically present at least 30 days prior to the procedure.

_____ In order to have a medical abortion at this clinic, you must request termination of your pregnancy and be certain of your decision.

_____ I consent to the physical examination, ultrasound, and recommended laboratory work.

_____ I am emotionally and mentally stable, in good general health, and capable of fully understanding the informed consent materials.

_____ I must return for all scheduled office visits and have access to a telephone and transportation in case of an emergency. Unforeseen complications may occur which may require additional treatment or hospitalization at your own expense.

_____ I understand that my abortion is not complete without the 2-3 week follow-up visit.

_____ Failure to keep all follow-up visits may result in an incomplete abortion and could lead to infertility or death.

_____ You understand that all information in your medical records will be kept confidential, but it may be medically necessary for a medical provider to contact you.

_____ I am responsible for any payment regarding post abortion complications.

PATIENT NAME: Demo Demo

PATIENT SIGNATURE:_____DATE: 05/06/2003

WITNESS SIGNATURE:_____DATE: 05/06/2003

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MIFEPRISTONE/MISOPRISTOL MEDICAL ABORTION PROTOCOL

PATIENT Information and Consent Form for:
Demo, Demo
01/15/1976

What is mifepristone?
Mifepristone (formerly known as RU-486) is a medication that blocks the action of the hormone progesterone. Progesterone is needed to sustain a pregnancy. Mifepristone has been used, in combination with other medications called prostaglandins, for medical abortion since 1988. In September 2000, the U.S. Food and Drug Administration (FDA) approved mifepristone for use in the U.S.

How does mifepristone works to e[illegible]nancy?
Mifepristone blocks the action of progester[illegible] is needed to sustain a pregnancy. This results in:
- Changes in the uterine lining and dete[illegible]ne pregnancy
- Softening and opening of the cervix
- Increased uterine sensitivity to prosta[illegible]

Mifepristone is used in combination with ar[illegible]dication, a prostaglandin called misoprostol.

What is misoprostol?
Misoprostol causes the uterus to contract, and helps the pregnancy tissue to pass. This is commonly used drug to protect the stomach who take daily doses of anti-inflammatory drugs such as ibuprofen. It is approved by the FDA for the above use but not for the termination of pregnancy. The FDA has however consistently adhered to a policy that permits evidence-based use of approved drugs.

How effective is the combination of mifepristone and misoprostol in terminating an early pregnancy?
Approximately 95% of women will have a complete abortion when using mifepristone/misoprostol up to 63 days after the start of the last menstrual period. The remaining women will need a suction abortion either because of ongoing or excessive bleeding, an incomplete abortion (tissue remains in the uterus but there is no growing embryo), or an ongoing pregnancy (which occurs in less than 1% of cases).

What is the treatment regimen with mifepristone/misoprostol?
Clinical studies have shown that several variations in mifepristone/misoprostol treatment regimens are safe and effective. Generally, however, once a woman has decided to have a medical abortion, there are three steps in the process of a medical abortion:

Medical abortion with mifepristone/misoprostol requires at least two visits to a doctor's office or clinic.

Step One
A medical history is taken and a clinical exam and lab tests are performed.
Counseling is completed and informed consent is obtained.
If eligible for medical abortion, the woman swallows the mifepristone pill(s).

Step Two *(at clinic or at home depending on patient's informed consent)*
This step takes place about two days after step 1.
Onset of bleeding prior to misproprostol occurs in approximately 50% of patients, most women will need miscpristol to complete the process. About 2-5% of women will have the abortion before they take the misopprostol. Unless abortion has occurred and has been confirmed by the clinician, the woman uses misoprostol. Misoprostol tablets may be swallowed or inserted into the vagina, depending on the treatment regimen.

NOTE: About 2/3 of women will have a complete medical abortion within 4 hours of using the misoprostol, 80% within 24 hours. 95% of women will eventually have a complete medical abortion. The whole process can take about a week.

Step Three

This step takes place approximately 14 days after **Step 2**. Your health care provider will examine you to confirm a complete abortion. It is essential for women to return to the clinic to confirm that the abortion is complete. If there is an ongoing pregnancy, a suction abortion MUST be performed. If there is an incomplete abortion, the clinician will discuss possible treatment options with you. These may include waiting and re-evaluating for complete abortion in a number of days or performing a suction abortion.

What are the possible side effects of a mifepristone abortion?

- Pain, cramping and vaginal bleeding, result from the abortion process itself
- Pain is typically described as cramping and is more intense during expulsion most commonly over a 1-3 hour period, after which the pain typically subsides.
- On average, women may expect to have bleeding and/or spotting for 9-16 days. Women may pass clots, ranging in size. It is typically heavier than your period.
- Other side effects of the medications themselves may include nausea, vomiting, diarrhea, chills, or fever. Complications are rare, but may include excessive vaginal bleeding requiring transfusion (occurs in approximately 1 in 500 cases), incomplete abortion or ongoing pregnancy which requires a suction abortion, about 5% of the time.

Call the 24 hour emergency contact line at the clinic if you:

- Soak more than two maxipads an hour, more than two hours in a row
- Bleed heavily for more than 12 hours in a row
- Pass clots larger than a lemon for two hours or more
- Run a temperature over 100.4 degrees for more than four hours after using misoprostol. Call immediately if a fever starts a few days after using the misoprostol.

Dose of Mifepristone:

_____I agree to take Mifepristone 600 mcg (3-200 mcg tablets) according to the FDA approved labeling

_____I agree to take Mifepristone 200 mcg (1-200 mcg tablet), This has been proven to be as effective as the 600 mg regimen in the accumulated scientific data but is not set forth in the FDA- approved labeling. The FDA has consistently adhered to a policy that permits evidence based use of approved drugs.

Site of Misopristol administration:

_____I agree to return to the office on Day 3 for the administration of the misopristol according to the FDA-approved labeling.

_____I will adminster the misopristol on Day 3 at home. This has been proven to be as safe and effective as office based administration and is highly acceptable to patients according to the accumulated scientific data but is not set forth in the FDA-approved labeling. The FDA has consistently adhered to a policy that permits evidence-based use of approved drugs.

Dose of Misoprostol:

_____I agree to take Misopristol 400 mcg (2- 200 tablets) by mouth according to the FDA-approved labeling

_____I agree to place Misopristol 800 mcg (4- 200 tablets) high into my vagina. This has been proven to have fewer gastrointestinal side effects and increase the likelihood of expulsion of the pregnancy within four hours of administration. It is more effective than the misopristol oral regimen according to the accumulated scientific data but is not set forth in the FDA-approved labeling. The FDA has consistently adhered to a policy that permits evidence based use of approved drugs.

PATIENT Information and Consent Form for
MIFEPRISTONE/MISOPRISTOL MEDICAL ABORTION PROTOCOL

PATIENT Information and Consent Form for:
Demo, Demo
01/15/1976

Initials

_____ In order to have a medical abortion at this clinic, you must request termination of your pregnancy and be certain of your decision.

_____ You must be at least 17 years old and no more than 49 days from your last menstrual period.

_____ You must consent to a physical examination, ultrasound, and laboratory work.

_____ You must be emotionally and mentally stable, in good general health, and capable of fully understanding the informed consent materials.

_____ You cannot have any hemorrhagic disorder, concurrent anti-coagulant therapy, a serious immune problem, such as HIV, chronic adrenal failure or concurrent long- term systemic corticosteroid therapy, have confirmed or suspected ectopic pregnancy or undiagnosed adnexal mass, have inherited porphyrias, have an IUD in place (it must be removed before treatment), have a history of allergy to mifepristone, misoprostol, or other prostaglandin

_____ You must be willing to undergo a surgical abortion if the medical abortion is unsuccesful or complications occur. **Either drug can cause birth defects if taken while pregnant. Therefore, once the mifepristone has been given, the abortion must be completed medically or surgically.**

_____ The entire process may take from one to six weeks and may require multiple clinic vists.

_____ **Failure to keep all follow-up vists may result in an incomplete abortion and could lead to infertility or death.**

_____ You must return for all scheduled office visits and have access to a telephone and transportation in case of an emergency. Unforeseen complications may occur which may require additional treatment or hospitalization at your own expense.

_____ Alternatives to this treatment include continuation of the pregnancy or to undergo a surgical (suction) abortion.

_____ You understand that all information in your medical records will be kept confidential, but it may be medically necessary for a medical provider to contact you.

I have read and fully understand the information about medical abortion including alternative methods of treatment, risks, discomfort, and the possibility that known and unknown complications may arise. All questions have been fully answered. I understand that I must undergo a surgical abortion if the medical abortion is unsuccessful or complications arise. I voluntarily accept the risks associated with medical abortion and request medical abortion using mifepristone and misoprostol.

Patient Name: Demo Demo **Date:** 05/06/2003

Patient Signature:_____

Provider Signature:_____

Passed

Amendment #1

To: House Bill 292 Sponsored by Rep. Seaton

Page 1, line 9,
After "professional conduct" delete the words
in a critical area of practice

Page 1, line 13,
After "on the Internet" insert the words
that is reviewed and approved by the State Medical Board and

Page 2, lines 1 and 2,
After " private choices" delete
between permanent and life affecting alternatives

Page 2, line 3, on the internet
After "information site" insert the words
that is reviewed and approved by the State Medical Board

Page 2, lines 8 through 10,
Delete all material

Page 2, line 19,
After "agencies" delete
and and insert **,**

Page 2, line 19,
After "services" insert
, clinics and facilities

Page 2, line 21,
After "(B)" insert
agencies, services,

Page 2, line 22,
After "and services" insert
and

Page 2, 23,
Create a new sub-section that shall read
{C} agencies, services, clinics and facilities designed to assist or provide contraceptive options and counseling;

Passed

Page 2, line 30,
After "abortions services;" insert
and the circumstantial criteria for the availability of medical assistance benefits for contraception;

Page 3, line 12,
After "objective, nonjudgmental, and" insert
that is reviewed and approved by the State Medical Board and

Page 3, line 15
After "information that" insert
is reviewed and approved by the State Medical Board and

Page 3, line 20,
After "unbiased information" insert
that is reviewed and approved by the State Medical Board
Pg 3, line 23 - change . to a ;
Page 3, line 24,
Create a new sub-section that shall read
(9) contains objective, unbiased and comprehensive information that is reviewed and approved by the State Medical Board on different types of available contraceptive choices and the medical risk and possible complications commonly associated with each method as well as the possible psychological effects that have been associated with using contraceptives.

Page 5, line 16,
Delete
at least 24 hours before the abortion procedure,

Page 6, line 16,
After "this section" insert
that do not violate the woman's privacy by including her name or any another identifying information.

Page 6, line 23,
After "whether the" insert
unidentified

amendment #2 also passed.

23-LS0867\H.1
Lauterbach
5/7/03

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 292

Page 4, line 24, following "woman":

Insert "and the pregnant woman's estate, and only to the pregnant woman and the pregnant woman's estate,"

Following "damages":

Insert "caused by the violation"

Alaska Pro-Choice Alliance

Protecting Reproductive Rights and Services
A Statewide Resource for Information and Referral

To: Members of the Alaska State Senate

From: Cassondra Johnson, Program Coordinator, Alaska Pro-Choice Alliance

Date: May 15, 2003

Re: HB292

I am writing to you on behalf of the Alaska Pro-Choice Alliance, a coalition of over 20 organizations dedicated to protecting reproductive rights in Alaska. We believe this bill is bad public policy on many levels.

First of all, contrary to what Senator Dyson said on Tuesday, May 6, 2003 in the House HES Committee, we are not opposed to women having accurate, scientific, evidence based information about all their reproductive options. In fact, we fully support that proposal. (I assume that Senator Dyson was referring to organizations like ours when he asked the committee to listen to "the other side"...saying we don't want women to have information.) However, we do not believe that giving women this information is the state's responsibility. We trust women to find their own information. Also, we believe this is a private matter for a woman to discuss with her medical provider - medical providers that are in a much better position than politicians are to discuss reproductive options with their patients because of their years of medical training.

If the sponsor and supporters of this bill truly believe this is the state's role, perhaps they would be willing to fund comprehensive accurate sexuality and reproductive health education curriculum in all Alaskan schools. This bill does not address this. In fact, it only targets women wanting an abortion. If the proposed website has medically accurate information about pregnancy and all the options that go along with pregnancy, why not give it to all women of child bearing age?

Secondly, this bill restates the parental/court consent legislation that has been challenged in court. I would like to share with members that when similar laws were passed in Minnesota and Missouri, the proportion of second trimester abortions among minors increased by 20%, increasing the **risk and cost** of the procedure. Of course, it would increase the cost here as well as there not a facility that currently performs second trimester abortions in Alaska.

Thirdly, the 24 hour waiting period is unnecessary and **discriminatory**. It is unnecessary because a woman already takes much longer than 24 hours when making the necessary arrangements for abortion care (making an appointment, making travel plans if necessary, and arranging to pay for the abortion, etc). This waiting period is discriminatory to women having to travel from rural Alaska to a city where abortion is available. At the very least, it will increase the cost of lodging and increase the time away from their jobs and families.

At the last HES hearing on HB 292, there was some discussion about changing the waiting period to 12 hours or less. Still, this treats women seeking an abortion differently than other pregnant women. We do not tell women who choose to carry their pregnancy to term, "Go home and think it over for 24 hours. When you return, we then can begin your prenatal care."

Lastly, we have grave concerns about the information that would be included in this website. I have heard an enormous amount of inaccurate testimony given by members of the Right to Life community. For example, Ms. Karen Vossburgh testified in front of the Senate Judiciary Committee regarding the mythical link between abortion and breast cancer. In fact, a scientific panel appointed by the Director of the National Cancer Institute (who was appointed by the anti-choice President of the United States) has **unanimously** concluded, after a review of four new studies and a review of all available earlier studies that there is **absolntely no evidence** that having an abortion increases the risk of breast cancer. This review was widely publicized in all major media formats in early March of this year.

Another mythical ailment that has been discussed is the so-called Post Abortion Syndrome. When this syndrome is mentioned, it is likened to Post Traumatic Stress Disorder. And again, **not one** reputable organization recognizes this supposed syndrome. It is not recognized by the American Medical Association or the American Psychological Association, and it is not in the DSM IV. However, Post-Partum Depression is recognized by these groups.

In closing, the members of the Alaska Pro-Choice Alliance believe this bill is bad public policy and urge you to not pass HB 292 out of your committee.

by Carolyn Brown, M.D.

Senate Bill 30
"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed; except in cases of medical emergency"

On the face of it, this proposed legislation would appear to address equity so that all pregnant women and girls, significant others, and families receive the same information about their pregnancy options as these may relate to abortion.

In order to enable this proposed legislation as a just, workable, and fair document, it will be useful to seriously consider the following:

I. DEFINITIONS.

1. Define "public, private agencies and services" [18.05.032 (a) (1)]. Does this include all health care providers who may interact with a pregnant woman/girl in the professional care of that woman/girl? This will require some administrative oversight by the Department of Health and Social Services (DHSS) to identify and maintain credible monitoring and update on this information.
2. Define "agencies, services, clinics, facilities" [18.05.032 (1) (A) (B)] that provide pregnancy services – whether these are for intended term pregnancies or whether these are for intended abortions or whether that decision has not been made at the initial encounter. Who and what are these entities? This will necessitate the oversight provided in #1 above.
3. Define "coerce". Once that definition is clear, it would appear crucial to assure the person or persons who coerce a pregnant woman/girl not to have an abortion are subject to the same penalties as the person or persons who coerce a pregnant woman/girl to have an abortion. This equitable language does not appear to be present in the proposed legislation.
4. Define "unbiased" [18.05.032 (a) (8) (9)]. It would appear obvious to most thinking people that none of us lives a day of our lives

of no treatment, so that the patient can make an intelligent or informed choice".

11. Define "medical emergency" [18.16.060 (a)]. This proposed legislation would appear to have left the decision making to the "physician's good faith clinical judgment" [28.16.060 (d) (2)]. Why would this single "good faith clinical judgment" be accepted when other measures of the physicians' judgments are not accepted?

II. SERVICES.

1. Parental consent [18.16.010 (a) (3)]. If parental consent is required before an abortion is performed for a minor, can a parent demand or mandate an abortion for a minor who does not wish/want this done? Is it the intent of this legislation to assure parental consent whether or not an abortion is the end result? The proposed legislation does not appear clear on this.
2. Provision of information. In addition to assuring that a pregnant woman/girl who requests an abortion receives information about all possible services, it is equally important that any pregnant woman/girl who does not request an abortion be provided the same information. How will this be mandated, implemented, and assured?
3. Any document provided by the Department of Health and Social Services (DHSS) must be available to any and all pregnant women and girls since a decision for or against an abortion may not have been made at any number of patient/healthcare provider encounters. How will this be assured and monitored?
4. How will this proposed legislation affect women and girls who are pregnant secondary to rape or incest? What will the Department's position be on this?
5. How will the putative sexual partner that produced the pregnancy be identified? Who will mandate his participation and responsibility

10. What is the issue for the 30-day waiting period? It is clearly established that early abortions carry less morbidity and mortality than later abortions. It is clearly established that a first trimester abortion carries less morbidity and mortality than a full term pregnancy delivery.
11. Is it clear just who delivers the messages in this legislation to pregnant women and girls? Can anybody do this? How can the Department assure that the correct information has been presented and that the patient's questions have been appropriately answered?

SUMMARY.

1. SB 30 is discriminatory to pregnant women and girls as it does not assure the provision of appropriate information to all pregnant women and girls – regardless of their decision for or against an abortion.
2. Definitions are incomplete or inaccurate for statutory inclusion.
3. Language of bias and opinion are integrated into the document so as to preclude an accurate presentation of science based facts about options for pregnant women and girls.
4. SB 30 in its current form does not appropriately address the issues of pregnant women and girls who may/may not plan an abortion or who may/may not plan a term delivery. SB 30 should not be a part of Alaska Statutes.

References:

1. Alan Guttmacher Institute Report on Public Policy. Minors and the Right to Consent to Health Care. 3 (4). August 2000.
2. American College of Obstetricians and Gynecologists. Compendium 2003. ACOG Statement of Policy. Abortion. Washington DC: ACOG. 2003.

March 17, 2003

Senate Hess
State Capitol
Juneau, AK 99801-1182

Dear Mr. Chairman and Members of the Committee:

My name is Deatrich Sitchler, and I reside in Anchorage. I am here today to urge you to oppose SB 30, and to do everything in your power to stop this bill from becoming law.

I would like to share with you my personal reasons why this bill is not needed. At the age of 14, I was diagnosed with hemophilia, a disease affecting the blood. As a result o this condition, it is medically dangerous for me to carry a pregnancy to term because the loss of blood during delivery could be potentially fatal to me. I am in a long-term committee relationship, and my partner and I are very careful, but as you know, no form of birth control is 100% effective. Were I to accidentally become pregnant, it may be in my best interest to terminate the pregnancy rather than carry the pregnancy to term.

I strongly feel that this is a decision between my partner and me, with the advice and consultation of my doctor. The government has no place in this personal, painful choice I would have to make. Furthermore, I would find it very painful to have to listen to a litany of "alternatives" to abortion – alternatives that are not actually in my best interest and that could actually threaten my life – before being deemed capable of consenting to an abortion. I might not fall under the "medical necessity" exception to SB 30 because having the abortion at that very moment would probably not be a life-saving measure or an emergency situation. Therefore I would be subject to this extra "counseling" which would be wholly irrelevant to my individual circumstances.

I remind you that this decision would already be very painful for me, and that I would only be terminating my pregnancy to save my life. Why should extra hurdles be placed before me that are not placed before any other patient seeking any other medical treatment?

For these reasons I urge you to oppose this bill.

Very truly yours,

Deatrich Sitchler

Dear Senators:

I have studied Senate Bill 30 proposed by Senator Dyson, and I must object to this bill on multiple grounds. This bill is a thinly veiled attempt aimed squarely at making it more difficult for women in Alaska to receive abortions. It contains biased language throughout and indirectly suggests placing new limitations on the availability of the abortion procedure.

The bill claims to be about informed consent. As physicians, we are quite familiar with informed consent. If there is a complication of a procedure and informed consent was not obtained, we are painfully aware of the consequences. Getting proper informed consent before an abortion is very high on my list of priorities.

Furthermore, contrary to what some people might think, there is no monetary gain in performing abortions to a physician who provides both prenatal care and abortion. If a patient carries a pregnancy to term, our practice will see a much larger revenue stream than if that patient has an abortion. There is absolutely no incentive on our part to encourage abortion over an ongoing pregnancy.

The bill starts in a biased manner by saying that it is meant to "ensure informed consent before an abortion may be performed, except in cases of medical emergency." A pregnancy has several possible outcomes including carrying and delivery, abortion, adoption, miscarriage, and ectopic pregnancy and others. There is no mention in SB 30 of giving this kind of information to women regarding carrying a pregnancy to delivery, or giving the pregnancy up for adoption. In my practice as a physician, I perform abortions as well as multiple other procedures including both office and hospital procedures. The legislature has not chosen to pass a bill regulating how I obtain informed consent from a person for a C-section or hysterectomy – both of which carry far more risk to the patient than an abortion. Clearly, abortion is being singled out, but not for medical reasons. This bill relates to politics and beliefs, not medicine or the safety of Alaska women.

Throughout the bill the term "unborn child" is used. A review of the 23rd edition of Stedman's Medical dictionary reveals that the term "unborn" or phrase "unborn child" are not recognized. There are medical terms such as blastocyst, morula, embryo, fetus and several other terms referring to the "conceptus." The term "unborn child" is included only to incite emotion. On page 2 lines 25-26, the term "nonjudgmental" is used when the decidedly judgmental phrase "unborn child" is used in the very same sentence, a contradiction of terms.

On pages 1 through 3, a "standard information pamphlet" is described, again using biased terms defined by politicians, not terms recognized by science. Page 2, lines 19-27, *describe in detail the pictures* that need to be included in this pamphlet. Why are these to be included? Are they meant to "educate" the patient regarding the fetal development when she is deciding whether to carry a pregnancy rather than to have an abortion? If so, where are the parallel photographs describing the complications of abortion as well as the complications of carrying a pregnancy to term? Of what value are these pictures? When I counsel patients regarding an ongoing pregnancy or an abortion, should a patient ask me for drawings or photographs of a fetus at various stages of development, I have an encyclopedia containing the information, and I go over it with the patient, but I tailor the information to the needs of the patient. Each person is an individual, and the "standard information packet" alluded to by this bill leaves little room for patient individuality.

After extensively reviewing the literature, former Surgeon General C. Everett Koop (a conservative) and the American College of Obstetrics and Gynecology concluded that there is no solid scientific data suggesting that there are long-term negative psychological effects from an abortion. Yet page 2, line 31 refers to "possible psychological effects" that have allegedly been associated with having an abortion. Why should a patient be subjected to this concept when there is no proof that it exists, and will only serve to frighten the patient with false information? Informed consent should involve only actual scientific information, not conjecture. ("Actual scientific information" is referred to in line 26, page 2). If this reference remains in the bill, where is the comparable line referring to the possible psychological risks of adopting a baby out?

This bill is not about science, nor about medicine. This bill is not about information or informed consent. This bill is simple bias, placing more obstructions in the paths of women seeking an abortion. The suggested body of information is already available, and gathering it as suggested is a duplication of efforts. The requirements of SB 30 serve only as an obstacle intended to discourage patients from choosing a procedure that is recognized as one of the safest performed in medicine.

The persons being served are not the patients, but the legislators who wish to further obstruct abortion in Alaska.

Jan Whitefield

Medical Director, Alaska Women's Health Services

SPRUCEHAVEN
2109 C Mission Road
P.O. Box 945
Kodiak AK 99615

TESTIMONY ON HB 292 May 8, 2003

In order to establish my credibility, let me say that I am a physician who practiced 40 years in Kodiak. During the last 10 years of practice, I performed about 70 abortions per year for a total of 700 abortions. I am thoroughly familiar with the procedure, the risks, and the results. I am retired and have nothing to gain by promoting abortions.

I was here Tuesday at 3PM to testify but, after finally getting to HB 292, the committee spent about 30 minutes discussing various aspects of the bill. During this process, Senator Dyson testified and cautioned the committee not to entertain objections to the term *unborn child,* which clearly indicated his bias with respect to abortion, and his obvious conflict of interest. This was to have been a hearing, not a discussion of the bill or testimony of the committee in favor of the bill, which it became apparent that it was. Because of this only two were able to testify that afternoon.

My purpose is to prevent obstacles being placed before women who, for multiple reasons, feel they need an abortion. Each of my patients was presented with options available for them in addition to an abortion. Each was told as much as they wanted to know about the procedure, the risks and the outcomes. Each was scheduled for a follow up visit two weeks after the procedure.

My findings support entirely Tuesday's testimony by Dr. Murphy who, by the way, you questioned mercilessly about her own management of patients. She was very cooperative and did not deserve Senator Dyson's vituperative accusation that her testimony was biased. In addition, he made a big fuss about her use of the term *termination of pregnancy,* which, I suspect, was her attempt to be sensitive to patients' feelings about the term abortion, which those in favor of the *right to life* have made a nasty word!

My findings indicate that the risks are considerably less than we are led to believe by those who oppose abortion. For instance, only two of my patients developed post-abortion depression requiring treatment and both of these recovered. This is less than the incidence of post-partum depression. None lost enough blood to require a transfusion. Two had minor post-abortion infections, which responded promptly to treatment. Those, who so desired, went on to have normal pregnancies. I saw no fertility problems associated with abortion.

There is no indication for this kind of legislation. Politicians have no business telling patients what they must know, in spite of what advice they receive or from whom. It is an insult to the intelligence of women who, in my opinion, know exactly what they want to know and, if encouraged, will make sure their physician tells them. Do you think that physicians are not familiar with their responsibility to explain the options, risks, benefits and procedural details of any treatment?

This legislation places more obstacles in the path of those who need an abortion. It, along with much inaccurate publicity, complicates the decision and tends--indeed, *intends,* I believe—to make women who elect to have an abortion feel guilty. *I think* the occasional suicide I have heard mentioned is a direct result of this.

Ladies and Gentlemen, I implore you, in the name of compassion for women who cannot manage to bear or raise a child, for whatever reason, to reject this and any similar legislation.

Dr. Bob Johnson

Alaska State Legislature

Please enter into the record my testimony to the House Health Educ & SocSvc committee name

committee on HB292 bill/ subject, dated 5/8/03.

HB292 is aboutempowering women to make informed choices. It is about respecting a woman's intelligence enough to give her the tools necessary to make an educated choice. Many women must resort to making the decision about having an abortion based on outside pressure rather than revelatory information. This pressure may come from a variety of sources, but it often comes from within the medical profession itself. I have heard many stories of women being coerced by members of the medical profession into having an abortion.

HB292 puts this very important decision back into the hands of the ones it most effects. I doubt there is any other medical procedure which we administer while purposely withholding knowledge that would insure the patient is as informed as possible on the scientific facts, medical hazards, and emotional and psychological risks of the procedure. Anyone truly believing in women's rights should be fighting for the support of this bill.

Thank you,
Ruth Abbott

Signed: Ruth A. Abbott
Testifier

Representing (Optional)

HC 60 Box 4325 Delta Jct. AK
Address

895-2007
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the House Hess committee name

committee on House Bill 392 bill/ subject, dated 5/8/03.

As a young Alaskan woman, I fully support House Bill 292. I believe it is important to fully inform women of the risks involved in the abortion procedure, and to offer alternative choices. Choices that offer a baby every opportunity to be granted life.

Life and death decisions should not be rushed or uninformed.

Signed: D Autumn DeMott
Testifier

Representing (Optional)

HC 66 Box 9225 Delta Jct
Address

(907) 895-2002
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the HHES
committee name

committee on HB 292 / Informed Consent, **dated** 5/6/03.
bill/subject

I'd like to urge you to vote in favor of this bill. I think this is a very important bill. In these days of countless lawsuits this bill will offer some immunity to lawsuits. Surely this is in the best interests of the physician, patient and state.

This bill doesn't force the woman to read the information - but only makes it available - to make sure she can know if she desires.

This bill by no means infringes on a woman's right to choose but rather only enables her to be a more fully informed participant in her life's choices.

Please vote for this so that all the young women in our state can be more fully informed before making irreversible, life-changing decisions.

Signed: Linda Bowche

Testifier

Self

Representing (Optional)

P.O. Box 1048 Delta Jct. AK 99737

Address

895-4328

Phone No.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110610
JUNEAU, ALASKA 99811-0610
PHONE: (907) 465-3090
FAX: (907) 586-1877

May 13, 2003

MAY 13 2003

The Honorable Peggy Wilson
Chair, House HESS Committee
State House of Representative
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Wilson:

The House HESS Committee has proposed amendments to HB 292 that include State Medical Board review of any information the Division of Public Health would post on its webpage. The Division does not see any problem with this, especially if the Board could delegate the review to recognized Ob/Gyn specialists, since presumably Board members in general would not have this expertise. This would assure that the posted information is reviewed for medical accuracy and appropriateness.

The Committee also asked about the Department of Health & Social Services' process for ensuring the accuracy of all the health information and promotional materials posted or issued by this agency. All information posted can be referenced back to multiple authoritative sources, such as the Centers for Disease Control (CDC), Office of Women's Health, peer reviewed published research, etc. For complex documents related to medical care guidance, the Department has a committee of experts in the field co-author and review the document prior to distribution. Some programs require a local committee review for appropriateness for the target community or group.

A review of HB 292 does not reveal any violation of an individual's right to privacy or confidentiality of their own health care information or violation of HIPPA regulations. The HIPAA privacy regulation (CFR 45), 45 CFR 164.506 permits, but does not require, a covered entity to obtain consent of an individual to carry out health care treatment, payment, or operations. It states however, that if other state or federal regulation is more stringent concerning consent, then the federal HIPAA regulation is superceded by that law—if state law requires consent, then state law would prevail.

Please contact me if you have any additional questions.

Sincerely,

Doug Bruce
Director

Cc: Joel Gilbertson, Commissioner
Bob Labbe, Deputy Commissioner
Bob Buttcane, Legislative Liaison
Janet Clarke, DAS Administrative Director
Laura Baker, Budget Chief
Carl Gatto, Vice Chair, House HESS
John Coghill, House HESS
Paul Seaton, House HESS
Kelly Wolf, House HESS
Sharon Cissna, House HESS
Mary Kapsner, House HESS

Log 87

SITE: JUNEAU LIO Offnet COMMITTEE: DATE:	SUBJECT OF MEETING: HB292 UPDATE #:

PLEASE SIGN IN

PLEASE PRINT:

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Dr. Colleen Murphy			

Nnn

COMMITTEE: House Health, Education and Social Services Standing Committee

SUBJECT: HB 292-ABORTION: INFORMED CONSENT; INFORMATION

DATE: May 8, 2003

PLEASE SIGN IN

PLEASE PRINT: NAME & TITLE	ADDRESS	PHONE	REPRESENTING (No acronyms unless for a state agency, please)	DO YOU WANT TO TESTIFY ?
Chip Wagner	3294 Pioneer Ave Juneau AK	586-1867	Alaska Catholic Conference	Yes
E-mail address:				
Fr Tom Moffatt	415 Capitol	465-4931	self	Yes?
E-mail address:				
Myrna Gardner	Box 33391 Juneau	790-5470	Self	yes
E-mail address:				
Karen			AK Right to Life	
E-mail address:				
E-mail address:				

SITE: ANCHORAGE LIO COMMITTEE: HHES DATE: 5-8-03	SUBJECT OF MEETING: HB 292/SB 157 UPDATE #: 2

PLEASE SIGN IN

PRINT YOUR NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Cassandra Johnson		AK Pro Choice	Y-HB 292
Email address:			
Jennifer Esterl		AK CLU	Y-HB 292
Email address:			
Vicki Halcro		PPA-Anna Franks	Y-HB 292
Email address:			
Pauline Utter			Y-HB 292
Email address:			
~~Robin Smith~~			Y-HB 292
Email address:			
Email address:			
Email address:			

SITE: **MATSU LIO** *SUBJECT OF MEETING:*

COMMITTEE: HHES *UPDATE #: HB 292*

DATE: 0508/03

PLEASE SIGN IN

PRINT *YOUR NAME*	*ADDRESS (MAILING & ZIP)*	*REPRESENTING*	*DO YOU WANT TO TESTIFY? Y or N*
Karen Vosburgh		**Ak right to life**	**HB292 Y**
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			

SITE: **Kodiak LIO** *COMMITTEE:* House HESS *DATE:* 05-08-03	*SUBJECT OF MEETING:* HB 292 - Abortion: Informed Consent; Information *UPDATE:* #2

PLEASE SIGN IN

P R I N T *YOUR NAME*	*ADDRESS (MAILING & ZIP)*	*REPRESENTING*	*DO YOU WANT TO TESTIFY? Y or N*
Dr. Bob Johnson	700 abortions **Kodiak 99615**	**women**	**Y (HB 292)**
Email address:			
Geneneiva Pearson	**Kodiak, 99615**	**Self**	**Y (HB 292)**
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			

SITE: DELTA JCT LIO **COMMITTEE:** House HESS **DATE:** May 8, 2003	**SUBJECT OF MEETING:** SB 292 Abortion Informed Consent **UPDATE #:**

PLEASE SIGN IN

PRINT YOUR NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Ruth Abbott			Y SB 292
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			

SITE: Kodiak LIO **COMMITTEE:** House HESS **DATE:** 05-08-03	**SUBJECT OF MEETING:** HB 292 - Abortion: Informed Consent; Information **UPDATE:** #1

PLEASE SIGN IN

PRINT YOUR NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Dr. Bob Johnson	Kodiak 99615	women	Y (HB 292)
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			

HB

294

Alaska State Legislature

Member
Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee

Finance Subcommittees
House Environmental Conservation
House Military & Veterans' Affairs
House Court System

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
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Phone: (907) 269-0205
Fax: (907) 269-0207
Representative_Bob_Lynn@legis.state.ak.us

February 17, 2003

To: Representative Peggy Wilson, Chairman
Health, Education and Social Services Committee

Fr: Representative Bob Lynn BL

Re: HB 294
"An Act relating to murder and assault of unborn children."

We would like to request HB 294 be scheduled in the Health, Education and Social Services Committee to be heard either on Friday February 27, 2004 or Monday, March 1, 2004. Attached is a copy of the Bill and supporting documents. *Please let us know if you can accommodate one of these dates.* Thank you.

Alaska State Legislature

Member
Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee

Finance Subcommittees
House Environmental Conservation
House Military & Veterans' Affairs
House Court System

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
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Juneau, AK 99801-1182

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Representative_Bob_Lynn@legis.state.ak.us

SPONSOR STATEMENT
HB 294
"The Laci and Connor Peterson Act"

This bill amends the homicide provisions of Alaska Statute 11.41 to include the murder of an unborn child. HB 294 specifically excludes the death of an unborn child resulting from a legal abortion to which the pregnant woman consented.

Alaska needs to have a law that will permit prosecution of a person who kills an unborn baby as a result of an assault upon or the murder of a pregnant woman. California has such a law and because of this, the alleged perpetrator of Laci Peterson and her unborn child, Connor Peterson, is undergoing trial for a double murder in California.

Twenty-seven other states – including California, Minnesota, and Wisconsin – have already passed similar legislation. Both federal and state courts have rejected every legal challenge to state fetal homicide issues, consistently ruling that they do not conflict with Roe v. Wade that legalizes abortion.

According to three national polls, the opinion of 80% of the public is that the murder of a pregnant woman that results on the death of her unborn child is the murder of two people. HB 294 supports that view.

Your support of the "Laci and Connor Peterson Act" – HB 294 is respectfully requested.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 16, 2004 REPORT NUMBER 04.162

STATE LAWS RECOGNIZING THE DEATH OF A FETUS AS A SEPARATE CRIME

PREPARED FOR REPRESENTATIVE BOB LYNN

BY PATRICIA YOUNG, MANAGER

You asked for information on states that account for the death of a fetus as a crime separate from the death of the mother. According to a National Right to Life Committee publication dated February 2, 2004, lawmakers in 28 states have enacted laws providing for the death of a fetus as a separate crime. Laws in 15 of those states (Arizona, Idaho, Illinois, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Utah, and Wisconsin) apply to a pregnancy at any stage of development. Laws in 13 states (Arkansas, California, Florida, Georgia, Indiana, Massachusetts, Mississippi, Nevada, Oklahoma, Rhode Island, South Carolina, Tennessee, and Washington) apply to a fetus after a certain stage of development—often the point of viability, that is, the point at which the fetus could survive outside of the womb. We include a copy of this National Right to Life Committee publication, "State Homicide Laws that Recognize Unborn Victims," as Attachment A.

We also include an extensive report on the issue prepared by this agency in 1996, which you may find to be useful. See Attachment B, "Death of a Fetus During a Felony," Research Report 96.010. As Attachment C, we include a copy of a decision in the Alaska Court of Appeals on a case in which a fetus was killed along with the mother (*Yerk v. State*, 706 P.2d 341).

We note that civil libertarians and pro-choice advocates oppose legislation that recognizes any stage of prenatal development as an independent victim of a crime. Instead, groups such as the American Civil Liberties Union (ACLU) support alternative approaches to punishing violence against pregnant women, including enhanced penalties for cases in which a woman suffers harm to herself and to her pregnancy. We include as Attachment D, an ACLU memorandum regarding proposed federal legislation, the Unborn Victims of Violence Act.[1]

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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[1] The measure before the 108th U.S. Congress is H.R. 1997.

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/Research/research_home.htm

State Capitol
Juneau, AK 99801

Attachment A

"State Homicide Laws that Recognize Unborn Victims,"
National Right to Life Committee,
February 2, 2004

Click here for Complete List of Resources on Unborn Victims of Violence

State Homicide Laws That Recognize Unborn Victims
(Fetal Homicide)

National Right to Life Committee
February 2, 2004

Full-Coverage Unborn Victim States (15)
(States With Homicide Laws That Recognize Unborn Children as Victims Throughout the Period of Pre-natal Development)

Arizona: The killing of an "unborn child" at any stage of pre-natal development is manslaughter. Ariz. Rev. Stat. §13-1103 (A)(5) (West 1989 & Supp. 1998). Also to be read with Ariz. Rev. Stat. § 13-702(c)(10).

Idaho: Murder is defined as the killing of a "human embryo or fetus" under certain conditions. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. Idaho Sess. Law Chap. 330 (SB1344)(2002).

Illinois: The killing of an "unborn child" at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide. Ill. Comp. Stat. ch. 720, §§5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/12-3.1. A person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any means causes bodily harm to an unborn child. Read with Ill. Rev. Stat. ch. 720 § 5/12-4.4.

Louisiana: The killing of an "unborn child" is first degree feticide, second degree feticide, or third degree feticide. La. Rev. Stat. Ann. §§14:32.5 - 14.32.8, read with §§14:2(1), (7), (11) (West 1997).

Michigan: The killing of an "unborn quick child" is manslaughter under Mich. Stat. Ann. § 28.555. The Supreme Court of Michigan interpreted this statute to apply to only those unborn children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, a separate Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that intentionally, or in wanton or willful disregard for consequences, cause a "miscarriage or stillbirth," or cause "aggravated physical injury to an embryo or fetus."(M.C.L. 756.90)

Minnesota: The killing of an "unborn child" at any stage of pre-natal development is murder (first, second, or third degree) or manslaughter, (first or second degree). It is also a felony to cause the death of an "unborn child" during the commission of a felony. Minn. Stat. Ann.

§§609.266, 609.2661- 609.2665, 609.268(1) (West 1987). The death of an "unborn child" through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. Ann. §609.21 (West 1999).

Missouri: The killing of an "unborn child" at any stage of pre-natal development is involuntary manslaughter or first degree murder. Mo. Ann. Stat. §§1.205, 565.024, 565.020 (Vernon Supp. 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. W.D. 1997).

Nebraska: The killing of an "unborn child" at any stage of pre-natal development is murder in the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-394. (2002)

North Dakota: The killing of an "unborn child" at any stage of pre-natal development is murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§12.1-17.1-01 to 12.1-17.1-04 (1997).

Ohio: At any stage of pre-natal development, if an "unborn member of the species *homo sapiens*, who is or was carried in the womb of another" is killed, it is aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 2903.07, 2903.09 (Anderson 1996 & Supp. 1998).

Pennsylvania: An individual commits criminal homicide in the first, second, or third-degree, or voluntary manslaughter of an "unborn child" if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Ann. §§ 2601 to 2609 (1998) "Unborn child" and "fetus." Each term shall mean an individual organism of the species Homo sapiens from fertilization until live birth."

South Dakota: The killing of an "unborn child" at any stage of pre-natal development is fetal homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. §22-16-1, 22-16-1.1, 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 1997).

Texas: Under a law signed June 20, 2003, and effective September 1, 2003, the protections of the entire criminal code extend to "an unborn child at every stage of gestation from fertilization until birth." The law does not apply to "conduct committed by the mother of the unborn child" or to "a lawful medical procedure performed by a physican or other licensed health care provider with the requisite consent." (SB 319, Prenatal Protection Act)

Utah: The killing of an "unborn child" at any stage of pre-natal development is treated as any other homicide. Utah Code Ann. § 76-5-201 *et seq.* (Supp. 1998)and UT SB 178 (2002).

Wisconsin: The killing of an "unborn child" at any stage of pre-natal development is first-degree intentional homicide, first-degree reckless homicide, second-degree intentional homicide, second-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or homicide by negligent operation of vehicle. Wis. Stat. Ann. §§939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

Partial-Coverage Unborn Victim States (13)

(States with Homicide Laws That Recognize Unborn Children as Victims, But only During Part of the Period of Pre-natal Development)

NOTE: These laws are gravely deficient because they do not recognize unborn children as victims during certain periods of their pre-natal development. Nevertheless, they are described here for informational purposes.

Arkansas: The killing of an "unborn child" of twelve weeks or greater gestation is capital murder, murder in the first degree, murder in the second degree, manslaughter, or negligent homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-101 to 5-10-105. (A separate Arkansas law makes it a battery to cause injury to a woman during a Class A misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury under conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

California: California Penal Code § 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." The words "or a fetus" were added by the legislature in 1970. The California Supreme Court later interpreted "fetus" to apply "beyond the embryonic stage of seven to eight weeks." (*People v. Davis*, 1994) In addition, Penal Code § 190.2(3) makes a defendant eligible for capital punishment if convicted of more than one murder, and the California Supreme Court ruled that fetal homicide is included under this provision as well (*People v. Dennis*, 1998).

Florida: The killing of an "unborn quick child" is manslaughter, a felony of the second degree. Fla. Stat. Ann. § 782.09 (West 1999). The killing of an unborn child after viability is vehicular homicide. Fla. Stat. Ann. § 782.071 (West 1999).

Georgia: The killing of an "unborn child" after quickening is feticide, vehicular feticide, or feticide by vessel. Ga. Code Ann. § 16-5-80 (1996); § 40-6-393.1 (1997); and § 52-7-12.3 (1997).

Indiana: The killing of "a fetus that has attained viability" is murder, voluntary manslaughter, or involuntary manslaughter. Indiana Code 35-42-1-1, 35-42-1-3, 35-42-1-4.

Massachusetts: The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn child after viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (Mass. 1989).

Mississippi: The killing of an "unborn quick child" is manslaughter. Miss. Code Ann. § 97-3-37 (1994).

Nevada: The killing of an "unborn quick child" is manslaughter. Nev. Rev. Stat. § 200.210 (1997).

Oklahoma: The killing of an "unborn quick child" is manslaughter. Okla. Stat. Ann. tit. 21, § 713 (West 1983). The killing of an unborn child after viability is homicide. *Hughes v. State*, 868 P.2d 730 (Okla. Crim. App. 1994).

Rhode Island: The killing of an "unborn quick child" is manslaughter. The statute defines "quick child" to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

South Carolina: The killing of an unborn child after viability is homicide. *State v. Horne*, 319 S.E.2d 703 (S.C. 1984); *State v. Ard*, 505 S.E.2d 328 (S.C. 1998).

Tennessee: The killing of an unborn child after viability is first-degree murder, second-degree murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. Code Ann.

§39-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (1997 & Supp. 1998).

Washington: The killing of an "unborn quick child" is manslaughter. Wash. Rev. Code Ann. § 9A.32.060(1)(b) (West Supp. 1999).

Conflicting Statutes

New York: Under New York statutory law, the killing of an "unborn child" after twenty-four weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under a separate statutory provision, a "person" that is the victim of a homicide is statutorily defined as a "human being who has been born and is alive." N.Y. Pen. Law § 125.05 (McKinney 1998). *See People v. Joseph*, 130 Misc. 2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re Gloria C.*, 124 Misc.2d 313, 476 N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 N.Y.S.2d 177 (Co. Ct. 1987).

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Attachment B

Maureen Weeks,
"Death of a Fetus During a Felony,"
Legislative Research Report 96.010

Legislative Research Services

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Legislative Affairs Agency
Division of Legal & Research Services

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October 23, 1995

MEMORANDUM

TO:

FROM: Maureen Weeks MW
Legislative Analyst

RE: **Death of a Fetus During a Felony**
Research Request 96.010

You asked about state statutes which make it a felony to kill an unborn child while committing a crime, particularly a violent crime. After a brief summary, this memorandum offers a description of Alaska's law on the topic, a synopsis of statutes in other states, and a note about difficulties inherent in the language used in many of these laws. The attached table includes as many state laws as we could find which make it a crime to kill a fetus while committing another crime. All statutes discussed in this memorandum are in the attachments. We use the terms "fetus" and "unborn child" interchangeably.

Summary

Policymakers composing statutes making it a crime to unlawfully kill an unborn child have considered several questions:

- What was the state of mind of the person who caused the fatal injury?
- What was the stage of fetal development when the death occurred?
- How heinous is the act -- is it murder or manslaughter or another crime?

In Alaska, as in nearly two dozen other states, unlawfully killing an unborn child is a felony. Depending on the state, the act is considered battery, assault, manslaughter, feticide, homicide, or murder. Killing a fetus can merit as little as one year in prison (or up to ten) in Nevada, while across the state line in California, killing a fetus may earn 25 years in prison, a life sentence, or the death penalty.

A number of states use the word "willful" to describe the act which killed the unborn child. But court opinions reflect how hard it is to define this common, even banal, word. Is a "willful" act intentional, knowing, or purposeful -- or something else? Similarly, the words "unborn child" and "fetus" occur regularly in these statutes and in subsequent court opinions. When is it a crime to kill an unborn child -- after it has been conceived, when it is no longer an embryo, when it is able to move in the womb, or when it can live outside of the womb? The answer depends on the state and the court.

Alaska Law

In Alaska, the unlawful death of a fetus falls within the definition of "serious physical injury," which is among other things, an injury that "unlawfully terminates a pregnancy." The offense is either first or second degree assault, depending on the mental state of the assailant and the way the act was committed. The penalty for first degree assault, like that for manslaughter, is a minimum sentence of five years and a maximum sentence of 20 years in prison. The penalty for second degree assault is up to ten years in prison.

The language is found by reading two sections of Alaska's criminal statutes. The first defines "serious physical injury" as (among other definitions) injury that "unlawfully terminates a pregnancy."[1] The second defines assault, which uses the term "serious physical injury."

- First degree assault is assault in which the assailant recklessly causes *serious physical injury* using a dangerous instrument; intentionally causes *serious physical injury*; knowingly engages in conduct that results in *serious physical injury* under circumstances that show extreme indifference to the value of human life; or recklessly causes *serious physical injury* by repeated assaults with a dangerous instrument, even if each assault individually does not cause serious physical injury.[2]

- Second degree assault is assault in which the assailant recklessly causes *serious physical injury* (without a dangerous instrument); or recklessly causes *serious physical injury* by repeated assaults (without a dangerous instrument), even if each assault individually does not cause *serious physical injury*.[3]

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[1]Alaska Statute 11.81.900(b)(51)(B)

[2]Alaska Statute 11.41.200

[3]Alaska Statute 11.41.210

The Crime and the Punishment in Other States

This section describes the wide variation among states in classifying and punishing the offense of unlawfully killing an unborn child.

The Offense: From Battery to Murder

In some states unlawfully killing an unborn child is assault or battery (Alaska and Arkansas are examples), in others it is manslaughter (Florida, Mississippi, Oklahoma, Rhode Island, Washington), and in others it is murder (California and North Dakota).[4] Georgia makes it feticide.[5] South Dakota creates the crime of the Intentional Killing of a Human Fetus and Iowa calls the crime Nonconsensual Termination.[6] Some states list the levels of the offense in detail. Minnesota, for example, provides for first, second, and third degree murder and first and second degree manslaughter of the unborn child, followed by a statute which creates the crime of killing an unborn child in the commission of a felony.[7]

The Penalty: From One Year in Prison to Death

Punishment for the crime of causing the death of a fetus varies. Willfully killing a fetus in Nevada is manslaughter, with a sentence as short as one year in prison (with no more than ten years), while across the state line in California, killing a fetus is murder, with a possible sentence of 25 years, life in prison or even the death penalty. In Georgia, feticide is a "willful" act which can be punished by a life sentence, while in Indiana, feticide is an "intentional" act punished by a sentence of four years. In Minnesota, killing an unborn child intentionally with premeditation nets a life sentence, while killing

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[4]Alaska Statutes 11.41.200 and 11.81.900(B)(51); Arkansas Code Annotated 5-13-201; Florida Statutes 782.09 Killing of Unborn Child by Injury to Mother; Mississippi Code 97-3-37 Homicide; Oklahoma Statutes Annotated 21.713 Killing and Unborn Quick Child; General Laws of Rhode Island 11-23-5 Killing of Unborn Quick Child; Revised Code of Washington Annotated 9A.32.060 Manslaughter in the First Degree; Penal Code of California Section 187(a) Murder Defined; North Dakota Century Code Section 12.1-17.1-02 Murder of an Unborn Child.

[5]Official Code of Georgia Annotated 16-5-80.

[6]South Dakota Codified Laws 22-17-6; Code of Iowa 707.8.

[7]Minnesota Statutes 609.2661-.2665 Murder of an Unborn Child in the First, Second Third Degree, Manslaughter of an Unborn Child in the First, Second Degree; 609.268 Injury or Death of an Unborn Child in Commission of Crime..

an unborn child intentionally *without* premeditation can bring up to 40 years in prison. In Louisiana, a person who kills a fetus intentionally may be sentenced to up to 15 years hard labor, while a next door neighbor who successfully argues that the fetus was killed because the mother provoked a sudden, heated passion may shorten that sentence to 10 years.

The Statutes: A Variety of Approaches

This section describes strategies used in statutes which make it a crime to unlawfully kill an unborn child while committing a felony. It also describes how some states have chosen to address the possible confusion of unlawful killing and lawful abortion.

Some statutes make it a crime to terminate a pregnancy during the commission of a felony, without elaborating on the type of felony. For example, Iowa's statute reads simply," . . . **during the commission of a felony or felonious assault . . .**"[8] Kansas and New Mexico create the crime of injury to a pregnant woman, defined as **"injury to a pregnant woman during a felony or misdemeanor which causes the pregnant woman to suffer a miscarriage."**[9]

Some statutes specify the felonies the defendant was to have been committing when the unborn child died. The manner of listing the specific felonies varies, as the following examples show.

- Tennessee includes the words "viable fetus" in its statutes concerning assaults and criminal homicide. This effectively makes it a crime to kill a viable fetus while committing those assaults or homicides.[10]

- New York and California include references to the fetus or unborn child in their definition of homicide or murder. New York defines homicide as (among other things) the death of an "unborn child with which a female has been pregnant for more than 24 weeks" under circumstances which constitute murder, manslaughter in the first degree, manslaughter in the second degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.[11] California includes the phrase "or a fetus" in its murder statute.[12]

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[8]Code of Iowa 707.8(1).

[9]Kansas Statutes Annotated 21.195 (Senate Bill 16, approved April 22, 1995) Injury to a Pregnant Woman; New Mexico Statutes 30-3-7 Injury to Pregnant Woman.

[10]Tennessee Code Annotated 39-13-107 Viable Fetus as Victim.

[11]New York Consolidated Laws 125.00 Homicide Defined.

- Minnesota creates a series of crimes relating to the unlawful death of an unborn child. They include first degree murder of an unborn child in three circumstances: (1) with premeditation and intent, (2) while committing violent criminal sexual conduct, or (3) while committing burglary, aggravated robbery, kidnapping, arson, tampering with a witness or escape, with the intention of causing the death of the unborn child or another.

  Causing the death of an unborn child in Minnesota can also lead to second and third degree murder and first and second degree manslaughter, with a catalog of circumstances (including shooting the mother in the negligent belief that she is a deer or other animal.) Finally, a separate statute makes **"whoever, in the commission of a felony . . . causes the death of an unborn child . . . guilty of a felony . . ."**[13]

- North Dakota divides the crime of murder of an unborn child into two kinds of felonies, depending on whether the defendant was under emotional distress. It is a Class AA felony to cause the death of an unborn child "intentionally or knowingly," or with "extreme indifference to the value of the life of the unborn child or the pregnant woman," or during treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape.

  It is a Class A felony to cause the death of an unborn child "if the defendant was under the influence of extreme emotional disturbance for which there is reasonable excuse." Reasonableness is judged from the "viewpoint of a person in the person's situation," and the extreme emotional disturbance is excusable if it is occasioned by "substantial provocation, a serious event or a situation for which the offender was not culpably responsible." The North Dakota statute also creates the crimes of manslaughter of an unborn child and negligent homicide of an unborn child.[14]

Some statutes clearly state that language which deals with the death of an unborn child does not apply to abortion. Utah's statute reads: **"There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion."**[15] Tennessee spells out the legislature's intent **"that this section shall in no way affect abortion which is legal in Tennessee."**[16] North

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[12]California Penal Code Section 187(a)

[13]Minnesota Statutes 609.2661-.268.

[14]North Dakota Century Code 12.1-17.1-02.

[15]Utah Code Annotated 76-5-201(1)(b).

[16]Tennessee Code Annotated 39-13-107(c).

Dakota excepts any acts **"committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented. . ."**[17]

Language: Can Policymakers Avoid Ambush?

This section discusses the problems inherent in language used by many state laws dealing with the unlawful death of a fetus. It cautions the reader to be wary of the word "willful," and it cites court opinions that demonstrate how difficult it is to agree on a definition of "fetus" and "unborn child."

The Word "Willful"

Several states make it a crime to willfully kill an unborn child by injuring the mother (for examples, see statutes for Florida, Georgia, Michigan, Mississippi, Oklahoma, Rhode Island).[18] *Black's Law Dictionary* defines a "willful act" as one done intentionally, knowingly and purposely. In practice, however, the definition is far from clear.

An Oklahoma appellate court decision shows the problems conjured up by the word "willful." The defendant had been convicted of the murder of an unborn quick child after his wife, who was more than eight months pregnant, died from a gunshot wound to the head at close range.[19] He appealed the conviction, arguing that the Oklahoma statute uses the word "willful," and that there was no proof that he *intended* to kill the unborn child.[20] Puzzling over the word, the appellate court found that a jury could reasonably conclude that the defendant *willfully* pulled the trigger with the *awareness* that the death of the unborn quick child would likely result, but that the statute did not require a specific *intent* to kill the unborn child.[21]

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[17]North Dakota Century Code 12.1-17.1-07.

[18]Florida Statutes 782.09; Official Code of Georgia Annotated 16-5-80; Michigan Statutes Annotated 750.322; Mississippi Code 97-3-37; Oklahoma Statutes Annotated 21.713; General Laws of Rhode Island 11-23-5.

[19]*Black's Law Dictionary* defines a "quick child" as one which has developed so that it moves within the mother's womb.

[20]Under Oklahoma law, the willful killing of an unborn quick child by any injury committed upon . . . the mother of such a child . . . is manslaughter.

[21] *Tarver v. State*, Okl. Cr., 651 P.2d 1332 (1982).

The definition of "willful" has taken on such subtle nuances that Alaska legislators expunged it from the state's criminal statutes when they rewrote the Alaska Criminal Code in 1980. Today Alaska law describes four specific states of mind during a criminal act: intentional, knowing, reckless and negligent. Other states also have steered clear of the word. Some replace it with the word "intentional," as in Washington statutes which read, **". . . intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child."**[22] South Dakota statutes read, **". . . who intentionally kills a human fetus by causing an injury to its mother . . . is guilty of a Class 4 felony."**[23] Utah specifies several states of mind in crimes which cause the death of an unborn child, **"A person commits criminal homicide if he intentionally, knowingly, recklessly, with criminal negligence . . . causes the death of . . . an unborn child."**[24]

Difficulties Defining "Fetus" and "Unborn Child"

Legislators pondering the killing of an unborn child must consider the stage of gestation at which the fetus or unborn child died. This is a difficult and murky area. Legal authorities disagree on exactly when it becomes a crime to unlawfully kill a fetus or an unborn child.

Among the states which make it a felony to unlawfully cause the death of a fetus at any time during its development are Arizona, Minnesota and North Dakota. Arizona specifically notes that the unborn child can be **"at any stage of its development."**[25] Minnesota defines the unborn child as **"the unborn offspring of a human being conceived but not yet born."**[26] North Dakota defines the unborn child as **"the conceived but not yet born offspring of a human being which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive."**[27] Some states make it a crime to unlawfully kill a fetus only after it has reached a certain stage of development. Tennessee requires that the unborn child be "viable," which means that it can survive outside the mother's womb.

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[22]Revised Code of Washington Annotated 9A.32.060.

[23]South Dakota Codified Laws 22-17-6.

[24]Utah Code Annotated 75-5-201.

[25]Arizona Revised Statutes 13-1103(A)(5).

[26]Minnesota Statutes 609.266 (a).

[27]North Dakota Century Code 12.1-17.1-01(3).

Several states require that the unborn child be "quick." This is a hard word to define, as experience in Michigan and Mississippi shows. Although the wording of the two statutes is virtually identical, the respective appellate courts have construed the statutes completely differently.[28] The Michigan Supreme Court determined that the "quick" fetus must be capable of surviving the trauma of birth, while the Mississippi Supreme Court found that the "quick" fetus must merely move in the womb.[29] The difference is some four months of gestation.

Definitions mutate within states as well as among them. Over the past 25 years, the California law has metamorphosed from an 1872 statute which defined murder as "the unlawful killing of a human being" (and meant the fetus had to have been born alive before it died), through court decisions that the fetus must have been able to live outside the womb, to a 1994 state supreme court decision that the fetus need be only that: a fetus of seven to eight weeks that is no longer an embryo. This definition appalled state Supreme Court Justice Stanley Mosk, who wrote in a long dissent, "I cannot believe the Legislature intended to make it murder -- indeed, capital murder -- to cause the death of an object the size of a peanut."

The controversy began in 1970, when the state supreme court filed an opinion (authored by Justice Mosk) that under the 1872 statute, a viable fetus cannot be deemed a "human being." That case involved a nearly nine-month fetus which died of a skull fracture after Robert Keeler told his ex-wife,

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[28]"The wilful killing of an unborn quick child by an[y] injury to the mother of such child, which would be murder if it resulted in the death of such mother shall be [deemed] manslaughter," with "any injury" in Mississippi versus "an injury" in Michigan, which also adds the word "deemed."

[29]When construing the words "quick unborn child," the Michigan court dismissed the concept "quick" as mere "evidence of life" and "nothing more than discernable movement." It turned instead to the word "child": by using that word, the legislature made clear that the offense consists of destroying a human life, the court said. The court held that "[t]he word child as used in M.C.L.A. Section 750.322 . . . means a viable child in the womb of its mother; that is, an unborn child whose heart is beating, who is experiencing electronically measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of the usual medical care and facilities available in the community." *Larkin v. Cahalan* (1973) 208 N.W.2d 176, 389 Mich. 533.

Several years later, the Mississippi Supreme Court, construing the same language, concentrated on the term "quick" and came to a different conclusion. "Evidence was sufficient to show the child was 'quick' as used in the statute . . . where the state presented testimony of the husband of the victim to the effect that . . . he had placed his hand over the victim's stomach and had felt the unborn child move and that expert medical testimony showed that babies move in the womb from roughly 10th week of gestation . . ." *Willis v. State* 518 So 2d 667 (1988).

"I'm going to stomp it out of you," and pushed his knee into her abdomen.[30] The legislature immediately passed a law adding the words "or a fetus" to the 100 year old statute. But the word "fetus" remained undefined until a state court of appeal in 1976, pondering the death of a 12-15 week fetus after a beating, found that the fetus must have been "viable" or its death could not be murder. It reached this conclusion by reasoning that lawmakers had placed the word "fetus" in the chapter on homicide, which is the destruction of human life. But, the court said, a 12-15 week fetus is not viable and has not attained the status of independent human life. Thus, the words "or a fetus" refer to a viable fetus, the court said.[31] Later courts of appeal followed this interpretation.

In 1994, the question moved to the California Supreme Court, which turned the appeals court interpretation on its head. The supreme court said that when the legislature wrote "fetus," that is what it meant, and nothing more. If it had meant "viable fetus," the legislature could have said so, but it did not, the court said. Consulting a medical dictionary, the court found that an embryo becomes a fetus at "seven or eight weeks" gestation and concluded that the murder statute applies to a killing that occurs after this postembryonic period.[32] With this decision, the person who unlawfully kills a fetus commits murder.

Justice Mosk wrote a passionate dissent saying the legislature which wrote "fetus" meant "viable fetus." He noted that the legislature's rapid move to change the 1970 statute was a direct response to the *Keeler* opinion that said a fetus is not a human being. If, later, the legislature had disagreed with the *Smith* opinion that said the fetus must be viable, "surely it would have spoken again, and equally vigorously," the justice wrote. The new interpretation that the fetus not only need not be viable but can be as young as "seven or eight weeks" raises difficult questions and may lead to "absurd" results, he said.

"Do my colleagues have any idea what a seven-week-old product of conception looks like?" the justice asked. He answered his rhetorical question, "To begin with, it is tiny. At seven weeks its 'crown-rump length' . . . is . . . slightly over half an inch . . . It weighs . . . about one-tenth of an ounce . . . In more familiar terms, it is roughly the size and weight of a peanut." Under the new "draconian" definition, the justice said, "the felony-murder rule makes a capital offense out of the death of even a nonviable and invisible fetus that the actor neither knew nor had reason to know existed."

This is what had happened in the case which led to the 1994 decision. On March 1, 1991, Robert Davis pulled a gun to rob Maria Flores, who was 23 to 25 weeks pregnant, of her welfare check money. When she refused to give him the purse, Davis shot her in the chest. Ms. Flores survived, but the fetus was stillborn and Davis was convicted of assault, robbery and murder and was sentenced

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[30]*Keeler v. Superior Court* 87 Cal. Rptr 481, 470 P.2d 617

[31]*People v. Karl Andrew Smith*, App. 129 Cal. Rptr. 498

[32]*People v. Davis*, 30 Cal. Rptr.2d 50

to life in prison without possibility of parole. The justice warned that the same result could happen in another, less violent, scenario: an unarmed 18-year-old with no criminal record tries to shoplift a can of spray paint but loses his nerve and bolts for the door when a security guard approaches, accidentally knocking to the floor a woman who is seven weeks pregnant, and the trauma from the fall causes the woman to miscarry. Before the 1994 supreme court decision, the youth would have been guilty of, at the most, second degree burglary in California, the justice wrote. After the decision, he could also be found guilty of murder and, wrote Justice Mosk, "I cannot believe the Legislature intended . . . so absurd a result."

I hope this information is useful to you. If you have any further questions please do not hesitate to call.

Attachments

SELECTED STATE LAWS MAKING IT A FELONY TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Alaska	1st Degree Assault	Recklessly, intentionally or knowingly	By serious physical injury that unlawfully terminates a pregnancy	A pregnancy	Class A Felony	5-20 years in prison	Alaska Statutes 11.41.200; Alaska Statutes 11.81.900(b)(51)(B);
	2nd Degree Assault	Recklessly	By serious physical injury that unlawfully terminates a pregnancy	A pregnancy	Class B Felony	Up to 10 years in prison	Alaska Statutes 11.41.210; Alaska Statutes 11.81.900(b)(51)(B)
Arizona	Manslaughter	Knowingly or recklessly	By injury to mother	Unborn child at any stage of its development	Manslaughter (Class 2 Felony)	7 years in prison	Arizona Revised Statutes 13-1103; penalty 13-701(C)(1)
Arkansas	1st Degree Battery	While committing a felony	By injury to mother	Irrespective of the duration of pregnancy	1st Degree Battery (Class B Felony)	5-20 years in prison	Arkansas Code Annotated 5-13-201(a)(5)(A) and (i); penalty 5-4-401
California	Murder	Malice aforethought	Not stated	Fetus	Murder	25 years to life in prison; under special circumstance, life in prison or death penalty	California Penal Code 187(a); penalty 190 (a) and (190.2(a)(17)(vii). C.f. Justice S. Mosk dissent in People v. Davis 30 Cal. Rptr.2d 50
Florida	Killing of Unborn Child	Willfully	By injury to mother	Unborn quick child	Manslaughter (2nd Degree Felony)	Up to 15 years in prison	Florida Statutes 782.09; penalty 775.082-.084
Georgia	Feticide	Willfully	By injury to mother	Unborn quick child ("so far developed as to be ordinarily called 'quick' ")	Feticide	Life in prison	Official Code of Georgia Annotated 16-5-80(a); penalty 16-5-80(b)
	Feticide by Vehicle	Recklessly	By injury to mother	Unborn quick child ("so far developed as to be ordinarily called 'quick' ")	Feticide by Vehicle	2-15 years in prison	Georgia Annotated Statutes 40-6-393.1; penalty 40-6-393.1
	Feticide by Vessel	Under influence of alcohol or drugs	By injury to mother	Unborn quick child ("so far developed as to be ordinarily called 'quick' ")	Feticide by Vessel	2-15 years in prison	Georgia Annotated Statutes 52-7-12.3; penalty 52-7-12.3(a)(2)
Illinois	Intentional Homicide of Unborn Child	Intentionally or knowingly, or knowingly and knew the woman was pregnant	Not stated	Unborn child means any individual of human species from fertilization until birth	Intentional Homicide	Same as for 1st Degree Murder, except death penalty may not be imposed	Illinois Compiled Statutes Annotated Ch. 720.5/9-1.2(a) and (b); penalty 720.5/9-1.2(d)

SELECTED STATE LAWS MAKING IT A FELONY TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Indiana	Feticide	Knowingly or intentionally	Not stated	A human pregnancy	Class C Felony	4 years in prison	Indiana Statutes Annotated 35-42-1-6; penalty 35-50-2-6
Iowa	Feticide	Intentionally	Not stated	A human pregnancy after end of second trimester	Class C Felony	Up to 10 years in prison	Code of Iowa 707.7; penalty 902.9
	Nonconsensual Termination	During a felony	Terminates pregnancy without consent of pregnant person	A human pregnancy	Class B Felony	Up to 25 years in prison	Code of Iowa 707.8; penalty 902.9
Kansas	Injury to Pregnant Woman	During a felony or misdemeanor	By injury to pregnant woman	Fetus	Level 4 Person Felony	Up to 66 months in prison	Kansas Statutes Annotated Ch. 195; penalty Sentencing Guidelines 21-4704
Louisiana	1st Degree Feticide	Intentionally or during listed felonies	Not stated	An unborn child	1st Degree Feticide	Up to 15 years hard labor	Louisiana Statutes Annotated 32.6; penalty 32.6(B)
	2nd Degree Feticide	In sudden passion caused by provocation of the mother sufficient to deprive an average person of his self control; or without intent, or during felony; or when resisting arrest	Not stated	An unborn child	2nd Degree Feticide	Up to 10 years hard labor	Louisiana Statutes Annotated 32.7; penalty 32.7(B)
	3rd Degree Feticide	Neligently or while operating motor vehicle, aircraft, vessel with or without intention of causing death if under the influence of alcohol or drugs	Not stated	An unborn child	3rd Degree Feticide	Up to 5 years in prison, with or without hard labor	Louisiana Statutes Annotated 32.8; penalty 32.8(B)
Michigan	Manslaughter	Willfully	By any injury to mother	Unborn quick child	Manslaughter	Up to 15 years in prison	Michigan Compiled Laws 750.322; penalty 750.321

SELECTED STATE LAWS MAKING IT A FELONY TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Minnesota	1st Degree Murder of an Unborn Child	Intentionally and with premeditation, or while committing a list of felonies	Not stated	Unborn child: offspring of a human being conceived but not yet born.	1st Degree Murder	Life in prison	Minnesota Statutes 609.266(a); 609.2661; penalty 2661
	2nd Degree Murder of an Unborn Child	Intentionally without premeditation, or (without intent) while committing a felony	Not stated	Unborn child: offspring of a human being conceived but not yet born	2nd Degree Murder	Up to 40 years in Prison	Minnesota Statutes 609.266(a); 609.2662; penalty 2662
	3rd Degree Murder of an Unborn Child	Without intent, evincing depraved mind, without regard for human or fetal life	Not stated	Unborn child: offspring of a human being conceived but not yet born	3rd Degree Murder	Up to 25 years in prison	Minnesota Statutes 609.266(a); 609.2663; penalty 2663
	1st Degree Manslaughter of an Unborn Child	Intentionally in heat of passion, or committing a misdemeanor with such force that death to unborn child was foreseeable, or intentionally because coerced by threats	Not stated	Unborn child: offspring of a human being conceived but not yet born	1st Degree Manslaughter	Up to 15 years in prison	Minnesota Statutes 609.266(a); 609.2664; penalty 2664
	2nd Degree Manslaughter of an Unborn Child	Negligently	Negligently shoots the mother of the unborn child thinking she is a deer; negligently sets a snare; or negligently permits a vicious animal to run loose	Unborn child: offspring of a human being conceived but not yet born	2nd Degree Manslaughter	Up to 10 years in prison	Minnesota Statutes 609.266(a); 609.2665; penalty 2665
	Death of Unborn Child in Commission of a Crime	During felony	Not stated	Unborn child: offspring of a human being conceived but not yet born	Felony	Up to 15 years	Minnesota Statutes 609.266(a); 609.268(1); penalty 268.268(1)
Mississippi	Homicide; Killing of an Unborn Quick Child	Willfully	By injury to mother	Unborn quick child	Manslaughter	Up to 1 year in county jail; 2-20 years in penitentiary	Mississippi Code Annotated 97-3-37; penalty 97-3-25

SELECTED STATE LAWS MAKING IT A FELONY TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Nevada	Killing Unborn Child	Willfully	By injury to mother	Unborn quick child	Manslaughter	1-10 years in prison	Nevada Revised Statutes Annotated 200.210; penalty 200.210
New Hampshire	1st Degree Assault	Purposely or knowingly	By injury to another	Fetus	Class A Felony	Up to 15 years in prison	New Hampshire Revised Statutes Annotated 651:2
New Mexico	Injury to Pregnant Woman	While committing a felony	By injury to pregnant woman	Irrespective of duration of pregnancy	3rd Degree Felony	3 years in prison (6 years if human being dies)	New Mexico Statutes Annotated 30-3-7; penalty 31-18-15
	Injury to Pregnant Woman by Vehicle	Not stated	Driving vehicle unlawfully	Irrespective of duration of pregnancy	3rd Degree Felony	3 years in prison (6 years if human being dies)	New Mexico Statutes Annotated 66-8-101.1; penalty 31-18-15
New York	Homicide	Same as for murder, 1st and 2nd degree manslaughter, criminally negligent homicide, 1st degree abortion or 1st degree self-abortion	Not stated	An unborn child with which a female has been pregnant for more than 24 weeks	Homicide	Depends on the crime (murder, manslaughter, criminally negligent homicide, abortion or self-abortion)	New York Consolidated Laws Service 125.00
North Dakota	Murder of an Unborn Child: Class AA	Intentionally or knowingly; with extreme indifference to value of child's or woman's life; or while committing a list of felonies	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class AA Felony	Life in prison	North Dakota Century Code 12.1-17.1-02(1); penalty 12.1-32-01

SELECTED STATE LAWS MAKING IT A FELONY TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
(N.D. cont'd.)	Murder of an Unborn Child: Class A	Under extreme emotional disturbance for which there is a reasonable excuse; excuse is reasonable only if there is substantial provocation, a serious event or a situation for which the offender was not culpably responsible	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class A Felony	Up to 20 years in prison	North Dakota Century Code 12.1-17.1-02(2); penalty 12.1-32-01
	Manslaughter of an Unborn Child	Recklessly	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class B Felony	Up to 10 years in prison	North Dakota Century Code 12.1-17.1-03; penalty 12.1-32-01
	Negligent Homicide of an Unborn Child	Negligently	Not stated	An unborn child: conceived but not yet born offspring of a human being which, but for the action of the actor, would have been born alive	Class C Felony	Up to 5 years in prison	North Dakota Century Code 12.1-17.1-04; penalty 12.1-32-01
Oklahoma	Killing an Unborn Quick Child	Willfully	By injury to mother	Unborn quick child	1st Degree Manslaughter	Not less than 4 years in prison	Oklahoma Statutes Annotated 21.713; penalty 21.715

SELECTED STATE LAWS MAKING IT A FELONY TO KILL A FETUS WHILE COMMITTING ANOTHER FELONY

State	Name of the Offense	Offender's State of Mind	Elements of the Offense	Stage of Fetal Gestation	How Offense is Classified	Sentence	Statute
Rhode Island	Wilful Killing of Unborn Quick Child	Willfully	By injury to mother	Unborn quick child ("quick child" means an unborn child capable of surviving the trauma of birth per General Laws of Rhode Island 11-23-5(c))	Manslaughter	Up to 30 years in prison	General Laws of Rhode Island 11-23-5; penalty 11.23.3
South Dakota	Intentional Killing of Human Fetus by Unaurthorized Injury to Mother	Intentionally	By injury to mother	Human fetus	Class 4 Felony	Up to 10 years in prison	South Dakota Codified Laws 22-17-6; penalty 22-6-1
Tennessee	Viable Fetus as Victim	Not stated	During assault or criminal homicide (Tennessee Code Annotated 39-13 Assaultive Offenses and Criminal Homicide)	Viable fetus	Depends on the offense	Depends on the offense	Tennessee Code Annotated 39-13-107
Utah	Criminal Homicide	Intentionally, knowingly, recklessly, or with criminal negligence	Not stated	An unborn child	Aggravated murder (intentionally and knowingly), murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide or automobile homicide	Depends on the offense	Utah Code Annotated 76-5-201
Washington	1st Degree Manslaughter	Intentionally and unlawfully	By injury to mother	Unborn quick child	Manslaughter (Class B Felony)	Not less than 3 years	Revised Code of Washington Annotated 9A.32.060; penalty 9A Sentencing Grid

Attachment C

Yerk v. State, 706 P.2d 341

LEXSEE 706 p.2d 341

Richard C. YERK, Appellant, v. STATE of Alaska, Appellee

File No. A-748, No. 515

Court of Appeals of Alaska

706 P.2d 341; 1985 Alas. App. LEXIS 358

September 20, 1985

PRIOR HISTORY:
[1]**

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge.

COUNSEL:

Paul J. Nangle, Paul J. Nangle & Associates, Anchorage, and Richard C. Yerk, in Propria Persona, Palmer, for Appellant.

Clark T. Stirling, Assistant District Attorney, Victor C. Krumm, District Attorney, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

JUDGES:

Bryner, Chief Judge, Coats and Singleton, Judges.

OPINIONBY:

COATS

OPINION:

[*341] Richard Yerk was convicted, based upon his plea of no contest, of two counts of assault in the second degree, *AS 11.41.210(a)(2)*. n1 Judge Victor Carlson sentenced Yerk to concurrent sentences of seven years with four years suspended and placed Yerk on probation for a period of five years following his incarceration. Judge Carlson also revoked Yerk's driver's license for five years although he authorized Yerk to apply for a license to drive **[*342]** during the course of his employment following his incarceration. Yerk appeals this sentence, arguing that it is excessive. We affirm.

> n1 *AS 11.41.210(a)(2)* provides that a person commits the crime of assault in the second degree if
>
> ...
>
> (2) that person recklessly causes serious physical injury to another person.

[2]**

On April 29, 1984, Yerk was driving the wrong way on a bridge in Anchorage. He ran head on into a car driven by Rhonda Rice. She was accompanied by her husband David Rice. David Rice sustained a concussion, a fracture of the left hip, a fracture of the right jaw, and a large cut behind his left ear as a result of the collision. Rhonda Rice was twenty-eight weeks pregnant at the time of the accident; the fetus was killed in the accident. Mrs. Rice also suffered a black eye, abrasions on her chest, and bruises on her abdomen. Yerk sustained a cut over his right eye and abrasions on his arm. Two and one-half hours after the accident Yerk registered a blood alcohol level of 0.165 percent. A person is considered to be driving while intoxicated at 0.10 percent or over. *AS 28.35.030*.

At the time of the accident Yerk was forty-two and had no record of prior convictions other than two minor traffic offenses. He had a history of abuse of alcohol and cocaine, but at the time of sentencing appeared to have made substantial progress toward solving his substance abuse problems. n2 However, Judge Carlson found that Yerk's offenses were particularly serious, thus he imposed a sentence **[**3]** of seven years with four suspended. He found that the evidence in the case would have supported a conviction of a more serious offense, assault in the first degree, a class A felony. *See AS 11.41.200*. n3

> n2 Yerk argues that Judge Carlson placed undue emphasis on Yerk's substance abuse problem in passing sentence. Yerk points to *AS 12.55.155(g)*, which provides that "voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor." However, a person's background of substance abuse may be considered in assessing his prospects for rehabilitation. *State v. Ahwinona, 635 P.2d 488, 491 n.3 (Alaska App. 1981)*. Judge Carlson spent some time at the

sentencing proceeding discussing with Yerk his substance abuse problems. Judge Carlson appears to have concluded that Yerk had made substantial progress in solving his substance abuse problems and that this reflected favorably on Yerk's prospects for rehabilitation. Judge Carlson appears to have given proper consideration to Yerk's substance abuse background.

n3 *AS 11.41.200(a)(1)* provides that a person commits assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument.

[**4]

We believe that the sentence which Judge Carlson imposed is supported by the record. Yerk's offense was a class B felony with a maximum sentence of ten years. The presumptive sentence for a second felony offender convicted of a class B felony is four years. *AS 12.55.125(d)(1)*. In *Austin v. State, 627 P.2d 657, 657–58 (Alaska App. 1981)*, we indicated that "normally a first offender should receive a more favorable sentence than the presumptive sentence for a second offender. It is clear this rule should be violated only in an exceptional case." However, we have also indicated, in terms of applying the *Austin* rule, that our primary focus will be on the actual time of imprisonment imposed rather than suspended time. *Tazruk v. State, 655 P.2d 788 (Alaska App. 1982)*. Thus Yerk's sentence of three years to serve does not violate the *Austin* rule. Although three years to serve for a first assault conviction, coupled with Yerk's four year period of suspended time, is a substantial sentence for a first felony offender, we believe that the facts of this case justify the sentence. The injuries which resulted from this accident, particularly the injury which resulted in [**5] the death of the fetus, are particularly appalling. Judge Carlson could properly consider the fact that this offense could have been charged as a first degree assault in considering the seriousness of the offense. We conclude the sentence was not clearly mistaken.

AFFIRMED.

Attachment D

"Interested Persons Memo on the Unborn Victims of Violence Act,"
American Civil Liberties Union,
March 27, 2002

American Civil Liberties Union

www.aclu.org

URL: http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=10125&c=144

Interested Persons Memo on the Unborn Victims of Violence Act (S. 480/H.R. 503)
March 27, 2002

MEMORANDUM

TO: Interested Persons
FROM: ACLU Washington National Office
RE: Unborn Victims of Violence Act (S. 480/H.R. 503)
DATE: March 27, 2002

The American Civil Liberties Union (ACLU) opposes "The Unborn Victims of Violence Act" (S. 480/H.R. 503). This legislation would amend the federal criminal code and the Uniform Code of Military Justice to create a new, separate offense if, during the commission of certain crimes, an individual causes the death of, or bodily injury to, what sponsors of the bill call a "child in utero." Because this bill explicitly applies to all stages of prenatal development, it would be the first federal law to recognize a zygote (fertilized egg), a blastocyst (pre-implantation embryo), an embryo (through week eight of a pregnancy), or a fetus as an independent "victim" of a crime, with legal rights distinct from the woman who has been harmed by criminal conduct.

The ACLU fully supports efforts to punish acts of violence against women that harm or terminate a wanted pregnancy. This bill is an inappropriate method of imposing such punishment, however, because it dangerously seeks to separate the woman from her fetus in the eyes of the law. Such separation is merely the first step toward eroding a woman's right to determine the fate of her own pregnancy and to direct the course of her own health care. For this reason, the ACLU opposes this bill, but supports alternative approaches to punishing violence against pregnant women, including enhanced penalties for cases in which a woman suffers not only harm to herself but also to her pregnancy.

This Bill Dangerously Separates the Fetus and the Pregnant Woman.

The ACLU recognizes that a woman may suffer a serious physical and emotional injury if her pregnancy is ended or harmed by an assault, a drunk driving accident, or other criminal acts. This bill, however, seeks to make a distinction between harm to a pregnant woman and harm to her pregnancy. By creating a separate offense for injury to a fetus, this bill attempts to endow the fetus with legal rights distinct from the woman who has been injured. This legislation would thus dramatically alter the existing legal framework by elevating the fetus to an unprecedented status in federal law.

Such a legal shift is not merely a matter of semantics. It would undermine the principles underlying the right to reproductive choice -- a result that is the clear aim of the sponsors of this legislation. It is no accident that anti-choice groups like the National Right to Life Committee have drafted and circulated similar legislation all across the country. In a 1984 presidential election debate, Ronald Reagan, a well-known opponent of choice, cited a California feticide law as support for regarding abortion as murder, asking, "Isn't it strange that that same woman could have taken the life of her unborn child and it was abortion, not murder, but if somebody else does it, that's murder?" These words demonstrate that this legislation is in tension with the right of reproductive choice.

This Bill Permits a Person to be Convicted of Harming a Fetus Even if He or She Did Not Know that the Woman Was

Pregnant and Lacked Criminal Intent.

This legislation explicitly disavows a mens rea (or criminal intent) requirement as an element of the crime and thus is in tension with the Constitution's Due Process guarantees. The bill permits a person to be convicted of the offense of harm to a fetus even if he or she did not know, and had no reason to know, that the woman was pregnant, and he or she did not intend to cause the harm. Furthermore, because the bill does not require a conviction for the underlying crime, the separate offense of harm to a zygote, blastocyst, embryo or fetus can be proven without any showing of intent whatsoever. Such a result undermines the Constitution's promise of due process.

Enhanced Punishment for Injury to a Pregnant Woman Can Be Achieved through Properly Crafted Legislation.

The ACLU supports properly crafted legislation aimed at punishing violence against pregnant women that recognizes the additional and significant injury a woman may suffer from loss of, or harm to, a pregnancy. Criminal interference with a woman's right to bear a child should be prevented and punished.

Legislation that imposes enhanced penalties for criminal acts against pregnant women resulting in harm to their fetuses appropriately punishes the additional injury that such acts cause without recognizing the fetus as a legal entity separate and distinct from the woman. Such legislation focuses the criminal law where it should be: on the especially devastating loss or injury to the woman that occurs when her pregnancy is compromised.

This bill ignores the unity between the pregnant woman and the fetus she carries. Penalty enhancements appropriately punish criminal behavior while embracing that unity.

Subject: Fw: House votes Feb. 26 on Bush-backed fetal homicide bill
Date: Tue, 17 Feb 2004 06:39:17 -0900
From: Bob Lynn <boblynn@alaska.com>
To: "Fr. Tom Moffatt" <tommoffatt@aol.com>,
Forward from Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>

----- Original Message -----
From: Legfederal@aol.com
To: Legfederal@aol.com
Sent: Tuesday, February 17, 2004 6:20 AM
Subject: House votes Feb. 26 on Bush-backed fetal homicide bill

MEDIA ADVISORY AND BACKGROUNDER:

CONGRESS TO VOTE ON UNBORN VICTIMS OF VIOLENCE ACT
(FEDERAL FETAL HOMICIDE BILL) --

HOUSE WILL VOTE ON BILL THURSDAY, FEBRUARY 26;
FIRST-EVER SENATE ACTION MAY FOLLOW SOON

PRESIDENT BUSH SUPPORTS BILL -- SENATOR KERRY OPPOSES IT

WASHINGTON -- This is a media advisory from the National Right to Life Committee (NRLC), Federal Legislation Department, issued Tuesday, February 17, 2004, at 9 a.m. For further information on the Unborn Victims of Violence Act and state fetal homicide laws, visit the NRLC website at www.nrlc.org, send e-mail to Legfederal@aol.com, or call 202-626-8820.

The U.S. House of Representatives will vote on Thursday, February 26, 2004, on the Unborn Victims of Violence Act (H.R. 1997), also known as "Laci and Conner's Law." This is a bill, sponsored by Congresswoman Melissa Hart (R-Pa.), to allow federal and military prosecutors to bring charges on behalf of a "child in utero" when he or she is a victim of a violent federal or military crime. The bill defines "child in utero" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

Public attention to the fetal homicide issue has increased over the past year, due in part to widespread interest in the killing of Laci Peterson and her unborn son Conner in December, 2002. The State of California will soon place Scott Peterson on trial for two counts of murder in that case. However, abortion-rights advocacy groups such as the ACLU and Planned Parenthood say that a crime like the Peterson case has only a single victim, the pregnant woman, and they strongly oppose state and federal bills to recognize fetal homicide.

In order to pass the Unborn Victims of Violence Act, it is necessary for the House to first reject a radically different bill backed by abortion-rights advocacy groups, the "single-victim substitute

amendment" (Lofgren Substitute), which will be similar or identical to the language of H.R. 2247. The substitute would increase penalties for a federal crime that victimizes a pregnant woman if it causes "interruption" of her pregnancy, but would also write into federal law the doctrine that such a crime has only a single victim. Family members who have lost loved ones in two-victim crimes have condemned this approach.

Senate Majority Leader Bill Frist (R-Tn.) has indicated that the Senate, too, may turn to the issue very soon -- perhaps not long after House action. In the Senate, the UVVA is sponsored by Senator Mike DeWine (R-Ohio), Senator Lindsay Graham (R-SC), and 39 others. The single-victim substitute amendment will be offered by Sen. Dianne Feinstein (D-Ca.). When the Senate votes to choose between the Feinstein Substitute and the Unborn Victims of Violence Act, the outcome is in doubt. The Senate has never before considered the fetal homicide issue.

Three national polls found that about 80% of the public believes the law should recognize the killing of a "fetus" in a crime as HOMICIDE, and a solid majority believes this should be true throughout pregnancy. Only 7% to 10% said that the law should not regard the killing of a human fetus as a homicide at any stage of pregnancy -- but it is that 10% position that is incorporated into the Lofgren-Feinstein substitute amendments. The poll questions and responses are here:
http://www.nrlc.org/Unborn_victims/UnbornPolls110703.html

RESOURCES:

-- NRLC has created the most extensive resource on the Internet concerning unborn victims of violence and fetal homicide laws, at
http://www.nrlc.org/Unborn_victims/index.html

-- President Bush says that a crime like the Peterson case in California has two victims, and he has repeatedly urged Congress to pass the bill, most recently on January 22.
http://www.nrlc.org/marchforlife2004remarks.html

-- Senator John Kerry (D-Mass.) opposes the bill; his letter is here:
http://www.nrlc.org/Unborn_victims/kerryemailUVVA.html
Laci Peterson's mother, Sharon Rocha, has urged Kerry to change his mind and to reject the "single-victim" bill; her letter is here:
http://www.nrlc.org/Unborn_victims/RochatoKerry.html

-- On February 5, National Review Online posted an article by NRLC Legislative Director Douglas Johnson that is a good summary of the main points in dispute regarding the Unborn Victims of Violence Act:
http://www.nationalreview.com/comment/johnson200402050947.asp

-- Twenty-eight (28) states recognize fetal homicide -- 15 throughout

prenatal development, and 13 for some defined part of pregnancy. The laws are summarized here:
http://www.nrlc.org/Unborn_victims/Statehomicidelaws092302.html

-- Across the nation, federal and state courts have rejected every legal challenge to the state fetal homicide laws, consistently ruling that they do NOT conflict with Roe v. Wade. The cases are summarized here:
http://www.nrlc.org/Unborn_victims/statechallenges.html

-- Some prominent pro-Roe legal experts have in recent months declared that fetal homicide laws do not conflict with Roe -- among them, Prof. Walter Dellinger at Duke Law School, who once co-chaired a national commission to defend Roe and who later served as President Clinton's chief legal advisor on constitutional issues. Quotes from Dellinger and the other pro-Roe legal authorities are here:
http://www.nrlc.org/Unborn_victims/RoesupportersspeakUVVA.html

-- In increasing numbers, members of families who have lost loved ones -- born and unborn -- are speaking out in favor of state and federal fetal homicide legislation, and against the "single-victim" ideology. For example: On January 7, 18-year-old Ashley Lyons and her unborn son Landon were murdered in Scott County, Kentucky. Current Kentucky law regards this crime as having only a single victim. But Carol Lyons, mother of Ashley and grandmother of Landon, says: "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 good-bye for the last time and closed the casket." Read the full story in "Remember Their Names," by NRLC Legislative Director Douglas Johnson, here: http://www.nrlc.org/Unborn_Victims/Remembertheirnames.html

-- The official report of the House Judiciary Committee, explaining how the Unborn Victims of Violence Act would work, including discussion of pertinent court decisions, is here (PDF file -- requires free Adobe Acrobat Reader):
http://www.nrlc.org/Unborn_victims/UVVAHJCreport2004.pdf

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House Environmental Conservation
House Military & Veterans' Affairs
House Court System

A Communication From

REPRESENTATIVE BOB LYNN

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Representative_Bob_Lynn@legis.state.ak.us

MAY 0 8 2003

May 5, 2003

To: Representative Peggy Wilson, Chairman
Health, Education and Social Services Committee

Fr: Representative Bob Lynn

Re: HB 294
"An Act relating to murder and assault of unborn children."

Please schedule HB 294 to be heard in the House Education and Social Services at your earliest convenience. Attached is a copy of the Bill and supporting documents. Thank you.

Subject: Emailing: statechallenges.htm
Date: Wed, 30 Apr 2003 21:50:38 -0800
From: Bob Lynn <boblynn@alaska.com>
To: Forward from Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>

Constitutional Challenges to State Unborn Victims Laws

April 16, 2003

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

California

***People v. Davis*, 872 P.2d 591(Cal. 1994).**

Georgia

***Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987). Related state supreme court decision: *Brinkley v. State*, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).**

Illinois

***U.S. ex rel. Ford v. Ahitow*, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, *People v. Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991).**

***People v. Campos*, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: *appeal denied*, 602 N.E.2d 460 (Ill. 1992), *habeas corpus denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), *certiorari denied*, 514 U.S. 1024 (1995).**

Louisiana

Re double jeopardy -- *State v. Smith*, 676 So.2d 1068 (La. 1996), *rehearing denied*, 679 So.2d 380 (La. 1996).

Minnesota

***State v. Merrill*, 450 N.W.2d 318 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990).**

Re establishment clause -- *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991).

Missouri

In the 1989 case of *Webster v. Reproductive Health Services* (492 U.S. 490), the U.S. Supreme Court refused to invalidate a Missouri statute (Mo. Rev. Stat. 1.205.1) that declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law "impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion that *Roe* forbids.

In *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in this law is applicable to other statutes, including at least the state's involuntary manslaughter statute.

Pennsylvania

Commonwealth of Pennsylvania v. Corrine D. Wilcott, No. 2426 A & B of 2002 (Court of Common Pleas of Erie County, Pennsylvania, Criminal Division). Rejected challenges that Pennsylvania Crimes Against Unborn Children Act is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person." January 24, 2003.

Wisconsin

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

Subject: Emailing: Harming_fetus_in_assault_on_moP.htm
Date: Fri, 25 Apr 2003 21:16:22 -0800
From: Bob Lynn <boblynn@alaska.com>
To: Forward from Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>

Harming fetus in assault on mother should be federal crime, White House says

By Associated Press, 4/25/2003 17:50

WASHINGTON (AP) The White House urged Congress on Friday to pass a law making it a federal crime to harm a fetus during an assault on its mother, a subject currently in the news in connection with a California murder case.

The House passed legislation in 2001 supported by President Bush that would make it a criminal offense to injure or kill a fetus during the commission of a violent crime. The Senate never took up the measure.

Bush press secretary Ari Fleischer declined to comment specifically on the California case in which Scott Peterson has been charged with murdering his wife, Laci, and their unborn child.

But asked whether it is appropriate for the husband to be charged with two murders, Fleischer responded that the president believes that "when an unborn child is injured or killed during the commission of a crime of violence, the law should recognize what most people immediately recognize, and that is that such a crime has two victims."

Peterson pleaded innocent on Monday. Laci Peterson, who was eight months pregnant, disappeared on Christmas Eve, and the bodies washed ashore last week in San Francisco Bay, three miles from where Scott Peterson had said he was fishing.

California law permits a murder charge for a fetus if a pregnant woman is slain.

"The president calls on the House and calls on the Senate to again pass the Unborn Victims of Violence Act," Fleischer said.

National Right to Life

State Homicide Laws That Recognize Unborn Victim:

National Right to Life Committee
September 23, 2002

Full-Coverage Unborn Victim States (14)

(States With Homicide Laws That Recognize Unborn Children as Victims Throu; Period of Pre-natal Development)

Arizona: The killing of an "unborn child" at any stage of pre-natal development is manslaughter. Ariz. Rev. Stat. §13-1103 (A)(5) (West 1989 & Supp. 1998). Also to be Ariz. Rev. Stat. § 13-702(c)(10).

Idaho: Murder is defined as the killing of a "human embryo or fetus" under certain c The law provides that manslaughter includes the unlawful killing of a human embry without malice. The law provides that a person commits aggravated battery when, committing battery upon the person of a pregnant female, that person causes great harm, permanent disability or permanent disfigurement to an embryo or fetus. Idah Chap. 330 (SB1344)(2002).

Illinois: The killing of an "unborn child" at any stage of pre-natal development is int homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicid Comp. Stat. ch. 720, §§5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/1 person commits battery of an unborn child if he intentionally or knowingly without l justification and by any means causes bodily harm to an unborn child. Read with Ill. ch. 720 § 5/12-4.4.

Louisiana: The killing of an "unborn child" is first degree feticide, second degree fe third degree feticide. La. Rev. Stat. Ann. §§14:32.5 - 14.32.8, read with §§14:2(1), ((West 1997).

Michigan: The killing of an "unborn quick child" is manslaughter under Mich. Stat. A 28.555. The Supreme Court of Michigan interpreted this statute to apply to only tho children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that inte or in wanton or willful disregard for consequences, cause a "miscarriage or stillbirth "aggravated physical injury to an embryo or fetus."(M.C.L. 756.90)

Minnesota: The killing of an "unborn child" at any stage of pre-natal development is (first, second, or third degree) or manslaughter, (first or second degree). It is also a cause the death of an "unborn child" during the commission of a felony. Minn. Stat. §§609.266, 609.2661- 609.2665, 609.268(1) (West 1987). The death of an "unborn ch

through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. An (West 1999).

Missouri: The killing of an "unborn child" at any stage of pre-natal development is ir manslaughter or first degree murder. Mo. Ann. Stat. §§1.205, 565.024, 565.020 (Ver 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 28 App. W.D. 1997).

Nebraska: The killing of an "unborn child" at any stage of pre-natal development is the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-3

North Dakota: The killing of an "unborn child" at any stage of pre-natal developmen murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§12 to 12.1-17.1-04 (1997).

Ohio: At any stage of pre-natal development, if an "unborn member of the species *I sapiens*, who is or was carried in the womb of another" is killed, it is aggravated mu murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, ag vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 290 2903.09 (Anderson 1996 & Supp. 1998).

Pennsylvania: An individual commits criminal homicide in the first, second, or thirc or voluntary manslaughter of an "unborn child" if the individual intentionally, knowi recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Anr to 2609 (1998) "Unborn child" and "fetus." Each term shall mean an individual organ species Homo sapiens from fertilization until live birth."

South Dakota: The killing of an "unborn child" at any stage of pre-natal developmer homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. §22-16-1, 2 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 19

Utah: The killing of an "unborn child" at any stage of pre-natal development is treat other homicide. Utah Code Ann. § 76-5-201 *et seq.* (Supp. 1998)and UT SB 178 (200

Wisconsin: The killing of an "unborn child" at any stage of pre-natal development is degree intentional homicide, first-degree reckless homicide, second-degree intentic homicide, second-degree reckless homicide, homicide by negligent handling of dang weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or ho negligent operation of vehicle. Wis. Stat. Ann. §§939.75, 939.24, 939.25, 940.01, 94 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

Partial-Coverage Unborn Victim States (12)

(States with Homicide Laws That Recognize Unborn Children as Victims, But or Part of the Period of Pre-natal Development)

NOTE: These laws are gravely deficient because they do not recognize unborn cl victims during certain periods of their pre-natal development. Nevertheless, the described here for informational purposes.

Arkansas: The killing of an "unborn child" of twelve weeks or greater gestation is ca murder, murder in the first degree, murder in the second degree, manslaughter, or homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-1(

105. (A separate Arkansas law makes it a battery to cause injury to a woman during misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury conditions manifesting extreme indifference to human life and that results in a mis stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

California: The killing of an unborn child after the embryonic stage is murder. Cal. § 187(a) (West 1999)

Florida: The killing of an "unborn quick child" is manslaughter, a felony of the secor Fla. Stat. Ann. § 782.09 (West 1999). The killing of an unborn child after viability is homicide. Fla. Stat. Ann. § 782.071 (West 1999).

Georgia: The killing of an "unborn child" after quickening is feticide, vehicular fetic feticide by vessel. Ga. Code Ann. § 16-5-80 (1996); § 40-6-393.1 (1997); and § 52-7- (1997).

Massachusetts: The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn chil viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (1989).

Mississippi: The killing of an "unborn quick child" is manslaughter. Miss. Code Ann. § (1994).

Nevada: The killing of an "unborn quick child" is manslaughter. Nev. Rev. Stat. § 20 (1997).

Oklahoma: The killing of an "unborn quick child" is manslaughter. Okla. Stat. Ann. t 713 (West 1983). The killing of an unborn child after viability is homicide. *Hughes v.* P.2d 730 (Okla. Crim. App. 1994).

Rhode Island: The killing of an "unborn quick child" is manslaughter. The statute de child" to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

South Carolina: The killing of an unborn child after viability is homicide. *State v. H* S.E.2d 703 (S.C. 1984); *State v. Ard*, 505 S.E.2d 328 (S.C. 1998).

Tennessee: The killing of an unborn child after viability is first-degree murder, sec murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. §39-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (199 1998).

Washington: The killing of an "unborn quick child" is manslaughter. Wash. Rev. Cod 9A.32.060(1)(b) (West Supp. 1999).

States Without Unborn Victims Laws, Which Instead Crimi Certain Conduct That "Terminates a Human Pregnancy" O Causes a Miscarriage (7)

NOTE: These laws are gravely deficient, because they do not recognize unborn c victims, nor allow justice to be done on their behalf. These laws are included he informational purposes.

Indiana: An individual who knowingly or intentionally "terminates a human pregnanc commits feticide. Ind. Code Ann. § 35-42-1-6 (Burns 1994 & Supp. 1998).

Iowa: An individual who intentionally "terminates a human pregnancy" without the c the pregnant woman commits a felony. This law also sets forth other crimes involvi termination of a human pregnancy, such as during the commission of a forcible felo Code Ann. § 707.7 (West Supp. 1999).

Kansas: Injury to a pregnant woman during the commission of a felony or misdemea causes a miscarriage results in specific levels of offense severity. Kan. Stat. Ann. § 2 (1997).

New Hampshire: It is a felony to cause injury to another person that results in a mi or stillbirth. N.H. Rev. Stat. Ann. §§ 631:1-631:2 (1996).

New Mexico: It is a felony to injure a pregnant woman during the commission of a f cause her to undergo a miscarriage or stillbirth. N.M. Stat. Ann. §§ 66-8-101.1 (Mich

North Carolina: It is a felony to injure a pregnant woman during the commission of and cause her to undergo a miscarriage or stillbirth. It is a misdemeanor to cause a or stillbirth during a misdemeanor act of domestic violence. N.C. Gen. Stat. § 14-18 1998).

Virginia: The premeditated killing of a pregnant woman with the intent to cause a t of her pregnancy is capital murder. Va. Code Ann. § 18.2-31 (Michie Supp. 1998). Th unpremeditated killing of a pregnant woman with the intent to cause the terminati pregnancy is also a crime. Va. Code Ann. § 18.2-32.1 (Michie Supp. 1998). It is a felc injure a pregnant woman with the intent to maim or kill her or to terminate her pre and she is injured or her pregnancy is terminated. Va. Code Ann. § 18.2-51.2 (Michi 1998).

New York: Conflicting Statutes

New York: Under New York statutory law, the killing of an "unborn child" after twer weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under separate statutory provision, a "person" that is the victim of a homicide is statutoril as a "human being who has been born and is alive." N.Y. Pen. Law § 125.05 (McKinne *See People v. Joseph*, 130 Misc. 2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re* 124 Misc.2d 313, 476 N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 177 (Co. Ct. 1987).

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