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HB 167

State Homicide Laws That Recognize Unborn Victims (Fetal Homicide)

National Right to Life Committee
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What appears below is a summary of the laws of the 35 states that recognize the unlawful killing of an unborn child as homicide in at least some circumstances. The federal Unborn Victims of Violence Act, enacted April 1, 2004, covers unborn victims of federal and military crimes.

Full-Coverage Unborn Victim States (25)

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

Alabama: Legislation taking effect July 1, 2006 (HB 19) amended Section 13A-6-1 of the Code of Alabama to include "an unborn child in utero at any stage of development, regardless of viability" as a "person" and "human being" for purposes of the state laws dealing with murder, manslaughter, criminally negligent homicide, and assault.

Alaska: Alaska Statutes 11.41 (as amended by Senate Bill 20, enacted June 16, 2006) establishes the crimes of "murder of an unborn child," "manslaughter of an unborn child," "criminally negligent homicide of an unborn child," and "assault of an unborn child." Alaska Statutes 11.81.900(b) defines "unborn child" as "a member of species Homo sapiens, at any stage of development, who is carried in the womb."

Arizona: The "unborn child in the womb at any stage of its development" is fully covered by the state's murder and manslaughter statutes. For purposes of establishing the level of punishment, a victim who is "an unborn child shall be treated like a minor who is under twelve years of age." Senate Bill 1052, signed into law on April 25, 2005, amending the following sections of the Arizona Revised Statutes: 13-604, 13-604.01, 13-703, 13-1102, 13-1103, 13-1103, 13-1104, 13-1105, 13-4062, 31-412, 41-1604.11 and 41-1604.13.

Georgia: Legislation taking effect July 1, 2006 (SB 77) recognizes an "unborn child" (defined as "a member of the species homo sapiens at any stage of development who is carried in the womb") as a victim of the offenses of feticide, voluntary manslaughter of an unborn child, assault of an unborn child, and battery of an unborn child. (Official Code of Georgia Annotated, Sections 16-5-20, 16-5-28, 16-5-29, 16-5-80)

Legislation (SB 529) taking effect July 1, 2008 recognizes the crimes of "feticide by vehicle" in the first and second degree. (Section 40-6-393.1)

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.

Kansas: Under "Alexa's Law," signed into law on May 9, 2007, as part of HB 2062, effective July 1, 2007, an "unborn child," meaning "a living individual organism of the species *homo sapiens*, in utero, at any stage of gestation from fertilization to birth," is defined as a "person" and a "human being" for the purposes of the Kansas statutes against first degree murder, second degree murder, capital murder, voluntary manslaughter, involuntary manslaughter, vehicular homicide, and numerous battery offenses.

Kentucky: Since February, 2004, Kentucky law establishes a crime of "fetal homicide" in the first, second, third, and fourth degrees. The law covers an "unborn child," defined as "a member of the species *homo sapiens* in utero from conception onward, without regard to age, health, or condition of dependency."

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. 750.90a through 750.90f)

Minnesota: Since 1986 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).

Mississippi: Under a law enacted May 6, 2004, and effective July 1, 2004, for purposes of enumerated state laws dealing with various types of homicide and certain other violent crimes, "the term 'human being' includes an unborn child at every stage of gestation from conception until live birth and the term 'unborn child' means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb." (SB 2869)

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) In addition, "The Assault of an Unborn Child Act," effective April 13, 2006, provides that a criminal attacker who causes "serious bodily injury" to an unborn child commits the offense of "assault on an unborn child" in the first, second, or third degree. "Unborn child" is defined as "an individual member of the species *Homo sapiens* at any stage of development in utero." (LB 57, 2006)

North Dakota: Since 1987 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*,

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 (10)

(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 unlawful killing of an "unborn quick child" is murder in the same degree as if committed against the mother. [Fla. Stat. Ann. § 782.09 (West 2005)]. Other provisions cover the killing of an "unborn quick child" as manslaughter [Fla. Stat. Ann § 782.09 (West 2005)], vehicular homicide [Fla. Stat. Ann. § 782.071 (West 1999)], and DUI manslaughter [Fla. Stat. Ann. § 316.193 (West 2005)]. Under Fla. Stat. Ann. §§ 316.193 and 782.09, the term "unborn quick child" is the same as the term "viable fetus," which is defined in the following way: "... a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures." [Fla. Stat. Ann § 782.071 (West 2005)].

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.

Maryland: Under 2005 House Bill 398, amending Section 2-103 of the Annotated Code of Maryland, signed into law on May 26, 2005 and effective October 1, 2005, "A prosecution may be instituted for murder or manslaughter of a viable fetus," if the person prosecuted "intended to cause the death of the viable fetus, intended to cause serious physical injury to the viable fetus, or wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus."

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).

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

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).

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).