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# Crimes Against the Preborn Child Act

*Model Legislation & Policy Guide*



*Advancing the Human Right to Life  
in Culture, Law, and Policy*

# INTRODUCTION

The unimaginable grief and suffering endured by Laci and Conner Peterson’s family was transformed into a blow for justice on behalf of preborn victims of criminal violence, largely thanks to their own courageous advocacy. 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 a preborn child when the death occurs on federal property, such as a military installation, or when the death stems from the commission of another federal crime.

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

Thirty years ago, the picture was even more bleak. The vast majority of states then followed the outdated “born-alive” rule, requiring the child to be born after the assault and then to die before prosecutors could press charges.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 Forsythe of Americans United for Life, this picture has changed.

The purpose of the *Crimes Against the Preborn Child Act* is to overturn the common law born-alive rule, to criminalize conduct causing the death of a preborn child, and to protect preborn children from conception until birth. Notably, this model language is not directed at abortion which, under current constitutional doctrine, is protected.

For more information or drafting assistance, please contact AUL at [Legislation@aul.org](mailto:Legislation@aul.org).

# CRIMES AGAINST THE PREBORN CHILD ACT

HOUSE/SENATE BILL No. \_\_\_\_\_  
By Representatives/Senators \_\_\_\_\_

## Section 1. Title.

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

## Section 2. Legislative Findings and Purposes.

- (a) The [Legislature] of the State of [Insert name of State] finds that:
- (1) A significant loophole exists in [Insert name of State]’s criminal law, denying adequate legal 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, a preborn child is completely denied protection under current provisions of this State’s criminal law.
  - (2) [Insert name of State] lags behind most states in this area of crime victims’ protection. Thirty-nine (39) states now provide varying degrees of protection and justice for pregnant women and their preborn children who are victims of criminal violence. Importantly, thirty (30) states provide protection for preborn children at any stage of development or gestation.
  - (3) Recent statistics demonstrate that domestic abuse and violence against women increases during pregnancy. It is estimated that one (1) in five (5) 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.]
  - (4) Compounding this tragedy is the loophole in [Insert name of State]’s current law, which denies effective protection and remedy to women, their preborn children, and their extended families, telling them, in effect, that their loved ones never existed at all.

(5) The federal *Unborn Victims of Violence Act*, enacted in April 2004, is limited, applying only to preborn 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 preborn children: crimes which are most commonly prosecutable only under state criminal laws.

(b) Based on the findings in subsection (a), the purpose of this Act is to protect the affirmative right of a pregnant woman to carry her child to term and to hold perpetrators of crimes against pregnant women and their preborn children fully 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 a preborn child at every stage of gestation from conception until live birth.

### **Section 4. Definitions.**

As used in 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 a preborn child in her womb, from conception to birth.
- (c) “**Preborn child**” means the offspring of human beings from conception until birth.

### **Section 5. Exclusions.**

Nothing in this Act shall apply to:

- (a) An act committed by the mother of a preborn child;
- (b) A lawful medical procedure performed by a physician or other licensed medical professional at the request of a mother of a preborn child or the mother's legal guardian; or

(c) 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 to 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: FETAL HOMICIDE

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Thirty-nine states treat the killing of a preborn child as a form of homicide:

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

Two states define the killing of a preborn child after the embryonic stage (seven to eight weeks) as a form of homicide: CA and MT.

Three states define the killing of a preborn child after “quickening” (discernible movement within the womb) as a form of homicide: NV, RI, and WA.

One state defines the killing of a preborn child after 20 weeks gestation as a form of homicide: NH.

Two states define the killing of a preborn child after viability as a form of homicide: MD and MA.

One state defines the killing of a preborn child after 24 weeks gestation as a form of homicide: NY.

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

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