

Key Facts on the Unborn Victims of Violence Act (“Laci and Conner’s Law) (H.R. 1997)

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For more information on unborn victims of violence (or “fetal homicide” laws), visit the NRLC website at http://www.nrlc.org/Unborn_victims/index.html

! The Unborn Victims of Violence Act (also known as “Laci and Conner’s Law”), signed into law by President George W. Bush on April 1, 2004, was enacted after a five-year effort led by the National Right to Life Committee (NRLC). This bill was sponsored in the House of Representatives by Congresswoman Melissa Hart (R-Pa.). A Senate companion bill (S. 1019) was sponsored by Senator Mike DeWine (R-Ohio). The House of Representatives approved the bill on February 26, 2004 (254-163) and the Senate approved it on March 25, 2004 (61-38).

! The Unborn Victims of Violence Act recognizes that when a criminal attacks a pregnant woman, and injures or kills both her and her unborn child, he has claimed *two* human victims. The bill would establish that if a “child in utero” is injured or killed during the commission of certain federal crimes of violence, then the assailant may be charged with a second offense on behalf of the second victim, the unborn child. The exact charge would depend on which federal law is involved, the degree of harm done to the child, and other factors. The law applies this two-victim principle to 68 existing federal laws dealing with acts of violence. These laws cover a considerable number of activities defined as federal crimes wherever they occur, including interstate stalking, kidnapping, bombings, and offenses related to major drug trafficking, and attacks on federal employees. In addition, these laws cover federal geographical jurisdictions, such as federal lands and tribal lands, and the military justice system.

! Prior to enactment of this law, an unborn child was *not* recognized as a victim with respect to violent crimes. Thus, for example, if a criminal beat a woman on a military base, and killed her unborn child, he would be charged only with the battery against the woman, because the unborn child’s loss of life was not recognized by the law. Likewise, a bombing that injured a woman and killed her unborn child was not recognized as involving any loss of human life. This gap in federal law resulted in grave injustices, some real-world examples of which were described by former Congressman Charles Canady (R-Fl.) at a July 21, 1999 House Judiciary Constitution Subcommittee hearing on the issue. To read Congressman Canady’s summary statement, go to: <http://nrlc.org/news/1999/NRL899/cana.html>.

! The law covers the “child in utero,” defined as “a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The law explicitly provides that it *does not apply* to any abortion to which a woman has consented, to any act of the mother herself (legal or

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illegal), or to any form of medical treatment. The National Right to Life Committee strongly supported enactment of the law because it achieved other pro-life purposes that are worthwhile in their own right: The protection of unborn children from acts of violence *other than* abortion, the recognition that unborn children may be victims of such violent criminal acts, and the just punishment of those who harm unborn children while engaged in federally prohibited acts of violence.

! As of March 31, 2004, twenty-nine (29) states have laws that allow a homicide charge to be brought for the unlawful killing of an “unborn child” or “fetus” in a *state* crime. Of these, 16 provide this protection throughout the period of in utero development, while the other 13 provide protection during certain specified stages of development, which varies from state to state. These laws are sometimes referred to as “fetal homicide” laws. For detailed information on state unborn victims laws, see the NRLC factsheet “State Homicide Laws That Recognize Unborn Victims,” at: http://www.nrlc.org/Unborn_victims/Statehomicidelaws092302.html

! Enactment of the federal Unborn Victims of Violence Act did not supersede state unborn victims laws, nor did it apply such a law for state crimes in a state that has not enacted one. Rather, the federal law applies only to unborn children injured or killed during the course of the *federal* crimes of violence that are listed in the law.

! It is well established that unborn victims laws (also known as “fetal homicide” laws) do *not* conflict with the Supreme Court’s pro-abortion decrees (*Roe v. Wade*, etc.). The state laws mentioned above have had no effect on the practice of legal abortion. Criminal defendants have brought many legal challenges to the *state* unborn victims laws, based on *Roe* and other constitutional arguments, but all such challenges have been rejected by state and federal courts. To cite just one example, the Minnesota Supreme Court ruled: “*Roe v. Wade* . . . does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus.” [*State v. Merrill*, 450 N.W.2d 318 (Minn. 1990)]. For a summary of these court decisions, see: http://www.nrlc.org/Unborn_victims/statechallenges.html

! Moreover, in the 1989 case of *Webster v. Reproductive Health Services*, the U.S. Supreme Court refused to invalidate a Missouri statute 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* (including criminal 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 ruled that Missouri’s law “impermissibl[y]” adopted “a theory of when life begins,” and blocked its enforcement, but the Supreme Court nullified that ruling, allowing the law to go into effect so long as the state did not use it to restrict abortion.

! In Congress, some opponents objected to the bill’s recognition of the “child in utero” as a member of the human family who can be harmed in a crime. Yet, on July 25, 2000, the House passed on a vote of 417-0 a bill that contained *the same definition* of “child in utero” and that embodied the same basic legal principle. That bill, the Innocent Child Protection Act, said that no

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state or federal authority may “carry out a sentence of death on a woman while she carries a child in utero. . . . ‘child in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The principle embodied in the Innocent Child Protection Act was obvious – ***carrying out the execution would take two human lives, including one convicted of no crime.*** The Unborn Victims of Violence Act extended that same principle to the rest of the federal criminal code, recognizing that when a criminal attacks a woman, injuring or killing her *and* injuring or killing her unborn child, he has claimed *two* victims.

! The Unborn Victims of Violence Act has been vehemently attacked by pro-abortion groups such as NARAL, Planned Parenthood, and the ACLU. Even though this law deals with acts of violence other than abortion, the pro-abortion lobby’s ideology apparently compels it to deny the very existence of unborn human beings in *any* area of the law. Senator Dianne Feinstein (D-Ca.) and Congresswoman Zoe Lofgren (D-Ca.), who were allied with these groups, offered “single-victim substitute” proposals. These bills would have codified the doctrine that a crime against a pregnant woman has only a single victim, while also creating a new federal crime of “interruption to the normal course of the pregnancy.” Supporters of the Unborn Victims of Violence Act strongly opposed this “single-victim” doctrine, arguing that when an unborn child loses his or her life in a criminal attack, the parents and society mourn the death of a separate individual, rather than viewing it simply as an additional injury to the mother. Both houses rejected the single-victim substitute amendments. In the Senate, the Feinstein Substitute Amendment failed 49-50 (March 25, 2004).

! Arguments in favor of the single-victim proposals were internally inconsistent and illogical, and the proposals themselves may have been legally invalid. Supporters of the single-victim approach insisted that when a criminal *injures* a mother and *kills* her unborn child, there has been only a compound injury to the mother but no loss of any human life – yet, the single-victim substitutes would have imposed a penalty (up to life in prison) commensurate with loss of human life. Also, advocates of the single-victim approach argued that when a criminal assailant kills a pregnant woman, the assailant should receive double punishment: Once for killing the mother and then again for depriving her of her “pregnancy” – but if there is only *one* victim, it is difficult to see why this would not be a duplicative criminal charge, since legally speaking a woman who has been murdered cannot herself suffer an additional “loss,” nor can the law punish as if for two homicides if there was only a single victim.

! While the Unborn Victims of Violence Act and the single-victim substitutes were being considered in Congress, Sharon Rocha – whose daughter Laci and unborn grandson Conner were murdered in California – wrote that “adoption of such a single-victim amendment would be a painful blow to those, like me, who are left alive after a two-victim crime, because Congress would be saying that Conner and other innocent unborn victims like him are not really victims – indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun.”

! Some opponents of the Unborn Victims of Violence Act charged that the law would punish harm to the unborn child while “utterly ignoring the harm to the pregnant woman.” Others charged that the law would “separate the mother from her fetus.” These objections reflect misunderstandings or

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misrepresentations of how the law is structured. In reality, the law allows the government to prosecute for harm to an unborn child *only* if the offender violated one of 68 enumerated federal laws *that already cover the mother*. Thus, the prosecutor would charge the offender first for the harm to the mother, under any of the existing federal laws dealing with crimes of violence, then a second time for the harm done to the unborn child, under the Unborn Victims of Violence Act.

! Some opponents of the law have charged that it would allow defendants to be convicted without a showing of intent to do harm. This is false. It is necessary to *prove beyond a reasonable doubt* that a defendant had intent to do criminal harm towards somebody. *If* such criminal intent towards one victim (most often, the mother) is proved, *then* the defendant also can be held responsible for the harm done to the unborn baby, or to any others, under the legal doctrine of “transferred intent.” As the House Judiciary Committee explained in its official report on the bill, transferred intent is a long-established principle in the law. (Under this doctrine, for example, if a man shoots at a woman with intent to kill, and the bullet misses her, passes through a wall, and kills a child who the shooter did not know was there, he can be convicted of the homicide of the child.) **As the Minnesota Supreme Court ruled in upholding the Minnesota unborn victims law, “The possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude.”** [*State v. Merrill*, 450 N.W.2d 318 (Minn. 1990)].

! In order to win a conviction under the law, it would be necessary for the prosecution to (1) *prove beyond a reasonable doubt* that a member of the species homo sapiens existed and was “carried in the womb,” which would be utterly impossible until after the embryo had implanted in the womb and sent out the chemical signals that announce his or her presence (i.e., after implantation); and (2) *prove beyond a reasonable doubt* that a defendant acted with criminal malice towards some victim (most often, the mother) and violated one of the federal laws dealing with crimes of violence; and (3) *prove beyond a reasonable doubt* that the defendant’s criminal conduct *caused* the death of the child in utero. The mere possibility or even the strong likelihood that a defendant’s criminal conduct caused the death of a child in utero would not suffice, because the law requires *proof beyond a reasonable doubt*.