



**U.S. Department of Justice  
Office of Legislative Affairs**

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Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 24 2004

The Honorable Mike DeWine  
United States Senate  
Washington, DC 20510

Dear Senator DeWine:

The Department of Justice is happy to respond to your March 24, 2004, inquiry concerning the substitute amendment proposed by Senator Feinstein to H.R. 1997, the Unborn Victims of Violence Act, which the Senate is to consider shortly.

The Department has major concerns with Senator Feinstein's substitute amendment ("substitute"). H.R. 1997, as introduced, prohibits conduct that results in injury or death to the unborn child, which conduct is punished in the same way as it would be punished by federal law if the object of the conduct had been born. Because the substitute removes any reference to the unborn child, the prohibited conduct in the substitute cannot be the injury or death of the child. Instead, the offenses it apparently creates are "termination of a pregnancy" and "interruption of the normal course of the pregnancy."

However, the substitute then states that it prohibits prosecution for "conduct relating to any medical treatment of the pregnant woman, or matters related to the pregnancy." Because "termination of a pregnancy" and "interruption of the normal course of the pregnancy" are both "matters related to the pregnancy," a court interpreting the exception expansively, rather than reading it as only prohibiting prosecution for medical treatment related to the pregnancy that leads to termination or interruption, could come to the conclusion that there can be no prosecution for the very offenses the substitute purports to create.

Additionally, by omitting any reference to the unborn child, but retaining language contained in H.R. 1997 as introduced, the substitute appears to create an ambiguity that likely leaves an offense, could one be found, without a corresponding penalty. The substitute provides that punishment for an offense proscribed by the legislation is the same as the punishment provided under Federal law had the "injury or death occurred" to the pregnant woman.

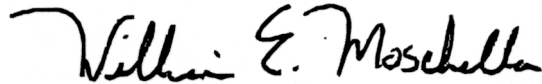
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In H.R. 1997, the object of the "injury or death" was the unborn child. However, in the substitute, the "injury or death" provision has no object, because the only victim under the substitute is the woman herself. Because there are currently no penalties in federal law for the offenses of "termination of a pregnancy" or the "interruption of the normal course of pregnancy," there would be no penalty even assuming that a successful prosecution could be brought.

We appreciate the opportunity to provide these comments. Please do not hesitate to contact this office should you have further questions on this issue.

Sincerely,

A handwritten signature in black ink that reads "William E. Moschella". The signature is written in a cursive style with a large, sweeping initial 'W'.

William E. Moschella

Assistant Attorney General