Estado Libre Asociado de Puerto Rico
POLICIA DE PUERTO RICO

14 de abril de 2009

Hon. José Emilio González
Presidente
Comisión de lo Jurídico Penal
Senado de Puerto Rico
El Capitolio
P.O. Box 9023431
San Juan, Puerto Rico 00902-3431

RE: PROYECTO DEL SENADO 442

Estimado Presidente:

Agradecemos la oportunidad brindada para poder expresarnos en torno al Proyecto del Senado 442, el cual nos fuera sometido para análisis y posterior recomendaciones.

En la pieza legislativa presentada, se propone añadir un inciso (d) al Artículo 106 de la Ley Núm. 149 de 18 de junio de 2004, según enmendada, conocida como Código Penal de 2004, a los fines de disponer que constituirá una modalidad de asesinato en primer grado todo asesinato a una mujer embarazada, en cualquier etapa del período del proceso de gestación, e independientemente de si el hecho del embarazo era o no de conocimiento de la persona que cometió dicho delito al momento de cometerlo; y para otros fines relacionados.

El embarazo se considera como una de las etapas más sagradas e importantes en el desarrollo de una sociedad saludable. En las últimas décadas la mujer puertorriqueña ha logrado la aprobación de legislación que reconoce y protege sus derechos. Esta legislación de ha manifestado prácticamente en todas las ramas de nuestro derecho de familia, laboral, sucesoral y penal entre otros. La mujer como ser creador de vida, ha encontrado una doble lucha al tener que abogar tanto por sus derechos como mujer y como madre.

Es altamente reconocido que la mujer en estado de embarazo atraviesa por varios cambios físicos y emocionales que requieren una mayor protección a su cuerpo y estado emocional, además de un ambiente más sano y favorable para

el desarrollo del feto. Todas estás condiciones hacen que toda mujer en estado de gestación se encuentre en una posición muy vulnerable la cual es merecedora de la mayor protección y justicia que nuestra sociedad, y más aún la Policía de Puerto Rico, le pueda brindar.

Según establecido en el Artículo 3 de la Ley Núm. 53 de 10 de junio de 1996, según enmendada, conocida como "Ley de la Policía de Puerto Rico", establece que los miembros de la Fuerza tienen el deber de proteger a las personas y a la propiedad, mantener y conservar el orden público, observar y procurar la más absoluta protección de los derechos civiles del ciudadano, prevenir, descubrir, investigar y perseguir el delito y, dentro de la esfera de sus atribuciones, compeler obediencia a las leyes y ordenanzas municipales, y reglamentos que conforme a estas se promulguen.

Bajo dichos preceptos, es nuestra responsabilidad velar por que se implementen aquellas medidas necesarias que promuevan la seguridad y la justicia para todos nuestros ciudadanos, especialmente los más vulnerables, y además se ataque al delito de manera firme y efectiva, estableciendo de la misma manera, medidas para que el delincuente reconozca que será procesado y castigado al incidir en conducta claramente delictiva.

Es por lo expresado anteriormente, que situaciones como el asesinato ocurrido en los meses pasados de una mujer embarazada, calan en lo más profundo de nuestros corazones y nos motivan a buscar soluciones o medidas que hagan brillar el ideal de la justicia, por encima del rencor o la venganza.

Nuestros ciudadanos, reconocen como una conducta antisocial y aberrante el asesinato, abuso sexual y maltrato contra menores, envejecientes y féminas, según fue establecido por un Estudio de Valoración de Severidad de Delitos en Puerto Rico que se realizó para establecer las penas del nuevo Código Penal del año 2004. Dicho estudio reveló que para el 49.6% de la población encuestada, la conducta más grave era el asesinato y un 23% adicional de la muestra especificó como más grave si se cometía dicho delito contra menores, envejecientes o féminas, o sea un 72.6%. Además en una escala de severidad en la que 0 significaba no delito y 10 un delito más grave, los asesinatos y los delitos sexuales contra menores, envejecientes y mujeres obtuvieron un promedio de 9.5 o más, y una mediana y moda de 10. Esto revela que la sociedad puertorriqueña percibía como de grave severidad esas conductas y por lo tanto debían asignárseles penas mayores.

Actualmente, constituye asesinato en primer grado, todo aquél perpretado entre otras cosas por medio de acecho, tortura, premeditación, cometido como

consecuencia de ciertos delitos enumerados y finalmente cuando se comete contra algunos funcionarios públicos. Definitivamente es comprensible que se pueda acusar por el delito de asesinato en primer grado contra una mujer embarazada cuando cae en el marco de los términos mencionados anteriormente, como lo es la tortura, la premeditación y el acecho. Pero, ¿Qué ocurre cuando dicho delito tiene lugar en ocasión de súbita pendencia o arrebato de cólera?. La contestación no las brinda el Artículo 108 del Código Penal del 2004, titulado Asesinato Atenuado. Dicho artículo impone una pena de delito de tercer grado, lo que equivale a una pena de reclusión de 8 a 15 años. El panorama cambia enormemente contra la misma víctima dependiendo de los hechos de cada caso. Es por esto que apoyamos la pieza legislativa de autos ya que su propósito es brindar justicia uniforme tomando en cuenta a la víctima y no a los hechos, que es lo que realmente se pretende perseguir con esta medida.

La Policía de Puerto Rico está a favor de imponer medidas o penas más rigurosas o punitivas a aquellas personas que cometen actos delictivos como los que nos atañe, ya que es una manera de desalentar al delincuente a incidir en conducta tan repugnante para la sensibilidad de la sociedad contemporánea, como lo es el asesinato de una mujer embarazada. Más aún, cuando hasta al día de hoy se han cometido más de 225 asesinatos en lo que va de año.

Conforme a lo anteriormente esbozado, respaldamos la aprobación del Proyecto del Senado 442. Como de costumbre, la Policía de Puerto Rico se reitera a la disposición de esta Comisión, para cuanto tenga a bien consultar sobre la pieza legislativa objeto del presente análisis.

Cordialmente,

José E. Figueroa Sancha
Superintendente

José A. Rosa Carrasquillo
Superintendente Asociado

OFICINA DE INFORMACION CRIMINAL
DIVISION DE ESTADISTICAS
ASESINATOS POR MOTIVO Y SEXO
2009

	Total	Total		Pelea		Pasional		Violencia Doméstica		Droga		Robo		Otros		Se Desconoce	
		Masc.	Fem.	Masc.	Fem.	Masc.	Fem.	Mas.	Fem.	Masc.	Fem.	Masc.	Fem.	Masc.	Fem.	Masc.	Fem.
TOTAL	**207**	**197**	**10**	**5**	**1**	**0**	**0**	**1**	**5**	**88**	**1**	**1**	**0**	**0**	**0**	**102**	**3**
San Juan	**46**	45	1						1	28						17	
Arecibo	**9**	9	0							2						7	
Ponce	**26**	25	1	1						12						12	1
Humacao	**16**	15	1		1					9						6	
Mayagüez	**3**	3	0							2						1	
Caguas	**15**	13	2	2					1	3	1					8	
Bayamón	**39**	38	1						1	18						20	
Carolina	**25**	23	2	1					2	6						16	
Guayama	**7**	7	0	1						1						5	
Aguadilla	**2**	2	0					1								1	
Utuado	**1**	1	0									1					
Fajardo	**12**	10	2							5						5	2
Aibonito	**6**	6	0							2						4	

Acumulado al 29 de marzo 2009.

OFICINA DE INFORMACION CRIMINAL
DIVISION DE ESTADISTICAS
ASESINATOS POR MOTIVO Y SEXO

	Total	Total		Pelea		Pasional		Violencia Doméstica		Droga		Robo		Otros		Se Desconoce	
		Masc.	Fem.	Masc.	Fem.	Masc.	Fem.	Mas.	Fem.	Masc.	Fem.	Masc.	Fem.	Masc.	Fem.	Masc.	Fem.
TOTAL	**807**	**755**	**52**	**29**	**1**	**5**	**2**	**1**	**26**	**631**	**4**	**14**	**1**	**8**	**2**	**67**	**16**
San Juan	**177**	169	8	5		1	1		2	148		1		2	1	12	4
Arecibo	**39**	35	4	5					2	25	1	2				3	1
Ponce	**116**	106	10	3				1	7	90				1	1	11	2
Humacao	**34**	31	3	2	1	1			2	24				1		3	
Mayagüez	**18**	16	2	3					2	11						2	
Caguas	**54**	54	0	1						46		1				6	
Bayamón	**155**	143	12	1		1			4	130	2	1	1	1		9	5
Carolina	**110**	106	4	1					2	88		5		3		9	2
Guayama	**30**	29	1	1						23	1	1				4	
Aguadilla	**17**	12	5	4			1		3	4		2				2	1
Utuado	**5**	4	1			2			1	2							
Fajardo	**40**	38	2	1					1	32		1				4	1
Aibonito	**12**	12	0	2						8						2	

acumulado al 31 de diciembre de 2008.

Fetal Homicide

Updated February 2009

State Laws || Resources

The debate over fetal rights is not new to the legislative arena. Every year pro-life and pro-choice advocates vie for the upper hand in this contentious issue. In recent years, states have expanded this debate to include the issue of fetuses killed by violent acts against pregnant women. In some states, legislation has increased the criminal penalties for crimes involving pregnant women. These laws have focused on the harm done to a pregnant woman and the subsequent loss of her pregnancy, but not on the rights of the fetus.

Other legislation has defined the fetus as a person under fetal homicide or "feticide" laws. Such legislation is hotly debated under names such as the Fetal Protection Act, the Preborn Victims of Violence Act and the Unborn Victim of Violence Act. Those supporting these acts, often pro-life advocates, say that both the lives of the pregnant woman and the fetus should be explicitly protected. They assert that fetal homicide laws justly criminalize these cases and provide an opportunity to protect unborn children and their mothers.

Those on the other side feel that laws to protect a fetus could become a "slippery slope" that could jeopardize a woman's right to choose an abortion. Pro-choice advocates say such laws grant a fetus legal status distinct from the pregnant woman - possibly creating an adversarial relationship between a woman and her baby. They are also concerned that the laws could be interpreted to apply to a woman's behavior during her pregnancy (such as smoking, drinking or using drugs). They prefer criminalizing an assault on a pregnant woman and recognizing her as the only victim.

Currently, at least **36** states have fetal homicide laws. The states include: **Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington**, **West Virginia** and **Wisconsin**. At least **19** states have fetal homicide laws that apply to the earliest stages of pregnancy ("any state of gestation," "conception," "fertilization" or "post-fertilization"), indicated below with an asterisk (*).

19/36

State	Summary of Statutes and Case Laws
Alabama*	**Ala. Code § 13A-6-1 (2006)** defines person for the purpose of criminal homicide or assaults. The law defines person to include an unborn child in utero at any stage of development, regardless of viability and specifies that nothing in this act shall make it a crime to perform or obtain an abortion that is otherwise legal.
Alaska	**Alaska. Stat. § 11.41.150 et seq., § 11.81.250 , § 12.55.035, and § 12.55.125 (2005)** relate to offenses against unborn children. The law provides that a defendant convicted of murder in the second degree or murder of an unborn child shall be sentenced to a definite term of imprisonment of at least 10 years but no more than 99 years and specifies that this law does not apply to acts that cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented or a person authorized by law to act on her behalf consented, or for which such consent is implied by law.
Arizona*	**Ariz. Rev. Stat. Ann. § 13-1102, § 13-1103, § 13-1104 and § 13-1105** define negligent homicide, manslaughter, first and second degree murder, and specifies that the offenses apply to an unborn child at any stage in its development. **Ariz. Rev. Stat. Ann § 13-701, § 13-704, § 13-705 and § 13-751** define aggravated circumstances in the sentence of death or life imprisonment. The law specifies that the defendant shall not be released until the completion of 35 years if the murdered person was under 15 years of age or was an unborn child. The law states that for the purposes of punishment, an unborn child shall be treated like a minor under 12 years of age.
Arkansas*	**Ark. Stat. Ann. § 5.1.102(13) (B)(i)(a)** defines "person" to include an unborn child in utero at any stage of development. "Unborn child" means a living fetus of 12 weeks or greater gestation. **Ark. Stat. Ann. § 5.10.101 et seq.** defines capital murder, murder in the first degree, murder in the second degree, manslaughter and negligent homicide.
California	**Cal. Penal Code § 187 (a)** defines murder as the unlawful killing of a human being or a fetus with malice aforethought.
Colorado	-
Connecticut	-

Delaware	-
District of Columbia	-
Florida	**Fla. Stat. Ann. § 316.193 (2005)** defines DUI manslaughter to include the death of an unborn quick child. **Fla. Stat. Ann. § 782.09** defines murder as the willful killing of an unborn quick child by any injury to the mother. The law also defines manslaughter. **Fla. Stat. Ann. § 782.071** defines vehicular homicide as the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.
Georgia*	**Ga. Code Ann. § 16-5-80** defines feticide. A person commits the offense of feticide if he willfully kills an unborn child so far developed as to be ordinarily called "quick" by causing any injury to the mother of such child. The penalty for feticide is imprisonment for life. **Ga. Code Ann. § 40-6-393.1** defines vehicular feticide and provides for penalties. **Ga. Code Ann. § 52-7-12.3** defines the term "unborn child" to mean a member of the species *Homo sapien* at any stage of development who is carried in the womb. The law defines feticide by watercraft in the first and second degrees and provides for penalties.
Hawaii	-
Idaho*	**Idaho Code § 18-4001 and § 18-4006 (2002)** declare that murder includes the unlawful 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 definitions. **Idaho Code § 35-42-1-1** states that a person commits felony murder if they knowingly or intentionally kill a fetus that has attained viability.
Illinois*	**Ill. Rev. Stat. ch. 20 § 505/7 and ch. 225 § 10/4.2** include the following as criminal offenses: intentional homicide of an unborn child; voluntary manslaughter of an unborn child; involuntary manslaughter of an unborn child; reckless homicide of an unborn child. **Ill. Rev. Stat. ch. 720 § 5/9-1.2, § 5/9-2.1, and § 5/9-3.2** define the crimes of intentional homicide, manslaughter voluntary manslaughter and includes the killing of an unborn child in the definitions. **Ill. Rev. Stat. ch. 720 § 5/12-3.1, § 5/12-3.2 (2004) and § 5/12-4.4** defines battery and aggravated battery of an unborn child. **Ill. Rev. Stat. ch. 730 § 5/3-6-3** directs the Department of Corrections to prescribe rules and regulations for early release on account of good conduct and specify that a prisoner serving a sentence for attempt to commit the intentional homicide of an unborn child shall receive no more than 4.5 days of good conduct credit for each month of his or her sentence.
Indiana	**Ind. Code Ann. § 35-41-1-25** defines serious bodily injury as bodily injury that causes the loss of a fetus. **Ind. Code Ann. § 35-42-1-3** defines voluntary manslaughter as a person who knowingly or intentionally kills a fetus that has attained viability while acting under sudden heat. The law provides penalties. **Ind. Code Ann. § 35-42-1-6** defines feticide as the intentional termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus. This law does not apply to an abortion performed in compliance with Ind. Code § 16-34. **Ind. Code Ann. § 35-42-2-1.5** defines aggravated battery as a person who knowingly or intentionally inflicts injury on a person that causes the loss of a fetus. **Ind. Code Ann. § 35-50-2-9(b)(16)** allows the state to seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging the victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability.
Iowa	
Kansas*	**Kan. Stat. Ann. § 21-3452 "Alexa's Law"** makes it possible to charge someone with murder, manslaughter, vehicular homicide or battery for killing or harming a fetus. It provides the definition of "person" for those specific crimes, including the definition of an unborn child that includes any stage of gestation from fertilization to birth.
Kentucky	**Ky. Rev. Stat. § 532** allows the state to charge an individual with a separate crime for terminating a fetus during the commission of an act that injures or kills a pregnant woman. (2004 HB 108)

	Ky. Rev. Stat. § 507A.010 et seq. defines "person" and "unborn child". Defines fetal homicide in the first, second, third, and fourth degrees.
Louisiana*	**La. Rev. Stat. Ann. § 14:32.5** defines feticide as the killing of an unborn child by the act, procurement, or culpable omission of a person other than the mother of the unborn child. The offense of feticide shall not include acts which cause the death of an unborn child if those acts were committed during any abortion to which the pregnant woman or her legal guardian has consented or which was performed in an emergency. Nor shall the offense of feticide include acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment. **La. Rev. Stat. Ann. § 14:32.6 (2006)** defines first degree feticide as the killing of an unborn child when the offender has a specific intent to kill or to inflict great bodily harm, and includes the killing of an unborn child when the offender is engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated arson, aggravated burglary, aggravated escape, armed robbery, first degree robbery, second degree robery, cruelty to juveniles, second degree cruelty to juveniles, terrorism, or simple robbery, even though he has no intent to kill or inflict great bodily harm. **La. Rev. Stat. Ann. § 14:32.7** defines second degree feticide as the killing of an unborn child which would be first degree feticide, but the offense is committed in sudden passion or heat of blood immediately caused by provocation of the mother of the unborn child sufficient to deprive an average person of his self control and cool reflection; and is defined as feticide committed without any intent to cause death or great bodily harm. **La. Rev. Stat. Ann. § 14:32.8 (2006, 2008)** defines third degree feticide as the killing of an unborn child by criminal negligence; and is defined as the killing of an unborn child caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance whether or not the offender had the intent to cause death or great bodily harm whenever specified conditions occur and such conditions were a contributing factor to the killing (2008 LA SB 382). **La. Rev. Stat. Ann. § 14:2 (7), (11)** defines "person" as a human being from the moment of fertilization and implantation and also includes a body of persons, whether incorporated or not. "Unborn child" means any individual of the human species from fertilization and implantation until birth.
Maine	**Me. Rev. Stat. Ann. tit. 17-A § 208-C** creates the Protect Unborn Children from Acts of Violence act; defines the crimes of murder, felony murder, assault, aggravated assault and elevated aggravated assault against an unborn child. Punishment for these crimes is consistent with penalties for the same offenses committed against persons as defined in the Maine Revised Statutes, Title 17-A, chapter 9. These crimes against unborn children do not apply to an abortion to which the pregnant woman has consented, nor do they apply to acts committed pursuant to usual and customary standards of medical practice. (2005 Me. Laws, Chap. 408, LD 262)
Maryland	**Md. Criminal Law Code Ann. § 2-103 (2005)** establishes that a prosecution may be instituted for murder, manslaughter, or unlawful homicide under certain conditions for an act or failure to act that causes the death of a viable fetus.
Massachusetts **	**Commonwealth vs. Lawrence, 536 N.E.2d 571 (Mass. 1973)** affirms the conviction for murder of a woman and involuntary manslaughter of her 27-week-old fetus. **Commonwealth vs. Cass, 467 N.E.2d 1324 (Mass. 1984)** rules that a viable fetus is within the ambit of the term "person" in the vehicular homicide statute. The case refers to Mass. Gen Law, ch. 90 § 24G (vehicular homicide).
Michigan	**Mich. Comp. Laws Ann. § 750.322** defines manslaughter as the willful killing of an unborn quick child by any injury to the mother of such child. **Mich. Comp. Laws Ann. § 750.323** declares that any person who administers medicines, drugs or substances to any woman pregnant with a quick child or uses an instrument or other means to destroy the child, unless the same shall have been necessary to preserve the life of the mother, is guilty of manslaughter.
Minnesota*	**Minn. Stat. § 609.205 and § 609.266 et seq.** defines unborn child. The law provides penalties for an assault to a pregnant woman and subsequent harm to an unborn child. The law also defines an assault of an unborn child and provides penalties. The law defines murder of an unborn child in the first, second and third degrees and provides penalties. **Minn. Stat. §609.21 (2004)** declares that a person is guilty of criminal vehicular operation if an unborn child is killed in the act. The law also states that as punishment, this person may be sentenced to imprisonment for not more than ten years or payment of a fine of not more than $20,000, or both. (SB 58)
Mississippi	**Miss. Code Ann. § 97-3-37** defines manslaughter to include the willful killing of an unborn quick child by an injury to the mother of such child. (SB 2869)

	Miss. Code Ann. § 11.7.13 includes the death of a fetus in wrongful death statute as murder or manslaughter. This law excludes acts committed by the mother, a medical procedure performed by a medical professional or lawfully prescribed medication. **Miss. Code Ann. § 97-3-19** defines murder to include murder that is done with deliberate design to effect the death of an unborn child.
Missouri	
Montana	-
Nebraska*	**Neb. Rev. Stat. § 28-388 et seq.** creates the Homicide of the Unborn Child Act. The law defines premeditation and unborn child. The law defines murder of an unborn child in the first degree, murder in the second degree, and manslaughter. The law also provides for penalties for vehicular homicide. Amended in 2003 to change provisions relating to driving under the influence and amends provisions regarding motor vehicle homicide. Provides a penalty for motor vehicle homicide of an unborn child and recognizes an action for an unborn child in wrongful death cases.
Nevada	**Nev. Rev. Stat. § 200.210** defines manslaughter as a person who willfully kills an unborn quick child by any injury committed upon the mother of the child.
New Hampshire	-
New Jersey	-
New Mexico	-
New York	-
North Carolina	**N.C. Gen. Stat. § 14-18.2** relates to injury to pregnant woman. The law states that any person, who in the commission of a felony, causes injury to a woman, knowing the woman to be pregnant, in which injury results in the miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed.
North Dakota*	**N.D. Cent. Code, § 12.1-17.1-01 et seq.** defines abortion, person and unborn child. The law defines the murder and manslaughter of an unborn child and provides penalties.
Ohio*	**Ohio Rev. Code Ann. § 2903.01 et seq.** defines aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, aggravated vehicular assault, felonious assault, aggravated assault, assault, negligent assault. The law applies to a person which includes an "unborn member of the species *Homo sapiens*, who is or was carried in the womb of another."
Oklahoma*	**Okla. Stat. Ann. tit. 21 § 691 (2006)** defines unborn child as a human being. Homicide does not include legal abortion or instances of death during normal medical, therapeutic or diagnostic testing. A mother shall not be prosecuted for the death of an unborn child unless the death was a result of criminal behavior. **Okla. Stat. Ann. tit. 21 § 714, 652 (2005)** revises civil wrongful death statutes to include the death of an unborn child; revises the provisions governing the intentional shooting with intent to kill another and any assault and battery upon another to add an unborn child; provides the penalty reference for anyone who willfully kills an unborn child; provides an exemption for a legal abortion, or the usual and customary diagnostic testing or therapeutic treatment; adds laws on the performance of an abortion; requires abortion alternative materials. **Okla. Stat. Ann. tit. 21 § 723 (2005)** specifies that any offense committed pursuant to the provisions of Section 652 and 713 of Title 21, does not require proof that the person engaging in the conduct had knowledge or should have had the knowledge that the victim of the underlying offense was pregnant or that the offender intended to cause the death or bodily injury to the unborn child. **2008 Okla. Sess. Laws, Chap 318 (2008)** amends Okla. Stat. Ann. tit. 21 § 644 to provide penalties for domestic abuse against pregnant women. The law states that any person who abuses a woman with knowledge of her pregnancy and causes a miscarriage or harms the unborn child is guilty of a felony. (HB 1897)
Oregon	-
Pennsylvania*	**Pa. Cons. Stat. Ann. tit. 18 § 106, § 1102 and § 2604** define first degree, second degree and third degree murder of an unborn child and provides penalties. **§ 1102** was amended in 2008 to provide for the sentence of the first degree murder and second degree murder or an unborn child (2008 HB 1845). **Pa. Cons. Stat. Ann. tit. 18. § 2603** defines homicide of an unborn child. An individual commits criminal homicide of an unborn child if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child. **Pa. Cons. Stat. Ann. tit. 18 § 2605** defines voluntary manslaughter of an unborn child and provides for penalties.
Rhode Island	**R.I. Gen. Laws § 11-23-5** defines "quick child." The willful killing of an unborn quick child by any injury to the mother of that child is deemed manslaughter.
South Carolina	**S.C. Code Ann § 16-3-1083** enacts the Unborn Victims of Violence Act of 2006 to provide that a person who commits a violent crime that causes the death of, or injury to, a child in utero is guilty of a separate offense and that

	the person must be punished as if the death or injury occurred to the unborn child's mother. The law also provides that the person must be punished for murder or attempted murder if the person intentionally killed or attempted to kill the unborn child. **State vs. Horne, 319 S.E.2d 703 (S.C. 1984)** reversed voluntary manslaughter conviction, holding that the killing of a viable human being in utero did not constitute a criminal homicide. The case refers to S.C. Code Ann. § 16-3-10. **State vs. Ard, 505 S.E.2d328 (S.C. 1998)** held, in relation to a murder conviction, that the terms "person" and "child" in S.C. Code Ann. § 16-3-20 (C)(a) included a viable fetus.
South Dakota*	**S.D. Codified Laws Ann. § 22-16-41** defines vehicular homicide, which includes the death of an unborn child. Amended in 2003 to revise provisions concerning court suspensions and revocations of driver licenses; relates to driving while under the influence of alcohol or controlled substances and causing the death of another person, including an unborn child (2006 HB 1163). **S.D. Codified Laws Ann. § 22-16-1.1 et seq.** defines fetal homicide which refers to a person who knew, or reasonably should have known, that a woman bearing an unborn child was pregnant and caused the death of the unborn child without lawful justification. The law provides for penalties. **S.D. Codified Laws Ann. § 22-16-4** defines homicide as murder in the first degree to include the death of a person or any other human being, including an unborn child.
Tennessee	**Tenn. Code Ann. § 39-13-214 and § 39-13-215** defines "another" and "another person" as a viable fetus of a human being when any such term refers to the victim of any act made criminal by the provisions of the law. The law defines reckless homicide as the reckless killing of another.
Texas*	**Tex. Penal Code Ann. § 1.07** relates to the death of or injury to an unborn child and provides penalties. The law defines an individual as a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.
Utah *	**Utah Code Ann. § 76-5-201 et seq.** declares that a person commits criminal homicide if he intentionally, knowingly, recklessly causes the death of another human being, including an unborn child.
Vermont	-
Virginia	**Va. Code § 18.2-32.2 (2004)** declares that any person who unlawfully, willfully, deliberately, maliciously and with premeditation kills a fetus is guilty of a Class 2 felony. The law also provides penalties.
Washington	**Wash. Rev. Code Ann. § 9A.32.060** declares that a person is guilty of manslaughter in the first degree when he intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.
West Virginia *	**W. Va. Code § 61-2-30** recognizes an embryo or fetus as a distinct unborn victim of certain crimes of violence against a person, including homicide and manslaughter.
Wisconsin*	**Wis. Stat. § 940.04 (2) et seq.** declares that any person who intentionally destroys the life of an unborn quick child; or causes the death of the mother by an act done with intent to destroy the life of an unborn child is guilty of homicide. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.
Wyoming	-

** Indicates states that have fetal homicide laws that apply to the earliest stages of pregnancy ("any state of gestation," "conception," "fertilization" or "post-fertilization").*

*** Massachusetts established fetal homicide/manslaughter laws only through case law, not through legislation.*

Source: National Conference of State Legislatures and StateNet, 2008.
Note: List may not be comprehensive, but is representative of state laws that exist. NCSL appreciates additions and corrections.

Resources:

States expand fetal homicide laws
Stateline.org article, August 22, 2006

Do Fetal Rights Limit Mother's Rights
This article appeared in the June 2002 issue of NCSL's magazine, *State Legislatures*, and includes information on fetal homicide.

Maternal and Child Health: Snapshot for Legislators (June 2004)

This booklet is intended to help legislators and legislative staff gain a better understanding of issues, resources and programs related to maternal and child health.

Links to Pro-Choice and Pro-Life Organizations:

- Guttmacher Institute http://www.guttmacher.org/
- Americans United for Life (AUL) http://www.unitedforlife.org
- Center for Reproductive Law and Policy (CRLP) http://www.crlp.org
- National Abortion and Reproductive Rights Action League (NARAL) http://www.naral.org
- National Right to Life Committee (NRLC) http://www.nrlc.org

NOTE: NCSL provides links to other websites for information purposes only. Providing these links does not necessarily indicate NCSL's support or endorsement of the site.

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Children, Adolescent, and Women's Health Policy Topic List

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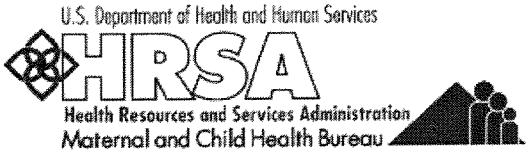

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