INTRODUCTION

The unimaginable grief and suffering endured by Laci and Conner Peterson’s family was, largely due to their own courageous advocacy, transformed into a blow for justice on behalf of unborn victims of criminal violence. In April 2004, President George W. Bush signed the federal “Unborn Victims of Violence Act,” more commonly known as “Laci and Conner’s Law,” filling an important gap in federal law. Federal prosecutors may now charge an assailant in the death of an unborn child when the death occurs on federal property, such as military installations, or when the death stems from the commission of another federal crime.

More importantly, Laci and Conner lived in a state, California, where prosecutors could press murder charges for the deaths of both this young mother and her unborn son. Thirty-six states carry such provisions in their criminal law, often referred to as “fetal homicide” laws. As for the remaining 14 states, Laci Peterson’s mother, Sharon Rocha, has said it best, that they are in effect telling grieving families that “innocent victims [like Conner] are not really victims – indeed that they never existed at all.”

Twenty years ago, the picture was even more bleak. The vast majority of states followed the outdated “born-alive” rule, requiring an unborn victim to be born after the assault, and then to die, before prosecutors could press charges. Thanks in large part to research and advocacy by Clarke D. Forsythe of Americans United for Life, this picture has changed.

The purpose of the “Crimes Against the Unborn Child Act” is to overturn the common law born-alive rule, to criminalize conduct causing the death of an unborn child, and to protect the unborn from conception until birth. Notably, this model law is not directed at abortion which, under current constitutional doctrine, is protected.

For more information and drafting assistance, please contact AUL’s Legislative Coordinator (202) 741-4907 or Legislation@AUL.org.

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Section 1. Title.

This Act may be known and cited as the “Crimes Against the Unborn Child Act” [or, alternatively, the “Unborn Victims of Violence Act”].

Section 2. Legislative Findings and Purposes.¹

(a) A significant loophole exists in [Insert name of State]’s criminal law, denying protection to pregnant women and certain children. Currently, an offender may not be held criminally responsible for the harm caused to a child unless that child has first been born alive. Thus, an unborn child is completely denied protection under this State’s current criminal law.

(b) [Insert name of State] lags behind most states in this area of crime victims' protection. Thirty-six states now provide varying degrees of protection and justice for pregnant women and their unborn children who are victims of violence. Importantly, 25 states provide protection for unborn children at any stage of gestation.

(c) Recent statistics demonstrate that domestic abuse and violence against women increases during pregnancy. It is estimated that one in five women will be abused during pregnancy. Moreover, a study in the Journal of the American Medical Association found that, for example, in the State of Maryland, a pregnant woman is more likely to be a victim of a homicide than to die of any other cause.

(d) Compounding this tragedy is the loophole in [Insert name of State]’s current law, which denies effective protection and remedy to women, their children, and their extended families, telling them, in effect, that their loved ones never existed at all. When a woman makes a conscious choice to keep her baby and has that choice violently taken away from her by a brutal perpetrator, justice – through comprehensive, effective, and timely legal protections – must be available to them.

¹ Much of the text of the Legislative Findings and Purposes section is modeled after language contained in legislation recently introduced in New York. See e.g. NY AB 4897 (2009).
(e) The federal "Unborn Victims of Violence Act," enacted in April 2004, is limited, applying only to unborn children injured or killed during the course of specified federal crimes of violence. It does not reach many crimes of violence committed against pregnant women and their unborn children – crimes which are most commonly prosecutable only under state criminal laws.

(f) Thus, it is the intent of the [Legislature] that the affirmative right of a pregnant woman to carry her child to term be protected, and that perpetrators of crimes against pregnant women and their unborn children be held accountable for their crimes.

Section 3. Amendment of State Criminal Code.

For purposes of the offenses of homicide, assault, and battery [Designate the specific crime(s) and section(s) of the state criminal code to be amended], the term “person” [or other appropriate term(s) as used in the state’s criminal code] includes an unborn child at every stage of gestation from conception until live birth.

Section 4. Definitions.

For the purposes of this Act only:

(a) “Conception” means the fusion of a human spermatozoon with a human ovum.

(b) “Gestation” means the time during which a woman carries an unborn child in her womb, from conception to birth.

(c) “Unborn child” means the offspring of human beings from conception until birth.

Section 5. Exclusions.

Nothing in this Act shall apply to an act committed by the mother of an unborn child; to a medical procedure performed by a physician or other licensed medical professional at the request of a mother of an unborn child or the mother's legal guardian; or to the lawful dispensation or administration of lawfully prescribed medication.

Section 6. Right of Intervention.

The [Legislature], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.
Section 7. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 8. Effective Date.

This Act takes effect on [Insert date].
STATE OF THE STATES: WHERE ARE WE NOW?

FETAL HOMICIDE

Thirty-six states treat the killing of an unborn child as a form of homicide:

- Twenty-six states define the killing of an unborn child at any stage of gestation as a form of homicide: AL, AK, AZ, GA, ID, IL, IN, KS, KY, LA, MI, MN, MS, MO, NE, ND, OH, OK, PA, SC, SD, TX, UT, VA, WV, and WI.

- One state defines the killing of an unborn child after the embryonic stage (seven to eight weeks) as a form of homicide: CA.

- One state defines the killing of an unborn child after 12 weeks of gestation as a form of homicide: AR.

- Four states define the killing of an unborn child after “quickening” (discernible movement within the womb) as a form of homicide: FL, NV, RI, and WA.

- Three states define the killing of an unborn child after viability as a form of homicide: MD, MA, and TN.

- One state defines the killing of an unborn child after 24 weeks gestation as a form of gestation: NY.
More detailed information about the need and justification for laws protecting the unborn from criminal violence can be found in AUL’s annual publication *Defending Life 2010: A State by State Legal Guide to Abortion, Bioethics, and the End of Life.*

*Defending Life 2010* is available online at AUL.org or for purchase at Amazon.com.

For further information regarding this or other AUL policy guides, please contact:

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