

THE STATUS OF THE FETUS: AN EXAMINATION OF FETAL PERSONHOOD AND FETAL  
PROTECTION IN THE UNITED STATES

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**ABSTRACT**

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The treatment of fetuses in U.S. criminal law is analyzed through examination of the history of fetal personhood, the landmark case *Roe v. Wade*, state statutes, and case law. Comprehensive tables are provided. The use of laws to prosecute pregnant women is explored. Predictions for the future of abortion and fetal victims laws are provided.

## CHAPTER I

### INTRODUCTION

For millennia, the world's greatest minds have struggled to determine when life begins. Countless debates have centered on the issue of when a fertilized egg actually becomes a "person." Does the transformation occur at the moment of conception? Is there an instant during gestation when the fetus ceases being a collection of cells and becomes a person? Or, does a fetus become a person once it is released from the bounds of its mother's body and inhales its first breath? And when does the fetus become a person endowed with constitutional rights and protections? These questions lie at a unique intersection of law, morality, religion and science, and evoke strong emotion from proponents on all sides of the argument (Reitman, 2002)

This paper will examine the history of fetal personhood as it has led to the development of current laws. The statutes and case law of the federal and state governments will be explained, with emphasis placed on the types of laws passed and the influences behind them. Case studies from the development of the law in representative states will be provided. Finally, predictions will be made about the future of fetal victim laws in the next decade

The eloquent observation with which Justice Blackmun began his ground breaking opinion in *Roe v. Wade*, 410 U.S. 113 (1973), applies not only to abortion but also to any of the many facets of life and law where fetal personhood is debated:

One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion. (*Roe v. Wade*, 410 U.S. 113 at 116)



People feel passionately about this subject because of its complexity and the fact that it touches deeply on all the aforementioned aspects of a person's history. This area of the law cannot be "free of emotion and of predilection" as Justice Blackmun so desired (410 U.S. 113 at 116).

These laws develop because of, and in spite of, great emotion.

Personhood is a vital issue in criminal law both inside and outside the context of abortion, because it defines who can be considered a victim of a crime. To be a victim, one must first be a "person." Historically, personhood in this sense has most often been used to determine whether or not abortion is legally and/or morally acceptable. While abortion remains a central feature of the personhood debate, other issues related to fetal harm have recently joined the fray. Recently, the issue of third party fetal homicide reappeared prominently in the national consciousness with the disappearance of Laci Peterson, who was eight and one half months pregnant when she vanished from her California home on Christmas Eve, 2002. Scott Peterson was subsequently convicted of the double murder of his wife and their unborn son Conner, and received a death sentence ("Peterson Sentenced," 2005).

Laws originally created to protect women and fetuses from outside harm have been interpreted more broadly by some prosecutors and judges and have been applied to women in regard to the fetuses they carry. This first began as a side effect of the "War on Drugs," but it has continued for decades, and pregnant women have been facing an increasingly wide array of criminal charges for engaging in behaviors and actions deemed harmful to the fetus.

Fetal laws in America are currently in a state of shaky equilibrium, with powerful forces operating on both sides. Pro-life and pro-choice organizations lobby fervently for their causes, creating scripts for the real life melodramas that play out on televisions across the country. Every year new laws are being passed that further expand the theoretical personhood of fetuses while ironically, at the same time, *Roe* remains the law of the land. With every election the government's balance of power is restructured and the chance of a significant shift in the nation's approach becomes more possible. The ultimate question is, which way will it go?

## CHAPTER II

### HISTORY

Fetal personhood has been a controversial topic for thousands of years. As long as written law has existed, it has vacillated on the topic of abortion and when independent life begins. This chapter will examine several different historical approaches to the issue of fetal personhood, and will look more closely at the cases and legislation that led up to *Roe v. Wade*.

#### Ancient Greece

Ancient theories about personhood were centered on the concept of the soul. Heralded Greek scholars Pythagoras and Hippocrates both believed that fetuses had souls from the moment of conception. Therefore, according to their philosophies, any action that harmed the fetus should incur as serious a penalty as any other action against a living person (Schroedel, 2000). In stark contrast, Aristotle believed that personhood developed over time in three distinct stages: vegetable (until the entry of the soul 40 days after conception for men, 80 days after conception for women), animal (until birth) and rational (beyond the moment of birth). Actions harmful to the fetus, such as abortion, were only objectionable if they occurred when the fetus was past the “vegetable” stage. Aristotle supported early-term abortions as a method of birth control and as a way of limiting the burgeoning population. His beliefs were an expansion of Plato’s view that abortions were good for society under certain conditions. Both Plato’s and Aristotle’s approaches toward personhood were primarily concerned with the Grecian state’s strength and well being, rather than the interest of the woman or fetus (Schroedel, 2000).

#### Hebrew Law/ Early Christianity

The issue of personhood is not clearly delineated in Hebrew Law. The Old Testament contains scripture that has been interpreted by both pro-choice and pro-life groups as supportive of their causes. Those seeking to establish that the fetus is not a person cite Genesis 2:7 which

states that man becomes alive when God breathes life into him. Therefore, breathing is an essential feature of being alive. Since fetuses do not breathe, they are not living entities (Perry, 1997). Analysis of the Old Testament in Hebrew shows that the term most often used to describe man is *nephesh* (alternately, *nefesh*), which is the Hebrew word for human being and includes the act of breathing as part of the definition. Lastly, Exodus 21:22-24 outlines a scenario in which two men are fighting, and one man injures a woman causing her to miscarry. The injury to the fetus is deemed a property crime (a finable offense) rather than a capital offense, as would be expected if the crime were treated as an actual murder. These interpretations of the Old Testament find support in the other sacred Hebrew texts of the Talmud, such as the *Mishnah*, which explicitly approves therapeutic abortion to save the mother's life and describes the methods in detail (Perry, 1997).

In spite of the above arguments, the most commonly held sentiment is that Hebrew Law, according to the Old Testament, follows the belief that life begins at conception. Although abortion is not specifically addressed in the Old Testament, the interpretation of some scholars is that its absence is emblematic of abortion's incomprehensible nature. In other words, it was inconceivable to Hebrews that anyone would want to terminate a pregnancy. References to children throughout the Old Testament, and references to the particularly horrible nature of crimes against children, are interpreted as including both the born and the unborn (Perry, 1997). Again, analysis of the words used to describe fetuses and children can be interpreted as supportive of the theory that the fetuses were considered on par with all other human beings. In fact, the Greek word *brephos* is used to describe both born babies (Jesus, as described in Luke 2:12, 16) and unborn fetuses (John the Baptist, as described in Luke 1:41,44) (Robinson, 2004).

The New Testament is also silent on the issue of personhood as it relates to abortion, although other Christian texts explicitly define abortion as a serious crime against a living person (Schroedel, 2000). In the *Didache* (ca. A.D. 150), it is written, "you shall not procure [an] abortion, nor destroy a newborn child" (*Didache* 2:1), while Tertullian wrote in the *Apology* (c. A.D. 200), "now we allow that life begins with conception because we contend that the soul also begins from conception" (*Apology* 27). Similar sentiments are expressed in the *Epistle of*

*Barnabas* (ca. A.D. 100), and Clement of Alexandria's *Paedagogus* (Schroedel, 2000).

### Middle Ages

Some Christian theorists during the Middle Ages, such as Thomas Aquinas, developed a more Aristotelian view of personhood (which included the stages of pre-animation and post-animation). Punishments and penance were to be meted out depending on the level of culpability. This approach would influence law for a few centuries. Protestant reformer John Calvin's view was more similar to that of the Catholic Church. He called abortion a "most monstrous crime." By the 16<sup>th</sup> century, the Vatican was ready to take a more conclusive stand on the issue. Pope Sixtus V and Pope Pius IX both declared abortion a mortal sin punishable by excommunication. The Vatican's stance has not changed significantly since then, and in most Roman Catholic countries, abortion is illegal (Schroedel, 2000; Perry, 1997). By comparison, the Protestant approach to personhood was similar to Aquinas's philosophy, as causing the death of a fetus after quickening (the stage of gestation when independent fetal movement is first detected by the mother) was determined to be a more serious sin than causing the death of an early-term fetus. Quickening was determined to be significant because it indicated the fetus had its own spirit that was compelling it to move on its own. However, some Protestants, such as the Puritans, adopted an approach that was more evocative of the strictest Catholic doctrine, and outlawed all abortions (Schroedel, 2000).

### American Colonies

An inherent contradiction between homicide and abortion laws existed in the American Colonies under British common law. While the abortion of a "quickened" fetus was a crime, until the middle 1900s, common law in the United States stated that the fetus had to be "born alive" to be a person capable of being a victim of homicide. This policy originated during the 16<sup>th</sup> century, a time at which medical understanding of pregnancy was limited (Smith, 2000). To be "born alive" meant that the infant was clinically observed to be alive, a requirement considered necessary at a time when miscarriages and stillbirths were common.

Due to the high fetal death rate, for legal purposes, it was important to determine that the death occurred as a result of the action of the offender and not as part of the birth process (Kole

& Kadetsky, 2002; Smith, 2000). “Born alive” requirements still exist in several states (Table 4). The changes made to homicide and abortion laws up until the middle 20<sup>th</sup> century occurred exclusively at the state level and included both the strengthening of “fetal protection laws” as well as the modification of restrictions on abortions (strengthening or loosening depending on the state) without a consistent stance being taken across the country. By 1961 half of all states had restrictions in place that allowed abortions only to save the mother’s life. One of these laws would be the subject of *Roe v. Wade*.

## CHAPTER III

### *ROE V. WADE*

In 1973 the United States Supreme Court decided the case that would change the nation's stance on fetal personhood. While *Roe v. Wade* legalized abortion in America, its influence has been stripped away with subsequent high court decisions. This chapter will discuss *Roe* and the other significant reproductive rights cases that were decided in the Supreme Court

#### Background

Norma McCorvey, using the alias Jane Roe, was a single woman who wanted to have a legal abortion in Texas. An 1859 Texas statute banned all abortions except those necessary to save the mother's life. Financial obstacles prevented Roe from traveling across state lines to procure an abortion in another state, as was a customary practice at the time. Roe contested the constitutionality of the statute. The United States District Court for the Northern District of Texas agreed with Roe that the statute unconstitutionally breached her 9th and 14th Amendment rights. The state's appeal brought the case to the U.S. Supreme Court. *Roe* was decided with *Doe v. Bolton*, 410 U.S. 179 (1973), a Georgia case dealing with a similar issue.

#### Holding

The argument centered on whether or not the 9th and 14th Amendments protected a woman's choice to have an abortion, and whether that choice was a constitutionally protected "right." Ultimately the court decided that it was, but that the right was not absolute, as had been the plaintiff's argument. The court created a trimester framework for determining the government's level of involvement in the woman's decision. The counterbalanced "compelling" interests of the woman and the fetus would tip from one side to the other as the pregnancy progressed. The court held that during the first trimester, the state could not prohibit abortions

because the fetus was not an independent being and thus not separable from the mother. During the second trimester, the state could intervene, but only to protect the woman's health. Most importantly, the court held that in the third trimester, the perceived point of viability, the state could step in and prohibit abortions to protect fetal life/potential human life. The court was careful to say that they were not making a judgment about the beginning of life, stating that "the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer" (410 U.S. 113 at 159).

### Constitutional Support

Abortion is not a right clearly delineated in the United States Constitution. Therefore the Justices were challenged to find constitutional support upon which to base their decision. However, the 9th Amendment's declaration that not all rights have to be enumerated made it possible for the Justices to find support through progressive interpretation of the law.

The Justices located the necessary support in the diaphanous "right to privacy" first identified in another reproductive rights case, *Griswold v. Connecticut*, 381 U.S. 479 (1965). The right to marital privacy and the use of contraceptives were the focus of *Griswold*. To support their 7-2 decision to strike down a Connecticut statute that denied contraceptives to married couples, the court developed the constitutional "right to privacy." The *Griswold* court found "that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance" (381 U.S. 479 at 484). This "right to privacy" in the area of contraception would then be extended to unmarried persons in *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

The *Roe* court determined, in part, that the right to abort a pregnancy was included in the "right to privacy." The government would need to meet the strict scrutiny standard before interfering with this fundamental right. Thus, the trimester framework was developed to provide logical checkpoints for governmental involvement.

While the majority interpreted the 14th Amendment's liberty interest to apply quite broadly to the reproductive decisions of pregnant women, they were very clear that the life interest would not be similarly expanded. The 14th amendment's protections were interpreted to apply only

after birth. The court also determined that “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn” (410 U.S. 113 at 158). Therefore, they specifically denied fetal personhood and instead based the government’s involvement on an interest in “potential human life.” Thus, challenges to abortion and fetal victim laws that rely on personhood are doomed to fail.

### Dissent

Justice Rehnquist’s dissent is of particular interest since he is the only remaining member of the *Roe* court. Furthermore, as the current Chief Justice, his opinion could be particularly influential. In his *Roe* dissent, Justice Rehnquist found fault with the use of the “right to privacy” argument. He suggests that when the rational relationship test is used to determine whether the state’s prohibition violates the liberty interest in “privacy” it fails to qualify as a due process violation. Justice Rehnquist also noted that at the time of the passage of the 14th Amendment (1868), 36 states had enacted laws restricting abortions. He suggests that the court conjured a right that the drafters purposely excluded. Justice Rehnquist cogently states near the conclusion of his dissent, “Even today, when society’s views on abortion are changing, the very existence of the debate is evidence that the ‘right’ to an abortion is not so universally accepted as the appellant would have us believe” (410 U.S. 113 at 174).

### After *Roe v. Wade*

In the thirty years since *Roe*, a variety of cases heard before the U.S. Supreme Court have weighed in on the issue of fetal personhood and the extent to which a fetus has constitutional rights of its own that conflict with or outweigh the rights of the pregnant woman (Schroedel, Fiber, & Snyder, 2000).

Three years after *Roe*, in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976), the court defined viability as the point at which a fetus could live continuously outside the womb with or without artificial life-support. Several years later the court heard a non-abortion case that nonetheless revealed one federal view of fetal rights. In *United Auto Workers v. Johnson Controls*, 499 U.S. 187 (1991), the court was asked to determine the constitutionality of an employment practice at a battery manufacturing plant. The policy being questioned required



that all fertile women employed in a factory be prohibited from working in areas where they would be in contact with lead because of the potential harm to their potential fetuses. In effect, the policy protected the health rights of fetuses that did not exist while violating the civil rights of female workers. The United States Court of Appeals for the Seventh Circuit upheld the District Court's ruling, but the decision was overturned in the U.S. Supreme Court on the grounds that the policy was discriminatory and violated the Civil Rights Act of 1964 (Samuels, 1995).

The next year, in *Planned Parenthood of Southeastern Pennsylvania v. Casey* 505 U.S. 833 (1992), a case that threatened to overturn *Roe*, a plurality of Justices (O'Connor, Kennedy, and Souter) did away with the trimester system of determining viability in favor of the "undue burden" standard. Five Justices (the plurality joined by Justices Blackmun and Stevens) found in favor of affirming the "essential holding" of *Roe* that women have a right to choose an abortion before viability. This slim majority also struck down a provision that required spousal notification. Various other restrictions that did not place an "undue burden" on the women seeking abortions were upheld. Once again Justice Rehnquist, who had become Chief Justice in 1986, laid out a forceful dissent which stated unapologetically that *Roe* was a mistake. Chief Justice Rehnquist was joined by Justices Scalia, Thomas, and White.

In 2000, the Supreme Court held that a Nebraska partial-birth abortion ban was unconstitutional because it did not include provisions for special cases in which a late-term/partial-birth abortion may be necessary for the preservation of the woman's health (*Stenberg v. Carhart*, 530 U.S. 914). A partial-birth abortion (intact dilation extraction abortion) is an uncommon method of aborting a late-term fetus. During the procedure the body of the fetus below the neck is delivered. The skull is pierced while inside the birth canal, and the brain is vacuumed out. Justice Kennedy's vote to uphold the ban has been viewed by some people as indicative of his ambivalence and unpredictability about *Roe* (NRL, 2005). However, the opinion in *Casey* suggests that he solidly supports *Roe*, and that he objected to this particular method of abortion rather than all abortions in general.

Justice Blackmun observed in his comment that:

[I]n one sense, the Court's approach is worlds apart from that of the Chief Justice and

Justice Scalia. And yet in another sense, the distance between the two approaches is short-- the distance is but a single vote... I cannot remain on this court forever, and when I do step down, the confirmation process for my successor well may focus the issue before us today. That, I regret, may be exactly where the choice between the two worlds will be made. (505 U.S. 833 at 943)

Justice Blackmun's dark prediction would not be realized during his lifetime. Originally a Nixon appointee, Justice Blackmun retired in 1994 and was replaced by Clinton appointee Justice Stephen Breyer. One year earlier, Justice White was replaced by another Clinton appointee, Justice Ruth Bader Ginsburg. With those changes, the court shifted away from *Casey's* one-vote margin.

#### Current Court

Judging from previous opinions, the court is currently split 6-3 on *Roe*. Justices voting to reaffirm *Roe* include: Justices Breyer, Ginsburg, Kennedy, O'Connor, Souter, and Stevens. Justices Rehnquist, Scalia, and Thomas have previously voted to overturn *Roe*. Accordingly, it would take two conservative appointments replacing two of the pro-*Roe* Justices to change the composition of the Court enough to make the overturning of *Roe* an actual possibility. For the past few years, court watchers have speculated about possible retirements during Bush's presidency. Justice O'Connor's recently announced retirement has surprised many who believed that Chief Justice Rehnquist's ailing health made him the most likely retiree. Possible nominees and their views on *Roe* will be the subject of a later chapter.

## CHAPTER IV

### STATE AND NATIONAL LAWS

#### California

The Laci Peterson case's widespread notoriety increased national awareness of California's fetal homicide law, which harshly punishes the third party killing of a fetus. Prior to the Peterson case, many people across the country likely did not know that California is one of the few states in which people can and have been sentenced to death for murdering a fetus. The punishment's severity is particularly incongruous given that California has some of the most liberal abortion laws in the country. Nevertheless, California's fetal homicide law is one of the strictest in the nation.

The law that has put Scott Peterson on death row is not new. Unlike many other states, which have only recently addressed the issue of fetal homicide, California has had this law for 35 years. Since the state's courts first dealt with the topic, its treatment has changed via the well-documented evolution of the state's case law. Thus California serves as a cogent example of one method by which the laws in this area can develop. This chapter will trace the progression of California's fetal homicide laws from 1970 to the present, and will examine similar circumstances in other states that have yielded comparable results.

#### *Keeler v. Superior Court of Amador County*

In 1970, the Supreme Court of California heard the case of *Keeler v. Superior Court of Amador County*, 470 P.2d 617. The history of the incident that led to this case is as follows. The pregnant victim was physically attacked by her husband. The couple, who were in the process of obtaining a divorce, were living apart from each other at the time of the offense. The petitioner, Robert Keeler, upon seeing Ms. Keeler's visible pregnancy for the first time, kned her in the stomach causing the death of the fetus by fracturing its skull. Ms. Keeler was between 28 and 36

weeks pregnant. The petitioner's intention to harm the fetus was undeniable. He is quoted as saying immediately before the assault, "I'm going to stomp [the fetus] out of you" (470 P.2d 617 at 618). Among the charges filed against the petitioner was a murder charge for the death of "Baby Girl Vogt" (Vogt being the surname of Ms. Keeler's boyfriend). The petitioner filed a writ of prohibition against the charge.

At the time in California, murder was statutorily defined as "the unlawful killing of a human being, with malice aforethought" (West's Ann. Cal. Penal Code § 187). Therefore, the question for the court was whether or not "Baby Girl Vogt" qualified as a human being. The court posited that it was not the legislature's original intent to include fetuses as potential homicide victims when the Penal Code was first enacted in 1872. The court found that the common law "born alive" rule was predominant in California in the middle of the 19th century. While other states were creating statutes prohibiting abortion and feticide, California abstained. The court viewed the exclusion of the word "fetus" in the murder statute and the absence of a feticide statute as intentional. They believed that if it had been the legislature's intent to include crimes against fetuses in the criminal code, they would have done so explicitly.

Furthermore, the court stated that since California is a code state and not a common law state, the only crimes that can be prosecuted are those that are explicitly defined in statutes. While it may appear intellectually reasonable to interpret the law more broadly given that modern medicine continually increases the viability of pre-term fetuses, separation of powers forbids the judiciary from doing so. Since the crime of feticide did not exist in the penal code, the charge against the petitioner could not be pursued even though advances in medicine have made the "born alive" rule obsolete. Additionally, the court determined that even if they did interpret the law to include fetuses, they would not be able to apply that interpretation retrospectively. To do so would violate the petitioner's 14th amendment due process right to "fair warning." Hence, the court allowed the writ of prohibition, effectively dismissing the charge of murder committed against "Baby Girl Vogt."

Acting Chief Justice Burke, in his dissent, asked the question, "[w]hat justice will be promoted, what objects effectuated, by construing "human being" as excluding Baby Girl Vogt

and her unfortunate successors?" (470 P.2d 617 at 633) His outrage was echoed throughout California. As is often the case in fetal homicide legislation, outrage led to action. The successors of which Burke spoke would soon face a different legal landscape with the passage of Assembly Bill No. 816 in September of 1970, which changed the definition of murder to read "the unlawful killing of a human being, or a fetus, with malice aforethought" (West's Ann. Cal. Penal Code § 187).

A subsequent judgment in *People v. Smith* (1976) would use *Roe* to refine the application of the statute to include only viable fetuses (59 Cal.App.3d 751). This interpretation survived challenges through *People v. Apodaca*, 76 Cal.App.3d 479 (1978), *People v. Hamilton*, 774 P.2d 730 (1989), and *People v. Henderson*, 225 Cal.App.3d 1129 (1990). In 1994, the Supreme Court of California would reexamine the issue of viability in *People v. Davis*, 872 P.2d 591 (1994).

#### *People v. Davis*

In 1993, Robert Davis shot Maria Flores during an attempted robbery. The approximately 24-week-old fetus carried by Flores died as a result of the injury. Davis was found guilty of the murder of the fetus but appealed his conviction on the grounds that the statute only applied to viable fetuses and that the fetus in question was not viable. The Court of Appeal found that viability was irrelevant, but overturned Davis's conviction because previous cases had used the viability standard.

In the Supreme Court of California, Davis argued that *Roe* created a definition of viability, which was not met by the Flores fetus. The court found that the rationale used to support Davis's contention was erroneous. The defense failed to recognize that the only liberty interest to be balanced against the state's interest in protecting fetal life belonged to the mother of the fetus. Absent the mother's privacy interest, the state's interest predominates.

Despite Davis's flawed logic, the court upheld the overturned conviction. The court agreed with the Court of Appeal that the multiple previous faulty interpretations of the murder statute made it impossible for Davis to have known that the viability standard was immaterial. Thus, once again, the court accepted that to apply their judgment retrospectively would be to deny Davis his due process rights. Finally, the court clarified its position on gestational age by

stating “[t]he third party killing of a fetus with malice aforethought is murder under section 187, subdivision (a), as long as the state can show that the fetus has progressed beyond the embryonic stage of seven to eight weeks” (872 P.2d 591 at 602).

In his dissent, Justice Mosk expresses his disbelief that “in amending section 187 to make that act a crime the Legislature also intended to make California the only state in the Union in which it is a capital offense to cause the death of a nonviable and invisible fetus that the actor neither knew nor had reason to know existed” (872 P.2d 591 at 623).

In *People v. Dennis*, 950 P.2d 1035 (1998), the court would face the punishment issue directly. Upon automatic appeal, the Supreme Court of California determined that the defendant, who had been found guilty of the grisly double murder of his ex-wife and her nearly full term fetus, was eligible for capital punishment via the multiple murder special circumstance. The court found further that such punishment was not disproportionate. The defendant raised the issue of whether or not awareness of the pregnancy was necessary to prove malicious intent, but the question was not thoroughly addressed in *Dennis*. That topic would be the focus of a recently decided case.

#### *People v. Taylor*

Harold Wayne Taylor was found guilty of the murder of his ex-wife and the implied malice murder of her approximately 12 week old fetus. He successfully challenged his case before the California Court of Appeal on the grounds that he was unaware of the fetus and therefore could not have had the *mens rea* necessary to meet the requirement for implied malice. In 2004, the Attorney General appealed to the Supreme Court of California.

Contrary to the Court of Appeal’s determination that the state had failed to prove the mental component of the charge, the Supreme Court of California in *People v. Taylor*, 86 P.3d 881 (2004), found that the defendant did not need to show malice toward the fetus. The court stated that the defendant “acted with knowledge of the danger to and conscious disregard for life in general” and that in order to be found guilty of implied malice murder, “[h]e did not need to be specifically aware how many potential victims his conscious disregard for life endangered” (86 P.3d 881 at 884). The court also found that there was no due process violation, as had been

proposed by the defendant, since the statute was clear and there had been no previous judgments that interpreted it in the manner suggested by the defendant.

In sum, current California law recognizes fetal homicide victims beyond the seventh or eighth week of pregnancy. Knowledge of the pregnancy is not required and the perpetrator can be sentenced to the death penalty for the murders of a fetus and its mother.

#### Sensational Cases in Other States

Over the past 35 years in California's courts and legislature the protection of fetuses from third party crime has been continuously debated. In 1970, the *Keeler* court correctly determined that although the crime of fetal murder seemed reasonable given the state of medical knowledge about the viability of fetuses, allowing someone to be charged with that crime without prior notice of it being a crime would violate that person's constitutional protections. The legislature's response to Keeler escaping punishment was unsurprising. During the past two decades, in states all over the country (including Kentucky, Minnesota, Pennsylvania, West Virginia, Wisconsin, and Virginia) sensational crimes have led to calls for legislative action (NRL, 2005).

Nebraska law was changed after the 2001 murder of Vickie Soto who was eight and a half months pregnant. Soto was killed by a friend's ex-boyfriend. She appears to have simply been in the wrong place at the wrong time. Soto's throat was slashed and her legs were cut off below the knees. The brutality of the crime, and the media's dissemination of the family's grief at having lost both the mother and the unborn child, led to the passage of a fetal homicide bill in 2002. The law was tested for the first time in late 2004, and has been employed successfully in two other cases since then (Thorsen, 2005).

In 2003, Heather Sargent's murder drew attention to an unusual situation caused by Maine's lack of a fetal homicide law. Mrs. Sargent was eight months pregnant when her husband stabbed her 40 times in the stomach and seven times in the head. Roscoe Sargent also killed the family's four cats in the process. The public was outraged to learn that Mr. Sargent could have been prosecuted for the cats' deaths, but that he would not be penalized for the fetus's murder. The seeming disparity led to a "compromise measure," which was passed by the Maine legislature in mid June 2005. The new law increased penalties for the termination of a pregnancy

caused by the assault of a pregnant woman (NRL, 2005).

Cases such as these are successful at providing impetus for the passage of legislation because of the powerful emotions evoked when the stories are told. Grieving families will often testify before legislatures about their unborn children and grandchildren, many of whom already had names, toys, and clothes. While proposed fetal homicide laws are always met with fervent opposition from abortion rights supporters, those who argue against these crimes are hard pressed to formulate a response that does not seem cruel or callous. Fetuses are sympathetic victims when they are framed as the wanted children of anguished families. However, such resistance has successfully blocked the passage of laws in some of the few states that do not have any laws against harming fetuses (NRL, 2005).



## CHAPTER V

### LAWS ACROSS THE COUNTRY

Every year in state legislatures around the country fetal victim legislation is proposed. In 2005, legislation to create separate crimes for injury to fetuses was proposed, but not passed, in the following states: Georgia, Iowa, Kansas, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Tennessee, Vermont, and Virginia. In several of these states, laws were already in place that provided some protection for fetal victims of crime, but new legislation was sought that would expand that protection further. Current laws range from those that treat an injury that causes a fetus to die as murder, to those that simply increase penalties for an assault that causes a miscarriage. During the current legislative session (2005), laws were passed in Arizona, Florida, Oklahoma, Maine, Maryland, and West Virginia (Tables 2-4). In 2004, similar laws passed in Kentucky, Mississippi, and Virginia. The laws are constantly in flux, which makes their study difficult but even more necessary.

#### Methodology

I chose to create a series of tables to provide a comprehensive examination of fetal laws in the United States. During my research I had not been able to find a single source that combined all state statutes with relevant case law. I wanted to provide a source that was not merely an alphabetical list of state statutes, but that was organized in a meaningful way.

To create the tables, I began with a collection of state laws published by the National Right to Life Committee (NRL, 2005). I checked the accuracy of the citations provided by locating each statute through Westlaw's online database. I cross-referenced these statutes with a list of pending legislation provided by NARAL Pro-choice America (NARAL, 2005). I checked periodically for updates from this year's legislative session and made the appropriate changes to

the table.

Upon locating a current statute in Westlaw, I would examine the nearby laws (laws in the same chapter or section) for any other related statutes also dealing with the treatment of fetuses. Since the NRL website only collects laws from states that recognize fetuses as separate victims, I had to locate the laws of the other states by searching the individual states' statutes via the Westlaw database.

I also utilized Westlaw to locate the relevant case law for the tables. In my research I was able to find the case styles of many cases at both the state and federal level. I located these cases on Westlaw and in several cases found significant quotes in the text that I included in the table.

I split the state statutes and cases into four major groupings that I felt were representative of all the laws in the United States. These groups were: states with laws covering fetuses from fertilization until birth, states with laws covering fetuses from a specific point during gestation until birth, states with laws that do not recognize separate fetal victims, and states that do not recognize any fetal victims. The fifth group in the table consists solely of the laws from New York, which do not fit any other category since they conflict with one another.

Table 1 is an abbreviated version of the larger tables and only includes the name of the states and their classification. Tables 2 through 6 are the extended versions of the above groupings. They include not only the relevant statutes and cases, but also highlight the terms used to describe fetal victims, the criminal charge faced by violators, the period of gestation covered (if applicable), exemptions, and the Westlaw citation. Table 7 contains material from a publication that addressed the changes that might occur across the country if *Roe* is overturned (Smock, 2004). The Tables will be thoroughly discussed below.

#### Laws Covering Fetuses from Fertilization until Birth

Tables 2 through 6 provide a survey of the laws as they currently stand in every state as of June 2005. The relevant text of the applicable statutes is provided as well as quotes from the court cases that created the law or helped in the law's development. Table 2 identifies the states that have the broadest fetal homicide laws, meaning that they cover fetal victims from fertilization

until birth. Because the earliest stages of pregnancy are covered, it is not necessary that the perpetrator have knowledge of the woman's pregnancy. Nor is it required that the mother of the fetus even be aware that she was pregnant

The following 20 states currently have laws which fall into this category: Arizona, Idaho, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin (Table 1; Table 2). In these states, a variety of laws dealing with fetuses are in effect. In most of these states, legislators have drafted new laws that specifically penalize actions against fetuses. For instance, in Louisiana, there are three degrees of "feticide" crimes (LSA-R.S. 14:32.6 - 14:32.8) while in Kentucky there are four degrees of "fetal homicide" crimes (K.R.S. § 507A.020 - 507A.050). Illinois, Michigan, Minnesota, Nebraska, North Dakota, Pennsylvania, and Virginia also have laws of this sort.

Another approach often taken by legislatures involves amending preexisting laws to include fetuses as victims for the particular crimes enumerated. For example, this year in Arizona, the legislature amended the negligent homicide, manslaughter, and murder codes to include an "unborn child in the womb at any stage of its development" as "persons" for the purposes of those specific crimes (A.R.S. § 13-1102 - 13-1105). These types of laws are often used because they do not require the addition of any new fetus-specific laws. States also using this model include: Idaho, Missouri, Mississippi, Ohio, West Virginia, and Wisconsin. South Dakota and Oklahoma have laws of both types. These states' laws include fetuses as victims for already existing crimes, and also create new crimes specifically for fetuses.

Texas has another type of law that provides full coverage from conception until birth. In 2003 Texas legislators passed Senate Bill 319, which amended the definitions in the Penal Code. For the purposes of criminal statutes in Texas " '[p]erson' means an individual," an " '[i]ndividual' means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth," and " '[d]eath' includes, for an individual who is an unborn child, the failure to be born alive" (V.T.C.A., Penal Code § 1.07). Instead of detailing which crimes can have fetal victims, the Texas bill instead lays forth a few exceptions. The law does

not apply to kidnapping and unlawful restraint. If the perpetrator is the mother of the fetus, the law does not apply to intoxicated assault, intoxicated manslaughter, assaultive offenses, or criminal homicide. Theoretically, in all other crimes defined by the Texas Penal Code, fetuses can be victims. Therefore, the decision whether or not to pursue crimes on the behalf of fetal victims lies with each individual prosecutor's office in Texas. The consequences of leaving so much of the law open to interpretation will be the topic of a later chapter.

#### States with Coverage from Specific Point during Gestation until Birth

The following 12 states have laws that recognize fetal victims, but do not allow the coverage to span the whole pregnancy: Arkansas, California, Florida, Georgia, Indiana, Maryland, Massachusetts, Nevada, Rhode Island, South Carolina, Tennessee, and Washington (Table 1; Table 3). These states have designated specific points during the pregnancy before which a fetus cannot be considered the victim of a crime. California, as previously discussed, employs a literal definition of "fetus" in the interpretation of its fetal homicide statute. The court in *Davis* followed a medical definition in determining that an unborn human is an embryo until seven to eight weeks of gestation, after which it becomes a fetus. Therefore the fetus can only be a victim of homicide once it is beyond that point. In Arkansas, the "general definitions" statute of the criminal code states a " 'person' also includes an unborn child in utero at any stage of development" but specifies that an "[u]nborn child" means a living fetus of twelve (12) weeks or greater gestation" (A.C.A. § 5-1-102).

Nevada and Washington rely on "quickening" as the borderline. As stated previously, quickening is the point during gestation when the mother could feel a fetus's independent movement for the first time, and it generally occurs between the twelfth and twentieth week, though this varies from person to person. In Georgia, a fetus of 16 weeks gestation was determined to be "quick" and the use of this standard was deemed clear and constitutional *Smith v. Newsome*, 815 F.2d 1386 (1987). Nevada case law has not designated a specific time period that defines an "unborn quick child" (N.R.S. 200.210).

Indiana, Maryland, and Tennessee have statutes that permit prosecutions for injury leading to the death of a viable fetus. Tennessee's law applies to first and second-degree

murder, voluntary manslaughter, vehicular homicide, and reckless homicide but does not create a separate crime of feticide, as Indiana's does (T. C. A. § 39-13-214; IC 35-42-1-6). Maryland's law only applies to murder and manslaughter (MD Code, Criminal Law, § 2-103). Florida and Rhode Island both use the word "quick" in their statutes but have further defined "quick" to mean "viable."

#### New Crimes through Case Law

South Carolina and Massachusetts have also designated that their laws apply to viable fetal victims, however they have not done so in the legislature. These two states are the only jurisdictions to have used case law to create, in effect, the crime of fetal homicide. Contrary to the holding of *Keeler*, in which the California court found that they could not read existing statutes to apply to fetuses without a precedent because to do so would overstep the boundaries integral to the separation of powers between the judiciary and the legislature, the Massachusetts and South Carolina courts decided to interpret the law in a new way

In 1984 the Supreme Judicial Court of Massachusetts decided a case that would immediately alter the law in the state. *Commonwealth v. Cass*, 467 N.E.2d 1324 (1984), was a vehicular homicide case and was the first time the Massachusetts court handled the issue of fetal victims. Although the cases dealt with similar issues, the *Cass* court distinguished the situation from *Keeler* by referencing Massachusetts's status as a common law state. They rejected:

[T]he notion that we are unable to develop common law rules of criminal law because the Legislature has occupied the entire field of criminal law. While this may be true in code jurisdictions, it is not true in this Commonwealth, where our criminal law is largely common law. (467 N.E.2d 1324 at 1327)

They applied their ruling prospectively, acknowledging that it may have been unforeseeable and maintained that the ruling should apply to viable fetuses. The Massachusetts court would rely on *Cass* five years later when facing their first fetal murder case.

In *Commonwealth v. Lawrence*, 536 N.E.2d 571 (1989), the Massachusetts court would have to clarify its position on the issue of intentional fetal homicide. Since the determination that fetuses could be victims of (vehicular) homicide had already been made in *Cass*, it was a simple matter for the Justices to conclude that the rationale "thus is equally applicable to the common

law crime of murder” (536 N.E.2d 571 at 576). They also determined that since they had clearly expressed their view on fetal victims in the *Cass* ruling, they were not required to apply the *Lawrence* decision prospectively, since the defendant had been adequately notified.

In the South Carolina case *State v. Horne*, 319 S.E.2d 703 (1984), the Supreme Court of South Carolina relied on a previous ruling in a wrongful death case to support the application of the homicide law to a fetal victim. They held that it “would be grossly inconsistent for us to construe a viable fetus as a ‘person’ for the purposes of imposing civil liability while refusing to give it a similar classification in the criminal context” (319 S.E.2d 703 at 704). Once again, the court recognized that due process prevented them from applying the law retrospectively.

*Horne* would serve as precedent for 1997’s controversial *Whitner v. State*, 492 S.E.2d 777 (1997), in which the court determined that fetuses could be victims of child abuse, and that pregnant women could be prosecuted for crimes against their fetuses. In their argument about the legislator’s original intent, the defense predicted that such a ruling would be unreasonable because it would open the door for prosecutions of pregnant women for behaviors such as drinking and smoking. The court responded by stating that they “need not address this potential parade of horrors advanced by *Whitner*” (492 S.E.2d 777 at 782). However, South Carolina, along with the rest of the country, has spent the past decade wading through the thorny litigation that has come in the aftermath of this case. These cases will be addressed in the following chapter.

#### States that Do Not Recognize Separate Fetal Victims

Eight states (Delaware, Iowa, Kansas, Maine, New Hampshire, New Mexico, North Carolina, and Wyoming) have laws that create penalties for conduct against pregnant women that leads to the termination of a pregnancy (Table 1; Table 4). These laws, which range in severity from New Hampshire’s Class A felonies (N.H. Rev. Stat. 631:1) to Kansas’s Class A misdemeanors (K.S.A. 21-3440), differ from fetal homicide laws because they do not recognize the fetus as another victim. The laws are framed so that technically, the only victim is the mother. These laws are often created as compromises, as was the case with the recently passed Maine law addressed earlier and identified in Table 4. Laws of this sort tend to make it through the

legislature more easily because they are not as controversial since they do not create “personhood” for the fetus. However, they do recognize that the loss of a fetus is more serious than an assault or other crime that solely affects the mother.

#### States without Any Protection for Fetal Victims

The following nine states have no protections for fetal victims of any sort: Alabama, Alaska, Colorado, Connecticut, Hawaii, Montana, New Jersey, Oregon, and Vermont (Table 1; Table 5). These states rely on the common law “born alive” rule, and have either codified the law specifically through statutes (as is the case in Alabama, Alaska, Colorado, Hawaii, Montana, and Oregon), or through case law (as is found in Connecticut, New Jersey, and Vermont). Legislation for fetal victims is proposed nearly annually in these states, but attempts thus far have been unsuccessful.

#### New York

Finally, New York is the only state in the Union to have contradictory laws regarding crimes against fetuses (Table 6). The homicide statute states that “[h]omicide means conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than twenty-four weeks” or in other words, a viable fetus (McKinney’s Penal Law § 125.00). However another statute says, “[p]erson,” when referring to the victim of a homicide, means a human being who has been born and is alive” (McKinney’s Penal Law § 125.05). These incongruous laws have not yet been rectified, although changes to the law have been proposed for many years.

#### Challenges to State Fetal Victims Laws

Challenges to the above laws tend to fall into a few discrete categories. One common type is the challenge based on *Roe*. Courts in Georgia and Pennsylvania have stated conclusively that *Roe* does not apply to cases of third party harm to an unborn victim (*Brinkley v. State*, 322 S.E.2d 49). Another common challenge centers on “due process” and the vagueness of fetal rights statutes. As was the case in *State v. MacGuire*, 84 P.3d 1171 (2004), these challenges have not been successful either.

Another interesting challenge that is commonly used is the “equal protection” challenge,

which generally states that a law is being unfairly applied to different groups. In these cases, persons who are accused of third party harm to fetuses challenge the constitutionality of exemptions for mothers and doctors. Courts across the country have rightly denied these challenges too, but a difficult case out of Texas may test the rationale.

A Houston case that may be based on this challenge will soon be working its way up to the appeals court. Nineteen-year-old Gerardo Flores was convicted of double murder for stepping on his pregnant girlfriend's abdomen in order to cause the miscarriage of their twin fetuses (Malisow, 2005). He was found guilty and recently sentenced to life in prison, although he could have faced the death penalty since double murder is a capital crime. What makes this case unique is that Erica Basoria, the mother of the fetuses, claims the miscarriage was her idea. She, however, cannot be charged with any crime because Texas has an exemption for mothers in its fetal homicide law. Flores's defense may argue that both parents equally desired to terminate the pregnancy and that holding only one parent responsible violates "equal protection."

#### Federal Legislation

The Unborn Victims of Violence Act (UVVA), which is alternately known as Laci and Conner's Law, after the Peterson murder victims, was approved in the House of Representatives in 1999 and 2001, but continually failed to garner enough votes in the Senate. However, in the spring of 2004, the law passed by a one-vote margin. On April 1, 2004, President George W. Bush signed it into law. The UVVA, which had formed out of public outrage in the wake of increased reporting of attacks on pregnant woman (not an increase in the number of actual attacks), changed the definition of a person under federal law (NRL, 2005; Holzapfel, 2002). Under the UVVA, a person who commits a federal crime against a pregnant woman, during which a fetus is injured or killed, will be punished as though the crime against the fetus had been committed against an independent living person. In effect it is the first federal law equating fetuses with persons (Kole & Kadetsky, 2002). Furthermore, the UVVA does not require any specific gestational age to determine coverage under the law. All unborn fetuses are protected.

An amendment to the UVVA was proposed by California Senator Dianne Feinstein, which would have recognized pregnant victims of crimes as single victims, but would have enforced



steeper penalties to persons convicted of offenses against pregnant women. This amendment to the Act was a synthesis of a variety of state fetal protection laws that avoided the issue of personhood (Smith, 2000). It took into consideration the fears of pro-choice advocates that the UVVA was an attempt to undermine women's reproductive rights. The Feinstein Amendment failed by one vote (NRL, 2005).

The UVVA does exclude doctors performing abortions and pregnant women seeking abortions from criminal liability, though that is of little consolation to those who see its passage as a step down the slippery slope toward the eventual overturning of *Roe v. Wade* (NRL, 2005; Holzapfel, 2002). The issue even appeared in a political ad in the 2004 presidential election, with Senator Kerry's vote against the UVVA and vote for the "single-victim substitute" being described as a vote "against the law that protects pregnant women from violence" (FactCheck.org, 2004). Vice Presidential nominee John Edwards also faced criticism for maintaining a pro-choice political approach while having previously "channeled" the voice of an unborn child in a medical malpractice case in which he was serving as counsel. The 2004 election was decided in Ohio, one of the full coverage fetal protection states ("Democrats Challenge," 2005).

## CHAPTER VI

### PROSECUTIONS OF PREGNANT WOMEN

The previous chapter dealt with third party injury to fetuses. As stated therein, some of the laws that were designed to protect fetuses ended up having unexpected consequences that have been detrimental to pregnant women. This chapter will focus on the use of existing laws to prosecute women for harming their fetuses.

#### South Carolina

South Carolina is a battleground for fetal rights. In 2001, the U.S. Supreme Court decided *Ferguson v. City of Charleston* 532 U.S. 67 (2001). In Charleston pregnant women who went to hospitals for medical treatment were often drug tested without being fully notified that the results of the test could be forwarded to the police. Only women fitting a designated profile (almost exclusively low income Black women who were treated in public hospitals) faced such testing. The court held that the drug testing of these women without their consent violated their 4th Amendment rights and resulted in high-risk women avoiding prenatal care for fear of prosecution for crimes against their fetuses. As outrageous as that case was, it paled in comparison to another case from the same year, which resulted from the practice.

In 2001 Regina McKnight gave birth to a stillborn baby who was found to have cocaine derivatives in his system. McKnight was convicted of homicide by child abuse for using crack cocaine during the pregnancy, and was sentenced to 12 years in prison (Jones, 2003). She thus became the first person in the U.S. to be convicted of murder for using drugs while pregnant, under the precedent of the previously described 1997 ruling in *Whitner v. State* which held, in part, that a viable fetus is a "person" under South Carolina law. Her conviction was upheld in the South Carolina Supreme Court (*State v. McKnight* 352 S.C. 635, 576 S.E.2d 168). The United States Supreme Court refused to hear the case in 2003, and the conviction stands. McKnight is

expected to serve at least eight years of her sentence.

As upheld, *State v. McKnight* (2003) provides a constitutional basis (at the state level) for holding women criminally accountable for actions that could potentially harm their fetus by ascribing all the constitutional rights and protections of a child, or person, to the fetus. The ramifications of this interpretation of the law could easily include charging women for the “crimes” of drinking, smoking, or engaging in dangerous activities while pregnant (Jones, 2003). What the *Whitner* court dismissed as the machinations of a desperate defendant has become reality. Justice Moore in his *McKnight* dissent stated, “It is not the business of this Court to expand the application of a criminal statute to conduct not clearly within its ambit,” (576 S.E.2d 168 at 180). He further observed that the punishment for self-abortion was two years or a \$1,000 fine. Ms. McKnight faced a possible life sentence. The incongruence strongly supports his contention that the court greatly surpassed the legislature’s intent.

These cases illustrate the fact that only certain women tend to be pursued for these crimes. Although the level of drug use is equal among different race groups, Black women have been targeted overwhelmingly. The stigma surrounding crack cocaine blinded authorities to the fact that powder cocaine and alcohol are potentially as damaging to a developing fetus (Roberts, 1991).

### Texas

In Texas, the legislature amended the Penal Code to apply to fetuses for almost all crimes except the few that were specifically exempted (V.T.C.A., Penal Code § 1.07). Though the precautions were taken to make sure that the law would not be used to prosecute women for the murder, kidnapping, or assault of their fetus, the legislature overlooked the possibility that the law could be used to prosecute mothers for delivering drugs to their unborn children.

In 2003 Amarillo District Attorney Rebecca King charged Tracy Yolanda Ward with delivering drugs to a minor. Ward had used cocaine while pregnant and gave birth to a child with cocaine in its system. King’s interpretation of the statute was immediately decried by one of the bill’s sponsors, Rep. Ray Allen. King had sent a letter to doctors in the Amarillo area stating that they had to notify law enforcement if a pregnant woman tests positive for drug use. Texas Attorney

General Greg Abbott eventually deemed King's interpretation erroneous in an opinion published in January of 2005. By that time, at least 18 cases had already been filed, and the vast majority of the women charged had already chosen to enter plea arrangements. Because of the controversy, the sentences were rehabilitative rather than punitive, often consisting of mandatory drug treatment. But this case illustrates the danger of leaving statutes widely open to interpretation (McBride 2004; Robbins, 2004).

### War on Drugs

The cases described above are recent rulings; however these situations have occurred with regularity since the mid-80s. Prior to 1985, few women were ever prosecuted for harming their fetuses through substance abuse. Initially states would suggest treatment rather than punishment when faced with a pregnant addict. However, during the 1980s, as part of the "war on drugs," President Reagan signed the Anti-Drug Abuse Acts of 1986 and 1988, which greatly increased penalties for drug offenders (Lyman and Potter, 2003). One side effect of this new focus on narcotic crimes was the creation of a new paranoia about crack addicts and crack babies. As a result of the widespread dissemination of statistics about drug-addicted infants, states began to take great interest in the conduct of pregnant women (Roberts, 1991).

As stated above, pregnant women who are being prosecuted for crimes against their fetuses frequently choose to enter guilty pleas in exchange for lessened charges. The prosecutions of women who do go to trial are usually unsuccessful. If found guilty, the women often have their convictions overturned on appeal. For example, in 1989, Jennifer Johnson was convicted of delivering crack cocaine to her newborn baby via the umbilical cord. The conviction was overturned in 1992 when the court determined that the law was being used in a way that violated the legislature's intent (Hubbard, 1994; Paltrow, 1999).

The Johnson case was the first prosecution of its kind, and it led to similar prosecutions across the country. In 1995, Cathy Encoe was prosecuted in Nevada for child endangerment. The Nevada prosecutors used the same reasoning as the Johnson prosecutors. Encoe had smoked marijuana while pregnant, and was accused of delivering drugs to a minor via the umbilical cord. The charges were dismissed on due process grounds (Paltrow, 1999; Reitman,

2002). Similarly, in 1996, Selena Dunn's conviction of criminal mistreatment against her unborn child was dismissed. Dunn had been convicted of the crime because she had used cocaine while pregnant. The Court of Appeals of Washington dismissed the charges on the basis that the law did not apply to fetuses (Paltrow, 1999).

#### Other Activities

The ingestion of illegal drugs is not the only type of activity that has caused pregnant women to be prosecuted for crimes against their fetuses. In 1999, Julie Starks and her boyfriend were arrested in Oklahoma for the manufacture and possession of methamphetamine. Starks was seven months pregnant at the time. The judge set her boyfriend's bail at the usual \$25,000, but set Starks's at \$200,000. Although Starks never had a positive drug test, the District Attorney had her unborn child declared a "deprived child" which effectively gave the state custody of her fetus. Starks spent two weeks in jail before her bail was lowered. The criminal charges were eventually dismissed, but the child was placed with relatives (though with Starks as "caretaker") after birth. In the 2001 case *In re Unborn Child of Starks*, 18 P.3d 342, the Oklahoma Supreme Court determined that the statute used to take away Starks's custody did not apply to fetuses and dismissed the case.

This case shows the danger of overly zealous prosecutions of women who are suspected of being drug users. The child born to Starks was perfectly healthy with no drugs in his system. Placing a child in state custody based solely on suspicion is a disservice to the child as well as the pregnant woman.

In 1987, Pamela Rae Stewart was arrested in California after her brain damaged newborn infant died. She was arrested for criminal non-support for failing to follow doctor's orders to remain in bed, abstain from sexual activities, and to go to hospital immediately if she experienced any bleeding. The law used to prosecute her was originally intended to apply to men who were not providing child support, and thus it clearly did not apply to Stewart's situation, and the case was dismissed (Paltrow, 1999). However the prosecution's attempt to adapt the meaning of an old law in this manner highlights the lengths to which authorities will go in their attempts to regulate the activities of pregnant women.

A final example of a woman being prosecuted for engaging in non-criminal activities is the recent case of Melissa Anne Rowland of Utah. In 2004, Rowland was prosecuted for murder for not getting a cesarean section quickly enough to save the life of one of her twins. Rowland was initially charged with murder, but as is often the case in these trials, she accepted a last minute plea arrangement whereby she pled guilty to two counts of child endangerment for using drugs while pregnant ("Utah Woman," 2004).

The biggest danger of using laws to prosecute women for actions against their fetuses is that it will cause women to avoid contact with the medical establishment and conceal their activities. Women may be more likely to avoid any type of prenatal care rather than risk being arrested upon arriving at a hospital (Cook, 2002). If this occurs, the potential damage to unborn children is immense. Receiving treatment and support is especially important for pregnant women who have drug or alcohol problems. This vulnerable group needs more opportunities to get help, not more reasons to avoid it.

## CHAPTER VII

### PREDICTIONS

The future of fetal protection and fetal victim laws in the United States remains murky. The situation will become less clear as individual states continue to create laws and courts continue to interpret them as they see fit. The variability in states' approaches towards these matters ensures that the Supreme Court will face the issue of personhood again in the near future. As previously mentioned, the court's composition will soon undergo changes, and the direction the nation takes on these issues could come down to the opinions of the men and/or women who ascend to the high court.

Justice O'Connor's recently announced retirement from the court will undoubtedly lead to a heated confirmation battle. President Bush's judicial nominees for lower courts have already had a difficult time receiving Senate confirmation. The stakes are much higher for a Supreme Court vacancy, especially since the seat will have belonged to Justice O'Connor. Washington had expected at least one retirement during Bush's second term, but had expected that Chief Justice Rehnquist would be the first to leave due to his ailing health. A Rehnquist retirement would not be met with such controversy because he is strongly conservative, and his replacement by another conservative would have little overall effect on the court ("Tough Fight," 2005).

Justice O'Connor, on the other hand, is considered a moderate, even though she was appointed by President Reagan. She has been the "swing vote" in many cases, and has sided with the liberal Justices on such issues as affirmative action and abortion ("Possible Nominees," 2005). An ideologically conservative replacement in her seat will place *Roe* at the critical 5-4 split (with the majority in favor of upholding *Roe*), while a more moderate appointment (someone similar to Justice O'Connor), will maintain the current 6-3 split.

( President Bush will have a difficult time selecting a nominee that will be easily accepted

by a majority within the Senate. Democrats have left open the possibility that they will filibuster any overly conservative nominee, whereas conservative factions of the Senate are likely to be unhappy with a nominee who is too moderate ("Tough Fight," 2005). President Bush's stated preference for a Justice can be found in his public statements.

At a 2002 event in Dallas, Bush said, "[w]e've got to get good, conservative judges appointed to the bench and approved by the United States Senate... I want people on the bench who don't try to use their position to legislate from the bench. We want people to interpret the law, not try to make law and write law" (Bush, 2002). Bush further clarified his ideal nominee in the second presidential debate of the 2004 election. He said:

I would pick somebody who would not allow their personal opinion to get in the way of the law. I would pick somebody who would strictly interpret the Constitution of the United States... I would pick people that would be strict constructionists. We've got plenty of lawmakers in Washington, D.C. Legislators make law; judges interpret the Constitution.

(Commission on Presidential Debates, 2004)

A conservative strict constructionist nominee would likely deny the "right to privacy" first developed in *Griswold*, because it is not a right that is specifically stated in the Constitution. Thus they would effectively deny the argument upon which *Roe* is based. However, an originalist Justice would probably not read fetal personhood into the Constitution, because nowhere in the text is it stated that the fetus has the rights of a born person. Furthermore, the original intent of the drafters would not have been to include fetuses as people because the common law "born alive" rule predominated at the time and very little was known about fetal development.

### Possible Nominees

Since the President's first term, several names have been floated as potential nominees in the event of a vacancy. Many of those suggested are strong conservative judges who are viewed as good replacements for Justice Rehnquist. However, President Bush may make an unusual move and look to the Senate instead of the judiciary for potential nominees.

### Senators

Just days before O'Connor's announcement, Harry Reid and Bill Frist generated their



own short list of Republican senators who they thought should be considered “consensus” nominees: Senators Lindsey Graham (South Carolina), Mel Martinez (Florida), Mike DeWine (Ohio) and Mike Crapo (Idaho) (“Senate Leaders,” 2005). Texas Senator John Cornyn is another possibility because of his close ties to the president and his experience on the Texas Supreme Court (“Possible Nominees,” 2005). All of the aforementioned senators voted for the passage of the Unborn Victims of Violence Act. In 1999, then-Representative Graham was an original author of the bill, while DeWine was the chief sponsor of the UVVA in the Senate. They all also voted for the Partial-Birth Abortion Ban Act of 2003.

While filling O'Connor's moderate position with a staunch conservative may be more challenging, President Bush may continue with his original plan since he has been able to successfully push several of his lower court nominees through difficult confirmations. If so, likely nominees are: Judge Samuel Alito of the 3rd Circuit Court of Appeals in Philadelphia, Judge Emilio Garza of the 5th Circuit Court of Appeals in New Orleans, Judge J. Michael Luttig, 4th Circuit Court of Appeals in Richmond, Virginia, and Judge John G. Roberts of the Court of Appeals, D.C. Circuit (“Possible Nominees,” 2005).

The suggested conservative judges have judicial records reflecting their opposition to abortion (“Possible Nominees,” 2005). Judge Alito's judicial opinions reveal his very conservative philosophy. In his dissent in a case that would eventually reach the Supreme Court (*Casey*), he supported a Pennsylvania spousal notification requirement. Judge Garza has stated in his opinions that he believes *Roe* is not soundly based on the Constitution and should be overturned. In 1998 Judge Luttig upheld a ban on partial-birth abortion that would be overturned by the Supreme Court in *Stenberg v. Carhart*. Judge Roberts has also publicly stated his belief that *Roe* is constitutionally unstable and should be overturned.

#### Moderate Appointment

President Bush will probably select a somewhat moderate candidate for O'Connor's position to ease the confirmation process. He would be taking the risk that the moderate Justice might eventually side with the liberal Justices on the issue of abortion (which is what happened with Ford-appointee Stevens, Reagan-appointee O'Connor, and George H.W. Bush-appointees

Kennedy and Souter) Yet, the President would be able to ensure that the process would not be as divisive and potentially damaging to his second term agenda. He will most likely be able to seat a strongly conservative nominee after Chief Justice Rehnquist's retirement, which will almost certainly occur during President Bush's final term ("Tough Fight," 2005).

Slightly more moderate selections include: Judge Janice Rogers Brown of the Court of Appeals, D.C. Circuit, Judge Michael McConnell of the 10th Circuit Court of Appeals in Denver, Judge J. Harvie Wilkinson of the 4th Circuit Court of Appeals, and frontrunner Attorney General Alberto Gonzales ("Possible Nominees," 2005).

Judge Brown has supported parental notification laws in California, but is viewed by some as too erratic for the High Court. Judge McConnell is a true moderate, having ties to both liberal and conservative sides of Washington. He also has openly disagreed with the ruling of the *Roe* court. Judge Wilkinson has also supported parental notification laws, but has previously stated that the ruling in *Roe* was not illogical. Wilkinson, at 61, is viewed by many as too old for the Justice position because he would not be able to leave as long lasting a legacy as a younger Justice ("Possible Nominees," 2005).

Attorney General Gonzales is the frontrunner of the moderate candidates because of his close friendship with the President, his youth (he is 49), and his Hispanic heritage. President Bush may be able to overcome the pressure to replace O'Connor with a female Justice by appointing the nation's first Hispanic Supreme Court Justice. Additionally, Gonzales's recent Senate confirmation into the Attorney General position means that Senate Democrats will have a difficult time raising new objections against him. More of a challenge may come from Senate Republicans who may find him too moderate on abortion. However, Gonzales remains the most likely candidate and could have a relatively easy confirmation. If Gonzales does take the seat, it is doubtful that any great change will occur in the fetal rights/abortion sphere, because Gonzales has agreed that *Roe* is "the law of the land," and has not suggested that it should be overturned ("Possible Nominees," 2005).

When Justice Rehnquist retires, conservative frontrunner Luttig may be placed into an Associate Justiceship and Gonzales may be elevated to Chief. However this still will not be

enough to potentially overturn *Roe*. One more conservative appointment in place of a current pro-*Roe* justice will be necessary. It will take the retirement of Stevens, who at 85 is the next most likely to leave the bench, to cause the shift to an anti-*Roe* court ("Senate Leaders," 2005).

#### Reconfigured Court

The newly comprised court may have the opportunity to change abortion policy dramatically. The court will likely hear another case in which they are faced with the decision whether or not to reaffirm *Roe*'s central holding. This may be a case like *Casey* or *Stenberg*, where a state's restrictions on abortion are deemed to violate the court's "undue burden" standard. Or it may be a due process or equal protection challenge of a state's fetal homicide law, though as stated previously that type of challenge would be difficult to argue successfully. If faced with an abortion case, a court that views *Roe* as an expression of judicial activism may overturn the decision because a majority of the justices would feel that since the right to an abortion is not stated in the Constitution, it does not exist.

#### *Roe v. Wade* Overturned

If *Roe* is overturned, abortions will not necessarily come to an automatic end. Instead, the issue will go back to the states, where it began. In 2004, the Center for Reproductive Rights published a report entitled, "What if *Roe* Fell?" (Smock, 2004). According to the report, 21 states (including Texas) are likely to ban abortion (Table 7). While many states have repealed their pre-*Roe* abortion bans, others, such as Louisiana have new abortion bans in place. Nine states are at moderate risk of banning abortion, and 20 states are likely to maintain legal abortions (Smock, 2004). The personhood of fetuses would not be affected by a change in abortion laws, unless those laws were deemed unconstitutional because the constitutional rights of fetuses were recognized. However, since the desired end result for many proponents of fetal personhood is the end of federally authorized abortions, the point may be moot.

## CHAPTER VIII

### CONCLUSION

The wide variety of states' rulings on fetal rights leaves pregnant women in an awkward position. As it stands, *Roe v. Wade* still mandates that in federal law, the fetus is not a person with constitutional protections that outweigh that of the mother. While states should have the discretion to create statutes and interpret constitutional law, these laws cannot infringe on women's already acknowledged rights to due process, privacy, and equal protection under the law. Presently, 40 states and the federal government have criminalized actions that harm the fetus, though the penalties and severity of the punishments for these crimes differ enormously (NRL, 2005; Smith, 2000).

The issue of fetal personhood continues to become more complex as policies and legislation vary drastically from state to state and from jurisdiction to jurisdiction (Smith, 2000). The passage of the UVVA has created an ideological precedent and has ensured that the ambiguity surrounding fetal personhood will undoubtedly only increase as advances are made in medical science. Prenatal and neonatal health care are advancing to levels that were unforeseeable in the days of *Roe v. Wade*. Viability occurs much sooner today through new medical practices such as fetal surgery.

In 2000, while the Supreme Court was deliberating *Stenberg v. Carhart*, 530 U.S. 914, a *USA Today* picture of surgeon's finger touching a tiny fetal hand protruding from the womb of a pregnant woman undergoing surgery, became a marketing device for pro-life and activists. Highly publicized images such as these emotionalize the debate and set the stage for rapid enactments of state policies and laws without the careful consideration of the potential ramifications of such actions. Schroedel et al. associate the technological advances in fetal imaging that occurred during the 1960s with the change in the legal and social view of fetuses

(2000). For centuries considered to be part of the women, fetuses began to have a voice of their own when their faces could be viewed through ultrasound (Schroedel et al., 2000).

Prenatal images were not presented to the philosophers and theologians who first raised the question of when life begins. One must wonder if their availability would have changed history. Would Aristotle have found the support for his tripartite classification, or would he have reacted as many people do, with a sense of obligation to the “child” smiling from the womb? The complexity of people’s reactions to these images is evidence of the tenuous grasp society has on the issue of fetal personhood. Undoubtedly, the issue will be forced in the next several years, though the direction America will take remains unknown.

## APPENDIX

**Table 1: States by Level of Protection**

Protections from Fertilization until Birth	Coverage from Specific Point during Gestation until Birth	No Recognition of Separate Fetal Victims	No Protection for Fetal Victims	Conflicting Statutes
Arizona, Idaho, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin	Arkansas, California, Florida, Georgia, Indiana, Maryland, Massachusetts, Nevada, Rhode Island, South Carolina, Tennessee, and Washington	Delaware, Iowa, Kansas, Maine, New Hampshire, New Mexico, North Carolina, and Wyoming	Alabama, Alaska, Colorado, Connecticut, Hawaii, Montana, New Jersey, Oregon, and Vermont	New York

**Table 2: States with Protections from Fertilization until Birth (20):**

State	Citation(s)	Term	Criminal Charge	Statute(s)	Exemptions	Court Cases
Arizona	Arizona Revised Statutes Annotated (A R S)  A R S § 13-1102 (Westlaw 2005)  A R S § 13-1103 (Westlaw 2005)  A R S § 13-1104 (Westlaw 2005)  A R S § 13-1105 (Westlaw 2005)  SB 1052 (2005)	Unborn child	Negligent homicide, manslaughter, second-degree murder, first degree murder	<p><b>A.R.S. § 13-1102. Negligent homicide; classification</b></p> <p>A A person commits negligent homicide if with criminal negligence the person causes the death of another person, including an unborn child</p> <p>B An offense under this section applies to an unborn child in the womb at any stage of its development A person may not be prosecuted under this section if any of the following applies</p> <ol style="list-style-type: none"> <li>1 The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied of authorized by law</li> <li>2 The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child</li> <li>3 The person was the unborn child's mother</li> </ol> <p>C Negligent homicide is a class 4 felony</p> <p><b>A.R.S. § 13-1103. Manslaughter; classification</b></p> <p>A A person commits manslaughter by</p> <ol style="list-style-type: none"> <li>5 Knowingly or recklessly causing the death of an unborn child by any physical injury to the mother</li> </ol> <p>B An offense under subsection A, paragraph 5 of this section applies to an unborn child in the womb at any</p>	Abortion, medical treatment, mother	<p>"Because we find that the legislature has not evidenced an intent to include a fetus within the meaning of "person" in the first degree murder statute, that crime is not cognizable in Arizona"</p> <p><i>Vo v Superior Court in and for County of Maricopa</i>, 836 P 2d 408 at 419 (Ariz App Div 1, 1992)</p>

			<p>stage of its development A person shall not be prosecuted under subsection A, paragraph 5 of this section if any of the following applies</p> <ol style="list-style-type: none"> <li>1 The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied of authorized by law</li> <li>2 The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child</li> <li>3 The person was the unborn child's mother</li> </ol> <p>C Manslaughter is a class 2 felony</p> <p><b>A.R.S. § 13-1104. Second degree murder; classification</b></p> <p>A A person commits second degree murder if without premeditation</p> <ol style="list-style-type: none"> <li>1 The person intentionally causes the death of another person, including an unborn child or, as a result of intentionally causing the death of another person, causes the death of an unborn child, or</li> <li>2 Knowing that the person's conduct will cause death or serious physical injury, the person causes the death of another person, including an unborn child or, as a result of knowingly causing the death of another person, causes the death of an unborn child, or</li> <li>3 Under circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person, including an unborn child or, as a result of recklessly causing the death of another person, causes the death of an unborn child</li> </ol> <p>B An offense under this section applies to an unborn child in the womb at any stage of its development A person may not be prosecuted under this section if any of the following applies</p> <ol style="list-style-type: none"> <li>1 The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied of authorized by law</li> <li>2 The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child</li> <li>3 The person was the unborn child's mother</li> </ol> <p>C Second degree murder is a class 1 felony and is punishable as provided by section 13-604, subsection</p>		
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				<p>S, section 13-604 01 if the victim is under fifteen years of age or is an unborn child or section 13-710</p> <p><b>A.R.S. § 13-1105. First degree murder; classification</b></p> <p>A A person commits first degree murder if</p> <p>1 Intending or knowing that the person's conduct will cause death the person causes the death of a another person, including an unborn child, with premeditation or, as a result of causing the death of another person with premeditation, causes the death of an unborn child</p> <p>C An offense under subsection A, paragraph 1 of this section applies to an unborn child in the womb at any stage of its development A person shall not be prosecuted under subsection A, paragraph 1 of this section if any of the following applies</p> <p>1 The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied or authorized by law</p> <p>2 The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child</p> <p>3 The person was the unborn child's mother</p> <p>D First degree murder is a class 1 felony and punishable by death or life imprisonment as provided by sections 12-703 and 13-703 01</p>		
Idaho	<p>Idaho Code (I C )</p> <p>I C § 18-4001 (Westlaw 2002)</p> <p>I C § 18-4006 (Westlaw 2002)</p> <p>I C § 18-907 (Westlaw 2002)</p>	Human embryo or fetus	Murder, manslaughter, aggravated battery	<p><b>I.C. § 18-4001 Murder defined.</b></p> <p>Murder is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, with malice aforethought or the intentional application of torture to a human being, which results in the death of a human being</p> <p><b>I.C. § 18-4006 Manslaughter defined.</b></p> <p>Manslaughter is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, without malice</p> <p>It is of three (3) kinds</p> <p>1 Voluntary -- upon a sudden quarrel or heat of passion</p> <p>2 Involuntary -- in the perpetration of or attempt to perpetrate any unlawful act, other than arson, rape, robbery, kidnapping, burglary, or mayhem, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection, or in the operation of any firearm</p>	Abortion, medical treatment, mother	



				<p>or deadly weapon in a reckless, careless or negligent manner which produces death</p> <p>3 Vehicular -- in which the operation of a motor vehicle is a significant cause contributing to the death because of</p> <p>(a) the commission of an unlawful act, not amounting to a felony, with gross negligence, or</p> <p>(b) the commission of a violation of section 18-8004 or 18-8006, Idaho Code, or</p> <p>(c) the commission of an unlawful act, not amounting to a felony, without gross negligence</p> <p>Notwithstanding any other provision of law, any evidence of conviction under subsection 3 (b) shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of subsection 3 (b) means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s)</p> <p><b>I.C. § 18-907 Aggravated battery defined.</b></p> <p>(1) A person commits aggravated battery who, in committing battery</p> <p>(e) Upon the person of a pregnant female, causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus</p> <p>(2) For purposes of this section the terms "embryo" or "fetus" shall mean any human in utero</p> <p>(3) There shall be no prosecution under subsection (1)(e) of this section</p> <p>(a) Of any person for conduct relating to an abortion for which the consent of the pregnant female, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law</p> <p>(b) Of any person for any medical treatment of the pregnant female or her embryo or fetus, or</p> <p>(c) Of any female with respect to her embryo or fetus</p> <p>(4) Nothing in this chapter is intended to amend or nullify the provisions of chapter 6, title 18, Idaho Code</p>		
Illinois	West's Smith-hurd Illinois Compiled Statutes Annotated (ILCS)	Unborn child	Intentional homicide, voluntary manslaughter, involuntary manslaughter and reckless	<p><b>720 ILCS 5/9-1.2 Intentional Homicide of an Unborn Child.</b></p> <p>(a) A person commits the offense of intentional homicide of an unborn child if, in performing acts which cause the death of an unborn child, he without lawful justification</p> <p>(1) either intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child or knew that such acts would cause death or great bodily harm to the pregnant woman or her</p>	Abortion, medical treatment, mother	<p><i>Ford v. Ahitow</i>, 104 F 3d 926, C A 7 (Ill 1997)</p> <p><i>People v. Campos</i>, 592 N E 2d 85 (Ill App 1 Dist 1992)</p>

720 ILCS 5/9-1 2 (Westlaw 2000)	homicide, battery, aggravated battery	<p>unborn child, or</p> <p>(2) he knew that his acts created a strong probability of death or great bodily harm to the pregnant woman or her unborn child, and</p> <p>(3) he knew that the woman was pregnant</p> <p>(b) For purposes of this Section,</p> <p>(1) "unborn child" shall mean any individual of the human species from fertilization until birth, and</p> <p>(2) "person" shall not include the pregnant woman whose unborn child is killed</p> <p>(c) This Section shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, [FN1] to which the pregnant woman has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment</p> <p>(d) Penalty. The sentence for intentional homicide of an unborn child shall be the same as for first degree murder, except that</p> <p>(1) the death penalty may not be imposed,</p> <p>(2) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court,</p> <p>(3) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court,</p> <p>(4) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court</p> <p>(e) The provisions of this Act shall not be construed to prohibit the prosecution of any person under any other provision of law</p> <p><b>720 ILCS 5/9-3.2 Involuntary Manslaughter and Reckless Homicide of an Unborn Child.</b></p> <p>(a) A person who unintentionally kills an unborn child without lawful justification commits involuntary manslaughter of an unborn child if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of death consists of the driving of a motor vehicle, in which case the person commits reckless homicide of an unborn child</p>	<p><i>People v Greer</i>, 402 N E 2d 203 (Ill 1980)</p>
720 ILCS 5/9-3 2 (Westlaw 1986)			
720 ILCS 5/9-2 1 (Westlaw 1986)			
720 ILCS 5/12-3 1 (Westlaw 1986)			
720 ILCS 5/12-4 4 (Westlaw 1986)			
20 ILCS 301/40-5 (Westlaw 1997)			

				<p>(b) Sentence</p> <p>(1) Involuntary manslaughter of an unborn child is a Class 3 felony</p> <p>(2) Reckless homicide of an unborn child is a Class 3 felony</p> <p>(c) For purposes of this Section, (1) "unborn child" shall mean any individual of the human species from fertilization until birth, and (2) "person" shall not include the pregnant woman whose unborn child is killed</p> <p>(d) This Section shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, [FN1] to which the pregnant woman has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment</p> <p>(e) The provisions of this Section shall not be construed to prohibit the prosecution of any person under any other provision of law, nor shall it be construed to preclude any civil cause of action</p> <p><b>720 ILCS 5/12-3.1 Battery of an Unborn Child.</b></p> <p>(a) 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</p> <p>(b) For purposes of this Section, (1) "unborn child" shall mean any individual of the human species from fertilization until birth, and (2) "person" shall not include the pregnant woman whose unborn child is harmed</p> <p>(c) Sentence Battery of an unborn child is a Class A misdemeanor</p> <p>(d) This Section shall not apply to acts which cause bodily harm to an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, [FN1] to which the pregnant woman has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment</p> <p><b>720 ILCS 5/12-4.4 Aggravated battery of an unborn child.</b></p> <p>(a) A person who, in committing battery of an unborn child, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery of an unborn child</p> <p>(b) Sentence Aggravated battery of an unborn child is a Class 2 felony</p>		
Kentucky	Baldwin's Kentucky	Unborn child	Fetal homicide (4 degrees)	<b>K.R.S. § 507A.020 Fetal homicide in the first degree</b>	Abortion, medical	

<p>Revised Statutes Annotated (K R S )</p> <p>K R S § 507A 020 (Westlaw 2004)</p> <p>K R S § 507A 030 (Westlaw 2004)</p> <p>K R S. § 507A 040 (Westlaw 2004)</p> <p>K R S § 507A 050 (Westlaw 2004)</p> <p>K R S § 507A 060 (Westlaw 2004)</p>	<p>(1) A person is guilty of fetal homicide in the first degree when</p> <p>(a) With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507 020(1)(a), he causes the death of an unborn child, except that in any prosecution, a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of fetal homicide in the second degree or any other crime, or</p> <p>(b) Including but not limited to the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he wantonly engages in conduct which creates a grave risk of death to an unborn child and thereby causes the death of an unborn child</p> <p>(2) Fetal homicide in the first degree is a capital offense</p> <p><b>K.R.S. § 507A.030 Fetal homicide in the second degree</b></p> <p>(1) A person is guilty of fetal homicide in the second degree when</p> <p>(a) With intent to cause serious physical injury to an unborn child or with the intent necessary to commit an offense under KRS 507 030(1)(a), he causes the death of an unborn child, or</p> <p>(b) With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507 030(1)(b), he causes the death of an unborn child under circumstances which do not constitute fetal homicide in the first degree because he acts under the influence of extreme emotional disturbance, as defined in KRS 507A 020(1)(a)</p> <p>(2) Fetal homicide in the second degree is a Class B felony</p> <p><b>K.R.S. § 507A.040 Fetal homicide in the third degree</b></p> <p>(1) A person is guilty of fetal homicide in the third degree when he wantonly causes the death of an unborn child, including but not limited to situations where the death results from the person's operation of a motor vehicle</p> <p>(2) Fetal homicide in the third degree is a Class C felony</p> <p><b>K.R.S. § 507A.050 Fetal homicide in the fourth degree</b></p> <p>(1) A person is guilty of fetal homicide in the fourth degree when, with recklessness, he causes the death of an unborn child</p>	<p>treatment, mother</p>
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				<p>(2) Fetal homicide in the fourth degree is a Class D felony</p> <p><b>K.R.S. § 507A.060 Death sentence prohibited</b></p> <p>The death of an unborn child shall not result in the imposition of a sentence of death, either as a result of the violation of KRS 507A 020 or as a result of the aggravation of another capital offense under KRS 532 025(2)</p>		
Louisiana	<p>West's Louisiana Statutes Annotated Louisiana Revised Statutes (LSA-R S )</p> <p>LSA-R S 14 2 (Westlaw 2004)</p> <p>LSA-R S 14 32 5 (Westlaw 1989)</p> <p>LSA-R S 14 32 6 (Westlaw 2004)</p> <p>LSA-R S 14 32 7 (Westlaw 1989)</p> <p>LSA-R S 14 32 8 (Westlaw 2001)</p>	Unborn child	Feticide (3 degrees)	<p><b>LSA-R.S. 14:2 Definitions</b></p> <p>(1) "Another" refers to any other person or legal entity, including the state of Louisiana or any subdivision thereof</p> <p>(7) "Person" includes a human being from the moment of fertilization and implantation and also includes a body of persons, whether incorporated or not</p> <p>(11) "Unborn child" means any individual of the human species from fertilization and implantation until birth</p> <p><b>LSA-R.S. 14:32.5. Feticide defined; exceptions</b></p> <p>A Feticide is the killing of an unborn child by the act, procurement, or culpable omission of a person other than the mother of the unborn child The offense of feticide shall not include acts which cause the death of an unborn child if those acts were committed during any abortion to which the pregnant woman or her legal guardian has consented or which was performed in an emergency as defined in R S 40 1299 35 12 Nor shall the offense of feticide include acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment</p> <p>B Criminal feticide is of three grades</p> <p>(1) First degree feticide</p> <p>(2) Second degree feticide</p> <p>(3) Third degree feticide</p> <p><b>LSA-R.S. 14:32.6. First degree feticide</b></p> <p>A First degree feticide is</p> <p>(1) The killing of an unborn child when the offender has a specific intent to kill or to inflict great bodily harm</p> <p>(2) The killing of an unborn child when the offender is engaged in the perpetration or attempted</p>	Abortion, medical treatment	<p><i>State v Smith</i>, 676 So 2d 1068 (La 1996)</p>

				<p>perpetration of aggravated rape, forcible rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, assault by drive-by shooting, aggravated escape, armed robbery, first degree robbery, or simple robbery, even though he has no intent to kill or inflict great bodily harm</p> <p>B Whoever commits the crime of first degree feticide shall be imprisoned at hard labor for not more than fifteen years</p> <p><b>LSA-R.S. 14:32.7. Second degree feticide</b></p> <p>A Second degree feticide is</p> <p>(1) The killing of an unborn child which would be first degree feticide, but the offense is committed in sudden passion or heat of blood immediately caused by provocation of the mother of the unborn child sufficient to deprive an average person of his self control and cool reflection Provocation shall not reduce a first degree feticide to second degree feticide if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed</p> <p>(2) A feticide committed without any intent to cause death or great bodily harm</p> <p>(a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 32 6 (first degree feticide), or of any intentional misdemeanor directly affecting the person, or</p> <p>(b) When the offender is resisting lawful arrest by means, or in a manner, not inherently dangerous, and the circumstances are such that the killing would not be first degree feticide under Article 32 6</p> <p>B Whoever commits the crime of second degree feticide shall be imprisoned at hard labor for not more than ten years</p> <p><b>LSA-R.S. 14:32.8. Third degree feticide</b></p> <p>A Third degree feticide is</p> <p>(1) The killing of an unborn child by criminal negligence The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence</p> <p>(2) The killing of an unborn child caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, vessel, or other means of conveyance whether or not the offender had the intent to cause death or great bodily harm whenever any of the following conditions exist</p> <p>(a) The offender is under the influence of alcoholic beverages as determined by chemical tests</p>		
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				<p>administered under the provisions of R S 32 662</p> <p>(b) The offender's blood alcohol concentration is 0 08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood</p> <p>(c) The offender is under the influence of narcotic drugs, central nervous system stimulants, hallucinogenic drugs, methaqualone, or barbiturates and such condition was a contributing factor to the killing</p> <p>B Whoever commits the crime of third degree feticide shall be fined not less than two thousand dollars and shall be imprisoned with or without hard labor for not more than five years</p>		
Michigan	<p>Michigan Compiled Laws Annotated (M C L A )</p> <p>M C L A 750 322 (Westlaw 1970)</p> <p>M C L A 750 323 (Westlaw 1970)</p> <p>M C L A 750 90a (Westlaw 2001)</p> <p>M C L A 750 90b (Westlaw 2001)</p> <p>M C L A 750 90c (Westlaw 2003)</p> <p>M C L A 750 90d (Westlaw 2001)</p> <p>M C L A 750 90e (Westlaw 2001)</p>	Unborn quick child, quick child, embryo, fetus	Manslaughter, assaults with felony penalties	<p><b>M.C.L.A. 750.322. Manslaughter; wilful killing of unborn quick child</b></p> <p>Sec 322 WILFUL KILLING OF UNBORN QUICK CHILD—The wilful killing of an unborn quick child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter</p> <p><b>M.C.L.A. 750.323. Manslaughter; death of quick child or mother from use of medicine or instrument</b></p> <p>Sec 323 DEATH OF QUICK CHILD OR MOTHER FROM USE OF MEDICINE, ETC , WITH INTENT TO DESTROY SUCH CHILD—Any person who shall administer to any woman pregnant with a quick child any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, be guilty of manslaughter</p> <p>In any prosecution under this section, it shall not be necessary for the prosecution to prove that no such necessity existed</p> <p><b>M.C.L.A. 750.90a. Intentional conduct against a pregnant individual; resulting in miscarriage or stillbirth; resulting in death or great bodily harm to embryo or fetus</b></p> <p>Sec 90a If a person intentionally commits conduct proscribed under sections 81 to 89 [FN1] against a pregnant individual, the person is guilty of a felony punishable by imprisonment for life or any term of years if all of the following apply</p> <p>(a) The person intended to cause a miscarriage or stillbirth by that individual or death or great bodily harm to the embryo or fetus, or acted in wanton or willful disregard of the likelihood that the natural tendency of the person's conduct is to cause a miscarriage or stillbirth or death or great bodily harm to the embryo or fetus.</p> <p>(b) The person's conduct resulted in a miscarriage or stillbirth by that individual or death to the embryo or fetus</p>	Medical treatment, mother	<i>Larkin v Cahalan</i> , 208 N W 2d 176 (Mich 1973)

	<p>M C L A 750 90f (Westlaw 1999)</p>		<p><b>M.C.L.A. 750.90b. Intentional conduct against a pregnant individual; resulting in miscarriage or stillbirth; resulting in death or great bodily harm, serious or aggravated physical injury to embryo or fetus</b></p> <p>Sec 90b A person who intentionally commits conduct proscribed under sections 81 to 89 [FN1] against a pregnant individual is guilty of a crime as follows</p> <p>(a) If the conduct results in a miscarriage or stillbirth by that individual, or death to the embryo or fetus, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$7,500 00, or both</p> <p>(b) If the conduct results in great bodily harm to the embryo or fetus, a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000 00, or both</p> <p>(c) If the conduct results in serious or aggravated physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000 00, or both</p> <p>(d) If the conduct results in physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500 00, or both</p> <p><b>M.C.L.A. 750.90c. Commission of grossly negligent act against pregnant individual</b></p> <p>Sec 90c A person who commits a grossly negligent act against a pregnant individual is guilty of a crime as follows</p> <p>(a) If the act results in a miscarriage or stillbirth by that individual or death to the embryo or fetus, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$7,500 00, or both</p> <p>(b) If the act results in great bodily harm to the embryo or fetus, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500 00, or both</p> <p>(c) If the act results in serious or aggravated physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500 00, or both</p> <p>(d) If the act results in physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500 00, or both.</p> <p><b>M.C.L.A. 750.90d. Conduct resulting in a vehicular accident with a pregnant individual; resulting in miscarriage or stillbirth; death or bodily harm, serious or aggravated injury to embryo or fetus</b></p> <p>Sec 90d A person who engages in conduct proscribed under section 625(1) or (3) of the Michigan vehicle</p>		
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				<p>code, 1949 PA 300, MCL 257 625, that involves an accident with a pregnant individual is guilty of a felony punishable as follows</p> <p>(a) If the person's conduct causes a miscarriage or stillbirth by that individual or death to the embryo or fetus, imprisonment for not more than 15 years or a fine of not less than \$2,500 00 or more than \$10,000 00, or both</p> <p>(b) If the person's conduct causes great bodily harm or serious or aggravated injury to the embryo or fetus, imprisonment for not more than 5 years or a fine of not less than \$1,000 00 or more than \$5,000 00, or both</p> <p><b>M.C.L.A. 750.90e. Careless or reckless operation of motor vehicle; proximate and resulting cause of accident involving pregnant individual; resulting miscarriage or stillbirth to individual</b></p> <p>Sec 90e If a person operates a motor vehicle in a careless or reckless manner, but not willfully or wantonly, that is the proximate cause of an accident involving a pregnant individual and the accident results in a miscarriage or stillbirth by that individual or death to the embryo or fetus, the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000 00, or both</p> <p><b>M.C.L.A. 750.90f. Application of §§ 750.90a to 750.90e to other specific acts of conduct; definitions</b></p> <p>Sec 90f (1) Sections 90a to 90e [FN1] do not apply to any of the following</p> <p>(a) An act committed by the pregnant individual</p> <p>(b) A medical procedure performed by a physician or other licensed medical professional within the scope of his or her practice and with the pregnant individual's consent or the consent of an individual who may lawfully provide consent on her behalf or without consent as necessitated by a medical emergency</p> <p>(c) The lawful dispensation, administration, or prescription of medication</p> <p>(2) This section does not prohibit a prosecution under any other applicable law</p> <p>(3) As used in this section, "physician or other licensed medical professional" means a person licensed under article 15 of the public health code, 1978 PA 368, MCL 333 16101 to 333 18838</p>		
Minnesota	<p>Minnesota Statutes Annotated (M S A )</p> <p>M S A 609 266</p>	Unborn child	<p>Murder (3 degrees), manslaughter (2 degrees), assault (3 degrees),</p>	<p><b>M.S.A. 609.266. Definitions</b></p> <p>The definitions in this subdivision apply to sections 609 21, subdivisions 3 and 4, and 609 2661 to 609 2691</p> <p>(a) "Unborn child" means the unborn offspring of a human being conceived, but not yet born</p>	Pregnant woman	<p>"[I]t is not within our judicial province, under the guise of interpretation, to hold that the words "human being" as used in</p>

<p>(Westlaw 1986)</p> <p>M S A 609 2661 (Westlaw 1986)</p> <p>M S A 609 2662 (Westlaw 1986)</p> <p>M S A 609 2663 (Westlaw 1986)</p> <p>M S A 609 2664 (Westlaw 1986)</p> <p>M S A 609 2665 (Westlaw 1989)</p> <p>M S A 609 267 (Westlaw 1989)</p> <p>M S A 609 2671 (Westlaw 1989)</p> <p>M S A 609 2672 (Westlaw 1986)</p> <p>M S A 609 268 (Westlaw 1995)</p> <p>M S A 609 269 (Westlaw 1986)</p> <p>M S A 609 21 (Westlaw 2004)</p>	<p>criminal vehicular operation</p>	<p>(b) "Whoever" does not include the pregnant woman</p> <p><b>M.S.A. 609.2661. Murder of an unborn child in the first degree</b></p> <p>Whoever does any of the following is guilty of murder of an unborn child in the first degree and must be sentenced to imprisonment for life</p> <p>(1) causes the death of an unborn child with premeditation and with intent to effect the death of the unborn child or of another,</p> <p>(2) causes the death of an unborn child while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence, either upon or affecting the mother of the unborn child or another, or</p> <p>(3) causes the death of an unborn child with intent to effect the death of the unborn child or another while committing or attempting to commit burglary, aggravated robbery, kidnapping, arson in the first or second degree, tampering with a witness in the first degree, or escape from custody</p> <p><b>M.S.A. 609.2662. Murder of an unborn child in the second degree</b></p> <p>Whoever does either of the following is guilty of murder of an unborn child in the second degree and may be sentenced to imprisonment for not more than 40 years</p> <p>(1) causes the death of an unborn child with intent to effect the death of that unborn child or another, but without premeditation, or</p> <p>(2) causes the death of an unborn child, without intent to effect the death of any unborn child or person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence</p> <p><b>M.S.A. 609.2663. Murder of an unborn child in the third degree</b></p> <p>Whoever, without intent to effect the death of any unborn child or person, causes the death of an unborn child by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human or fetal life, is guilty of murder of an unborn child in the third degree and may be sentenced to imprisonment for not more than 25 years</p> <p><b>M.S.A. 609.2664. Manslaughter of an unborn child in the first degree</b></p> <p>Whoever does any of the following is guilty of manslaughter of an unborn child in the first degree and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both</p>	<p>Minn Stat § 609 21 (1984) encompass a viable 8 1/2 month old fetus"</p> <p><i>State v Soto</i> 378 N W 2d 625 at 630 (Minn 1985)</p> <p>"The possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude "</p> <p><i>State v Merrill</i>, 450 N W 2d 318 at 323 (Minn 1990)</p>
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			<p>(1) intentionally causes the death of an unborn child in the heat of passion provoked by such words or acts of another as would provoke a person of ordinary self-control under like circumstances,</p> <p>(2) causes the death of an unborn child in committing or attempting to commit a misdemeanor or gross misdemeanor offense with such force or violence that death of or great bodily harm to any person or unborn child was reasonably foreseeable, and murder of an unborn child in the first or second degree was not committed thereby, or</p> <p>(3) intentionally causes the death of an unborn child because the actor is coerced by threats made by someone other than the actor's coconspirator and which cause the actor to reasonably believe that the act performed by the actor is the only means of preventing imminent death to the actor or another</p> <p><b>M.S.A. 609.2665. Manslaughter of an unborn child in the second degree</b></p> <p>A person who causes the death of an unborn child by any of the following means is guilty of manslaughter of an unborn child in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both</p> <p>(1) by the actor's culpable negligence whereby the actor creates an unreasonable risk and consciously takes chances of causing death or great bodily harm to an unborn child or a person,</p> <p>(2) by shooting the mother of the unborn child with a firearm or other dangerous weapon as a result of negligently believing her to be a deer or other animal,</p> <p>(3) by setting a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device, or</p> <p>(4) by negligently or intentionally permitting any animal, known by the person to have vicious propensities or to have caused great or substantial bodily harm in the past, to run uncontrolled off the owner's premises, or negligently failing to keep it properly confined</p> <p>If proven by a preponderance of the evidence, it shall be an affirmative defense to criminal liability under clause (4) that the mother of the unborn child provoked the animal to cause the unborn child's death</p> <p><b>M.S.A. 609.267. Assault of an unborn child in the first degree</b></p> <p>Whoever assaults a pregnant woman and inflicts great bodily harm on an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both</p> <p><b>M.S.A. 609.2671. Assault of an unborn child in the second degree</b></p> <p>Whoever assaults a pregnant woman and inflicts substantial bodily harm on an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than five years or to payment of</p>		
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			<p>a fine of not more than \$10,000, or both</p> <p>As used in this section, "substantial bodily harm" includes the birth of the unborn child prior to 37 weeks gestation if the child weighs 2,500 grams or less at the time of birth "Substantial bodily harm" does not include the inducement of the unborn child's birth when done for bona fide medical purposes</p> <p><b>M.S.A. 609.2672. Assault of an unborn child in the third degree</b></p> <p>Whoever does any of the following commits an assault of an unborn child in the third degree and is guilty of a misdemeanor</p> <p>(1) commits an act with intent to cause fear in a pregnant woman of immediate bodily harm or death to the unborn child, or</p> <p>(2) intentionally inflicts or attempts to inflict bodily harm on an unborn child who is subsequently born alive</p> <p><b>M.S.A. 609.268. Injury or death of an unborn child in commission of crime</b></p> <p>Subdivision 1 Death of an unborn child Whoever, in the commission of a felony or in a violation of section 609 224, 609 2242, 609 23, 609 231, 609 2325, or 609 233, causes the death of an unborn child is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine not more than \$30,000, or both As used in this subdivision, "felony" does not include a violation of sections 609 185 to 609 21, 609 221 to 609 2231, or 609 2661 to 609 2665</p> <p>Subd 2 Injury to an unborn child Whoever, in the commission of a felony or in a violation of section 609 23, 609 231, 609 2325 or 609 233, causes great or substantial bodily harm to an unborn child who is subsequently born alive, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both As used in this subdivision, "felony" does not include a violation of sections 609 21, 609 221 to 609 2231, or 609 267 to 609 2672</p> <p><b>M.S.A. 609.269. Exception</b></p> <p>Sections 609 2661 to 609 268 do not apply to any act described in section 145 412 [abortion]</p> <p><b>M.S.A. 609.21. Criminal vehicular homicide and injury</b></p> <p>Subd 3. Resulting in death to an unborn child A person is guilty of criminal vehicular operation resulting in death to an unborn child and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the person causes the death of an unborn child as a result of operating a motor vehicle</p> <p>(1) in a grossly negligent manner,</p>		
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			<p>(2) in a negligent manner while under the influence of</p> <ul style="list-style-type: none"> <li>(i) alcohol,</li> <li>(ii) a controlled substance, or</li> <li>(iii) any combination of those elements,</li> </ul> <p>(3) while having an alcohol concentration of 0.10 or more,</p> <p>(4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,</p> <p>(5) in a negligent manner while knowingly under the influence of a hazardous substance,</p> <p>(6) in a negligent manner while any amount of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols, is present in the person's body, or</p> <p>(7) where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6</p> <p>A prosecution for or conviction of a crime under this subdivision is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct</p> <p>Subd. 4. Resulting in injury to unborn child. A person is guilty of criminal vehicular operation resulting in injury to an unborn child and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person causes great bodily harm to an unborn child who is subsequently born alive, as a result of operating a motor vehicle</p> <p>(1) in a grossly negligent manner,</p> <p>(2) in a negligent manner while under the influence of</p> <ul style="list-style-type: none"> <li>(i) alcohol,</li> <li>(ii) a controlled substance, or</li> <li>(iii) any combination of those elements,</li> </ul> <p>(3) while having an alcohol concentration of 0.10 or more,</p> <p>(4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,</p>		
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				<p>(5) in a negligent manner while knowingly under the influence of a hazardous substance,</p> <p>(6) in a negligent manner while any amount of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols, is present in the person's body, or</p> <p>(7) where the driver who causes the accident leaves the scene of the accident in violation of section 169 09, subdivision 1 or 6</p> <p>A prosecution for or conviction of a crime under this subdivision is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct</p>		
Mississippi	<p>West's Annotated Mississippi Code (Miss Code Ann )</p> <p>Miss Code Ann § 97-3-19 (Westlaw 2004)</p> <p>Miss Code Ann § 97-3-37 (Westlaw 2004)</p> <p>SB 2869 (2004)</p>	Unborn child	Homicide and certain other violent crimes	<p><b>Miss. Code Ann. § 97-3-19. "Murder" and "capital murder" defined</b></p> <p>(1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases</p> <p>(d) When done with deliberate design to effect the death of an unborn child</p> <p><b>Miss. Code Ann. § 97-3-37. Injury to pregnant woman resulting in miscarriage or stillbirth; "human being" defined; crimes; exceptions</b></p> <p>(1) For purposes of the offenses enumerated in this subsection (1), 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</p> <p>(a) Section 97-3-7, simple and aggravated assault and domestic violence,</p> <p>(b) Section 97-3-15, justifiable homicide,</p> <p>(c) Section 97-3-17, excusable homicide,</p> <p>(d) Section 97-3-19, capital murder,</p> <p>(e) Section 97-3-27, homicide while committing a felony,</p> <p>(f) Section 97-3-29, homicide while committing a misdemeanor,</p> <p>(g) Section 97-3-33, killing a trespasser unnecessarily;</p> <p>(h) Section 97-3-35, killing without malice in the heat of passion,</p> <p>(i) Section 97-3-45, homicide by means of a dangerous animal,</p> <p>(j) Section 97-3-47, all other homicides,</p>	Medical treatment	

				<p>(k) Section 97-3-61, poisoning with intent to kill or injure</p> <p>(2) A person who intentionally injures a pregnant woman is guilty of a crime as follows</p> <p>(a) If the conduct results in a miscarriage or stillbirth by that individual, a felony punishable by imprisonment for not more than twenty (20) years or a fine of not more than Seven Thousand Five Hundred Dollars (\$7,500 00), or both</p> <p>(b) If the conduct results in great bodily harm to the embryo or fetus, a felony punishable by imprisonment for not more than twenty (20) years or a fine of not more than Five Thousand Dollars (\$5,000 00), or both</p> <p>(c) If the conduct results in serious or aggravated physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than one (1) year or a fine of not more than One Thousand Dollars (\$1,000 00), or both</p> <p>(d) If the conduct results in physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than ninety (90) days or a fine of not more than Five Hundred Dollars (\$500 00), or both</p> <p>(3) The provisions of this section shall not apply to any legal medical procedure performed by a licensed physician or other licensed medical professional, including legal abortions, when done at the request of a mother of an unborn child or the mother's legal guardian, or to the lawful dispensing or administration of lawfully prescribed medication</p>		
Missouri	<p>Vernon's Annotated Missouri Statutes (V A M S )</p> <p>V A M S 1 205 (Westlaw 1986)</p>	Unborn child	First degree murder or Involuntary manslaughter	<p><b>V.A.M.S. 1.205. Life begins at conception--unborn child, defined--failure to provide prenatal care, no cause of action for</b></p> <p>1 The general assembly of this state finds that</p> <p>(1) The life of each human being begins at conception,</p> <p>(2) Unborn children have protectable interests in life, health, and well-being,</p> <p>(3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child</p> <p>2 Effective January 1, 1988, the laws of this state 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, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state</p>	Mother	<p>"In summary, we hold that the provisions of § 1 205--that unborn children are to be considered persons--apply to define the term "person" in the involuntary manslaughter statute Under § 565 024 [Involuntary Manslaughter], causing the death of an unborn child is causing the death of a "person ""</p> <p><i>State v Knapp</i>, 843 S W 2d 345 at 350 (Mo</p>

				<p>3 As used in this section, the term "unborn children" or "unborn child" shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development</p> <p>4 Nothing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care</p>		<p>1992)</p> <p>"We hold that an unborn child is a person for purposes of § 565 020 [First Degree Murder]"</p> <p><i>State v Holcomb</i>, 956 S W 2d 286 at 290 (Mo App W D 1997)</p> <p><i>Webster v Reproductive Health Services</i> 492 U S 490 (1989) [upholding 1 205 1]</p>
Nebraska	<p>Nebraska Revised Statutes of 1943 (Neb Rev St )</p> <p>Neb Rev St § 28-388 (Westlaw 2002)</p> <p>Neb Rev St § 28-389 (Westlaw 2002)</p> <p>Neb Rev St § 28-390 (Westlaw 2002)</p> <p>Neb Rev St § 28-391 (Westlaw 2002)</p> <p>Neb Rev St § 28-392 (Westlaw 2002)</p>	Unborn child	Murder (first or second degree) or manslaughter	<p><b>Neb. Rev. St. § 28-388. Act, how cited.</b></p> <p>Sections 28-388 to 28-394 shall be known and may be cited as the Homicide of the Unborn Child Act</p> <p><b>Neb. Rev. St. § 28-389. Terms, defined.</b></p> <p>For purposes of the Homicide of the Unborn Child Act, unless the context otherwise requires</p> <p>(1) Premeditation means a design formed to do something before it is done, and</p> <p>(2) Unborn child means an individual member of the species <i>Homo sapiens</i>, at any stage of development in utero, who was alive at the time of the homicidal act and died as a result thereof whether before, during, or after birth</p> <p><b>Neb. Rev. St. § 28-390. Applicability of sections.</b></p> <p>Sections 28-391 to 28-394 do not apply to an act or conduct causing or contributing to the death of an unborn child when the act or conduct is</p> <p>(1) Committed or engaged in by the mother of the unborn child,</p> <p>(2) Any medical procedure performed with the consent of the mother, or</p> <p>(3) Dispensing a drug or device in accordance with law or administering a drug or device prescribed in accordance with law</p>		



	<p>Neb Rev St § 28-393 (Westlaw 2002)</p> <p>Neb Rev St § 28-394 (Westlaw 2002)</p>		<p><b>Neb. Rev. St. § 28-391. Murder of an unborn child in the first degree; penalty.</b></p> <p>(1) A person commits murder of an unborn child in the first degree if he or she in committing an act or engaging in conduct that causes the death of an unborn child, intends, with deliberate and premeditated malice, to kill the unborn child or the mother of the unborn child with knowledge of the pregnancy</p> <p>(2) Murder of an unborn child in the first degree is a Class IA felony</p> <p><b>Neb. Rev. St. § 28-392. Murder of an unborn child in the second degree; penalty.</b></p> <p>(1) A person commits murder of an unborn child in the second degree if he or she, in committing an act or engaging in conduct that causes the death of an unborn child, intends, but without premeditation, to kill the unborn child or another</p> <p>(2) Murder of an unborn child in the second degree is a Class IB felony</p> <p><b>Neb. Rev. St. § 28-393. Manslaughter of an unborn child; penalty.</b></p> <p>(1) A person commits manslaughter of an unborn child if he or she (a) kills an unborn child without malice upon a sudden quarrel with any person or (b) causes the death of an unborn child unintentionally while in the perpetration of or attempt to perpetrate any criminal assault, any sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking of any public or private means of transportation, or burglary</p> <p>(2) Manslaughter of an unborn child is a Class III felony</p> <p><b>Neb. Rev. St. § 28-394. Motor vehicle homicide of an unborn child; penalty.</b></p> <p>(1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child</p> <p>(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor</p> <p>(3)(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class IV felony</p> <p>(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197 06, motor vehicle homicide of an unborn child is a Class IV felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period The revocation shall not run concurrently with any jail term</p>		
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				<p>imposed</p> <p>(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197 06 and the defendant has a prior conviction for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with section 60-6,196, motor vehicle homicide of an unborn child is a Class III felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.</p>		
North Dakota	<p>North Dakota Century Code (NDCC)</p> <p>NDCC 12-17-1-01 (Westlaw 1987)</p> <p>NDCC 12-17-1-02 (Westlaw 1987)</p> <p>NDCC 12-17-1-03 (Westlaw 1987)</p> <p>NDCC 12-17-1-04 (Westlaw 1987)</p> <p>NDCC 12-17-1-05 (Westlaw 1987)</p> <p>NDCC 12-17-1-06 (Westlaw 1987)</p> <p>NDCC 12-17-1-06 (Westlaw 1987)</p> <p>NDCC 12-17-1-07</p>	Unborn child	Murder, felony murder, manslaughter, negligent homicide	<p><b>NDCC 12.1-17.1-01 Definitions.</b></p> <p>As used in this chapter</p> <p>1 "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus</p> <p>2 "Person" does not include the pregnant woman</p> <p>3 "Unborn child" means the conceived but not yet born offspring of a human being, which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive</p> <p><b>NDCC 12.1-17.1-02 Murder of an unborn child.</b></p> <p>1 A person is guilty of murder of an unborn child, a class AA felony, if the person</p> <p>a Intentionally or knowingly causes the death of an unborn child,</p> <p>b Causes the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman, or</p> <p>c Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person, or another participant, if any, causes the death of an unborn child, except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant</p> <p>(1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof,</p> <p>(2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon that under the circumstances indicated a readiness to inflict serious bodily injury,</p> <p>(3) Reasonably believed that no other participant was armed with such a weapon, and</p>	Abortion, medical treatment, mother	

	(Westlaw 1987)		<p>(4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury</p> <p>Subdivisions a and b are inapplicable in the circumstances covered by subsection 2</p> <p>2 A person is guilty of murder of an unborn child, a class A felony, if the person causes the death of an unborn child under circumstances which would be class AA murder, except that the person causes the death of the unborn child under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in the person's situation under the circumstances as the person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation or a serious event or situation for which the offender was not culpably responsible</p> <p><b>NDCC 12.1-17.1-03 Manslaughter of an unborn child.</b></p> <p>A person is guilty of manslaughter of an unborn child, a class B felony, if the person recklessly causes the death of an unborn child</p> <p><b>NDCC 12.1-17.1-04 Negligent homicide of an unborn child.</b></p> <p>A person is guilty of negligent homicide of an unborn child, a class C felony, if the person negligently causes the death of an unborn child</p> <p><b>NDCC 12.1-17.1-05 Aggravated assault of an unborn child.</b></p> <p>A person is guilty of assault of an unborn child, a class C felony, if that person willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child</p> <p><b>NDCC 12.1-17.1-06 Assault of an unborn child.</b></p> <p>A person is guilty of assault of an unborn child, a class A misdemeanor, if the person willfully assaults a pregnant woman and inflicts bodily injury on an unborn child</p> <p><b>NDCC 12.1-17.1-07 Exception.</b></p> <p>This chapter does not apply to acts or omissions that cause the death or injury of an unborn child if those acts or omissions are committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented, nor does it apply to acts or omissions that are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment performed by or under the supervision of a licensed physician</p> <p><b>NDCC 12.1-17.1-08 Other convictions not prohibited.</b></p>		
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				A prosecution for or conviction under this chapter is not a bar to conviction of or punishment for any other offense committed by a person as part of the same conduct		
Ohio	<p>Baldwin's Ohio Revised Code Annotated (R C )</p> <p>R C 2901 01 (Westlaw 2002)</p> <p>R C 2903 01 (Westlaw 2002)</p> <p>R C 2903 02 (Westlaw 1998)</p> <p>R C 2903 03 (Westlaw 1996)</p> <p>R C 2903 04 (Westlaw 2002)</p> <p>R C 2903 041 (Westlaw 1999)</p> <p>R C 2903 05 (Westlaw 1996)</p> <p>R C 2903 06 (Westlaw 2004)</p> <p>R C 2903 08 (Westlaw 2004)</p> <p>R C 2903 09 (Westlaw 2000)</p> <p>R C 2903 11 (Westlaw 1999)</p> <p>R C 2903 12 (Westlaw 1999)</p>	Unborn member of the species <i>homo sapiens</i>	Aggravated murder, murder, voluntary manslaughter, negligent homicide, aggravated vehicular homicide, vehicular homicide	<p><b>R.C. 2901.01 Definitions</b></p> <p>(B)(1)(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following</p> <p>(ii) An unborn human who is viable</p> <p>(c) As used in division (B)(1)(a) of this section</p> <p>(i) "Unborn human" means an individual organism of the species <i>Homo sapiens</i> from fertilization until live birth</p> <p>(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support</p> <p>(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners</p> <p>(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903 01, 2903 02, 2903 03, 2903 04, 2903 05, 2903 06, 2903 08, 2903 11, 2903 12, 2903 13, 2903 14, 2903 21, or 2903 22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919 12, division (B) of section 2919 13, or section 2919 151, 2919 17, or 2919 18 of the Revised Code, may be punished as a violation of section 2919 12, division (B) of section 2919 13, or section 2919 151, 2919 17, or 2919 18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code</p> <p>(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following</p> <p>(i) Her delivery of a stillborn baby,</p>	Abortion, medical treatment, mother	

<p>R C 2903 13 (Westlaw 2002)</p> <p>R C 2903 14 (Westlaw 1996)</p> <p>R C 2903 21 (Westlaw 2000)</p> <p>R C 2903 22 (Westlaw 2000)</p>			<p>(ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying,</p> <p>(iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human,</p> <p>(iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human,</p> <p>(v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying</p> <p><b>R.C. 2903.01 Aggravated murder</b></p> <p>(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy</p> <p>(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape</p> <p>(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense</p> <p>(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another</p> <p>(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies</p> <p style="padding-left: 40px;">(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties</p> <p style="padding-left: 40px;">(2) It is the offender's specific purpose to kill a law enforcement officer</p> <p>(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code</p> <p><b>R.C. 2903.02 Murder</b></p> <p>(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy</p>		
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			<p>(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code</p> <p>(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense</p> <p>(D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2929.02 of the Revised Code</p> <p><b>R.C. 2903.03 Voluntary manslaughter</b></p> <p>(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy</p> <p>(B) Whoever violates this section is guilty of voluntary manslaughter, a felony of the first degree</p> <p><b>R.C. 2903.04 Involuntary manslaughter</b></p> <p>(A) No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony</p> <p>(B) No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a regulatory offense, or a minor misdemeanor other than a violation of any section contained in Title XLV of the Revised Code that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any section contained in Title XLV of the Revised Code that is a minor misdemeanor</p> <p>(C) Whoever violates this section is guilty of involuntary manslaughter. Violation of division (A) of this section is a felony of the first degree. Violation of division (B) of this section is a felony of the third degree</p> <p>(D) If an offender is convicted of or pleads guilty to a violation of division (A) or (B) of this section and if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's violation of division (A) or (B) of this section was a violation of division (A) or (B) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance or included, as an element of that felony, misdemeanor, or regulatory offense, the offender's operation or participation in the operation of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, both of the</p>		
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				<p>following apply</p> <p>(1) The court shall impose a class one suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege as specified in division (A)(1) of section 4510.02 of the Revised Code</p> <p>(2) The court shall impose a mandatory prison term for the violation of division (A) or (B) of this section from the range of prison terms authorized for the level of the offense under section 2929.14 of the Revised Code</p> <p><b>R.C. 2903.041 Reckless homicide</b></p> <p>(A) No person shall recklessly cause the death of another or the unlawful termination of another's pregnancy</p> <p>(B) Whoever violates this section is guilty of reckless homicide, a felony of the third degree</p> <p><b>R.C. 2903.05 Negligent homicide</b></p> <p>(A) No person shall negligently cause the death of another or the unlawful termination of another's pregnancy by means of a deadly weapon or dangerous ordnance as defined in section 2923.11 of the Revised Code</p> <p>(B) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree</p> <p><b>R.C. 2903.06 Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter; effect of prior convictions; penalties</b></p> <p>(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways</p> <p>(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance,</p> <p>(b) As the proximate result of committing a violation of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance,</p> <p>(c) As the proximate result of committing a violation of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance</p> <p>(2) In one of the following ways</p>		
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				<p>(a) Recklessly,</p> <p>(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (F) of this section</p> <p>(3) In one of the following ways</p> <p>(a) Negligently,</p> <p>(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (F) of this section</p> <p><b>2903.08 Aggravated vehicular assault; enhancement of penalty; prior convictions; penalties</b></p> <p>(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn in any of the following ways</p> <p>(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance,</p> <p>(b) As the proximate result of committing a violation of division (A) of section 1547 11 of the Revised Code or of a substantially equivalent municipal ordinance,</p> <p>(c) As the proximate result of committing a violation of division (A)(3) of section 4561 15 of the Revised Code or of a substantially equivalent municipal ordinance</p> <p>(2) In one of the following ways</p> <p>(a) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as</p>		
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				<p>described in division (E) of this section,</p> <p>(b) Recklessly</p> <p>(3) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (E) of this section</p> <p><b>R.C. 2903.09 "Unlawful termination of another's pregnancy", "another's unborn", and "such other person's unborn" defined</b></p> <p>As used in sections 2903 01 to 2903 08, 2903 11 to 2903 14, 2903 21, and 2903 22 of the Revised Code</p> <p>(A) "Unlawful termination of another's pregnancy" means causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs</p> <p>(B) "Another's unborn" or "such other person's unborn" means a member of the species homo sapiens, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs</p> <p>(C) Notwithstanding divisions (A) and (B) of this section, in no case shall the definitions of the terms "unlawful termination of another's pregnancy," "another's unborn," and "such other person's unborn" that are set forth in division (A) of this section be applied or construed in any of the following manners</p> <p>(1) Except as otherwise provided in division (C)(1) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903 01, 2903 02, 2903 03, 2903 04, 2903 05, 2903 06, 2903 08, 2903 11, 2903 12, 2903 13, 2903 14, 2903 21, or 2903 22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919 12, division (B) of section 2919 13, or section 2919 151, 2919 17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919 12, division (B) of section 2919 13, or section 2919 151, 2919 17, or 2919 18 of the Revised Code, as applicable</p> <p>(2) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following</p>		
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				<p>(a) Her delivery of a stillborn baby,</p> <p>(b) Her causing, in any other manner, the death in utero of an unborn that she is carrying,</p> <p>(c) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn,</p> <p>(d) Her causing her child who is born alive to sustain one or more injuries while the child is an unborn,</p> <p>(e) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying</p> <p><b>R.C. 2903.11 Felonious assault</b></p> <p>(A) No person shall knowingly do either of the following</p> <p>(1) Cause serious physical harm to another or to another's unborn,</p> <p>(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance</p> <p>(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907 02 of the Revised Code</p> <p>(D) Whoever violates this section is guilty of felonious assault, a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer, felonious assault is a felony of the first degree. If the victim of the offense is a peace officer, as defined in section 2935 01 of the Revised Code, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929 13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree</p> <p><b>R.C. 2903.12 Aggravated assault</b></p> <p>(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly</p> <p>(1) Cause serious physical harm to another or to another's unborn,</p>		
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				<p>(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923 11 of the Revised Code</p> <p>(B) Whoever violates this section is guilty of aggravated assault, a felony of the fourth degree. If the victim of the offense is a peace officer, as defined in section 2935 01 of the Revised Code, aggravated assault is a felony of the third degree. If the victim of the offense is a peace officer, as defined in section 2935 01 of the Revised Code, and if the victim suffered serious physical harm as a result of the commission of the offense, aggravated assault is a felony of the third degree, and the court, pursuant to division (F) of section 2929 13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree</p> <p><b>R.C. 2903.13 Assault</b></p> <p>(A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn</p> <p>(B) No person shall recklessly cause serious physical harm to another or to another's unborn</p> <p>(C) Whoever violates this section is guilty of assault. Except as otherwise provided in division (C)(1), (2), (3), (4), or (5) of this section, assault is a misdemeanor of the first degree</p> <p><b>R.C. 2903.14 Negligent assault</b></p> <p>(A) No person shall negligently, by means of a deadly weapon or dangerous ordnance as defined in section 2923 11 of the Revised Code, cause physical harm to another or to another's unborn</p> <p>(B) Whoever violates this section is guilty of negligent assault, a misdemeanor of the third degree</p> <p><b>R.C. 2903.21 Aggravated menacing</b></p> <p>(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family</p> <p><b>R.C. 2903.22 Menacing</b></p> <p>(A) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family</p> <p>(B) Whoever violates this section is guilty of menacing. Except as otherwise provided in this division, menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a</p>		
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				<p>misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree</p>		
Oklahoma	<p>Oklahoma Statutes Annotated (Ok St Ann )</p> <p>21 Okl St Ann § 652 (Westlaw 2005)</p> <p>21 Okl St Ann § 713 (Westlaw 2005)</p> <p>21 Okl St Ann § 715 (Westlaw 2005)</p> <p>21 Okl St Ann § 723 (Westlaw 2005)</p>	Unborn child	Manslaughter, Assault and battery	<p><b>21 Okl. St. Ann § 652. Shooting or discharging firearm with intent to kill--Use of vehicle to facilitate discharge of weapon in conscious disregard of safety of others-- Assault and battery with deadly weapon, etc.</b></p> <p>A Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life</p> <p>B Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years</p> <p>C Any person who commits any assault and battery upon another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting the execution of any legal process, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding twenty (20) years</p> <p>D The provisions of this section shall not apply to</p> <p>1 Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or</p> <p>2 Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment</p> <p>E Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child</p> <p><b>21 Okl. St. Ann § 713. Killing an unborn child</b></p> <p>A Except as otherwise provided by law, any person who willfully kills an unborn child, as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall, upon conviction, be guilty of a felony and, upon conviction, shall be punished pursuant to the provisions of Section 715 [manslaughter in the first degree] of this title</p>	<p>Abortion, medical treatment, mother</p>	<p>"[I]n light of the civil liability which can be imposed under Oklahoma law for the wrongful death of a viable human fetus, it would be most unjust to refuse to extend protection to a viable human fetus under Oklahoma's general homicide statute"</p> <p><i>Hughes v State</i>, 868 P 2d 730 at 734 (Okla Crim App 1994)</p>

				<p>B The provisions of this section shall not apply to</p> <p>1 Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or</p> <p>2 Acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment</p> <p>C Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child</p> <p><b>21 Okl. St. Ann. § 723. Offender's knowledge of victim's pregnancy</b></p> <p>Any offense committed pursuant to the provisions of Sections 652 and 713 of Title 21 of the Oklahoma Statutes does not require proof that the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant or that the offender intended to cause the death or bodily injury to the unborn child</p>		
Pennsylvania	<p>Purdon's Pennsylvania Consolidated Statutes Annotated (Pa C S A )</p> <p>18 Pa C S A § 2601 (Westlaw 1997)</p> <p>18 Pa C S A § 2603 (Westlaw 1997)</p> <p>18 Pa C S A § 2604 (Westlaw 1997)</p> <p>18 Pa C S A § 2605 (Westlaw 1997)</p> <p>18 Pa C S A § 2606 (Westlaw 1997)</p>	Unborn child, fetus	Criminal homicide in the first, second, or third-degree, or voluntary manslaughter	<p><b>18 Pa. C.S.A. § 2601. Short title of chapter</b></p> <p>This chapter shall be known and may be cited as the Crimes Against the Unborn Child Act</p> <p><b>18 Pa. C.S.A. § 2603. Criminal homicide of unborn child</b></p> <p>(a) Offense defined —An individual commits criminal homicide of an unborn child if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child in violation of section 2604 (relating to murder of unborn child) or 2605 (relating to voluntary manslaughter of unborn child)</p> <p>(b) Classification —Criminal homicide of an unborn child shall be classified as murder of an unborn child or voluntary manslaughter of an unborn child</p> <p><b>18 Pa. C.S.A. § 2604. Murder of unborn child</b></p> <p>(a) First degree murder of unborn child --</p> <p>(1) A criminal homicide of an unborn child constitutes first degree murder of an unborn child when it is committed by an intentional killing</p> <p>(2) The penalty for first degree murder of an unborn child shall be imposed in accordance with section 1102(a)(2) (relating to sentence for murder and murder of an unborn child)</p> <p>(b) Second degree murder of unborn child --</p> <p>(1) A criminal homicide of an unborn child constitutes second degree murder of an unborn child when</p>	Abortion, medical treatment, mother	

	<p>18 Pa C S A § 2607 (Westlaw 1997)</p> <p>18 Pa C S A § 2608 (Westlaw 1997)</p> <p>18 Pa C S A § 3203 (Westlaw 1989)</p>		<p>it is committed while the defendant was engaged as a principal or an accomplice in the perpetration of a felony</p> <p>(2) The penalty for second degree murder of an unborn child shall be the same as for murder of the second degree</p> <p>(c) Third degree murder of unborn child –</p> <p>(1) All other kinds of murder of an unborn child shall be third degree murder of an unborn child</p> <p>(2) The penalty for third degree murder of an unborn child is the same as the penalty for murder of the third degree</p> <p><b>18 Pa. C.S.A. § 2605. Voluntary manslaughter of unborn child</b></p> <p>(a) Offense defined --A person who kills an unborn child without lawful justification commits voluntary manslaughter of an unborn child if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by</p> <p>(1) the mother of the unborn child whom the actor endeavors to kill, but he negligently or accidentally causes the death of the unborn child, or</p> <p>(2) another whom the actor endeavors to kill, but he negligently or accidentally causes the death of the unborn child</p> <p>(b) Unreasonable belief killing justifiable --A person who intentionally or knowingly kills an unborn child commits voluntary manslaughter of an unborn child if at the time of the killing he believes the circumstances to be such that, if they existed, would justify the killing under Chapter 5 (relating to general principles of justification) but his belief is unreasonable</p> <p>(c) Penalty --The penalty for voluntary manslaughter of an unborn child shall be the same as the penalty for voluntary manslaughter</p> <p><b>18 Pa. C.S.A. § 2606. Aggravated assault of unborn child</b></p> <p>(a) Offense --A person commits aggravated assault of an unborn child if he attempts to cause serious bodily injury to the unborn child or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the life of the unborn child</p> <p>(b) Grading --Aggravated assault of an unborn child is a felony of the first degree</p> <p><b>18 Pa. C.S.A. § 2607. Culpability</b></p> <p>In any criminal prosecution pursuant to this chapter, the provisions of Chapter 3 (relating to culpability)</p>		
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				<p>shall apply except that</p> <p>(1) The term "different person" as used in section 303(b) and (c) (relating to causal relationship between conduct and result) shall also include an unborn child (2) The term "victim" as used in section 311 (relating to consent) shall not include the mother of the unborn child</p> <p><b>18 Pa. C.S.A. § 2608. Nonliability and defenses</b></p> <p>(a) Nonliability --Nothing in this chapter shall impose criminal liability</p> <p>(1) For acts committed during any abortion or attempted abortion, whether lawful or unlawful, in which the pregnant woman cooperated or consented</p> <p>(2) For the consensual or good faith performance of medical practice, including medical procedures, diagnostic testing or therapeutic treatment, the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus</p> <p>(3) Upon the pregnant woman in regard to crimes against her unborn child</p> <p>(b) Defenses --In any prosecution pursuant to this chapter, it shall be a defense that</p> <p>(1) The use of force that caused death or serious bodily injury to the unborn child would have been justified pursuant to Chapter 5 (relating to general principles of justification) if it caused death or serious bodily injury to the mother</p> <p>(2) Death or serious bodily injury to the unborn child was caused by the use of force which would have been justified pursuant to Chapter 5 if the same level of force was used upon or toward the mother</p> <p><b>18 Pa. C.S.A. § 3203. Definitions</b></p> <p>"Unborn child" and "fetus " Each term shall mean an individual organism of the species homo sapiens from fertilization until live birth</p>		
South Dakota	<p>South Dakota Codified Laws (SDCL.)</p> <p>SDCL. 22-1-2 (Westlaw 2005)</p> <p>SDCL 22-16-1 (Westlaw 2005)</p>	Unborn child	Fetal homicide, manslaughter, or vehicular homicide	<p><b>SDCL. 22-1-2. Definition of terms</b></p> <p>Terms used in this title mean</p> <p>(31) "Person," any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society. If the term is used to designate a party whose property may be the subject of a crime or petty offense, it also includes the United States, any other country, this state, and any other state or territory of the United States, and any of their political subdivisions, agencies, or corporations,</p>	Abortion	

SDCL 22-16-11 (Westlaw 2005)		(50A) "Unborn child," an individual organism of the species homo sapiens from fertilization until live birth		
SDCL 22-16-4 (Westlaw 2005)		<b>SDCL. 22-16-1. Homicide defined</b>		
SDCL 22-16-7 (Westlaw 2005)		Homicide is the killing of one human being, including an unborn child, by another Homicide is either		
SDCL 22-16-15 (Westlaw 2005)		(1) Murder,		
SDCL 22-16-20 (Westlaw 1995)		(2) Manslaughter,		
SDCL 22-16-41 (Westlaw 2000)		(3) Excusable homicide,		
[all amended 2005 SD SB 43]		(4) Justifiable homicide, or		
		(5) Vehicular homicide		
		<b>SDCL. 22-16-1.1. Fetal homicide</b>		
		Homicide is fetal homicide if the person knew, or reasonably should have known, that a woman bearing an unborn child was pregnant and caused the death of the unborn child without lawful justification and if the person		
		(1) Intended to cause the death of or do serious bodily injury to the pregnant woman or the unborn child, or		
		(2) Knew that the acts taken would cause death or serious bodily injury to the pregnant woman or her unborn child, or		
		(3) If perpetrated without any design to effect death by a person engaged in the commission of any felony		
		Fetal homicide is a Class B felony		
		This section does not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, lawful or unlawful, to which the pregnant woman consented		
		<b>SDCL. 22-16-4. Murder in the first degree--Premeditated design--Felony murder-- Homicide as murder in the first degree</b>		
		Homicide is murder in the first degree		
		(1) If perpetrated without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, including an unborn child, or		



			<p>(2) If committed by a person engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary, kidnapping, or unlawful throwing, placing, or discharging of a destructive device or explosive</p> <p>Homicide is also murder in the first degree if committed by a person who perpetrated, or who attempted to perpetrate, any arson, rape, robbery, burglary, kidnapping or unlawful throwing, placing or discharging of a destructive device or explosive and who subsequently effects the death of any victim of such crime to prevent detection or prosecution of the crime</p> <p><b>SDCL. 22-16-7. Murder in the second degree--Act imminently dangerous to others-- Depraved mind</b></p> <p>Homicide is murder in the second degree if perpetrated by any act imminently dangerous to others and evincing a depraved mind, without regard for human life, although without any premeditated design to effect the death of any particular person, including an unborn child</p> <p><b>SDCL. 22-16-15. Manslaughter in the first degree</b></p> <p>Homicide is manslaughter in the first degree if perpetrated</p> <p>(1) Without any design to effect death, including an unborn child, while engaged in the commission of any felony other than as provided in § 22-16-4(2),</p> <p>(2) Without any design to effect death, including an unborn child, and in a heat of passion, but in a cruel and unusual manner,</p> <p>(3) Without any design to effect death, including an unborn child, but by means of a dangerous weapon,</p> <p>(4) Unnecessarily, either while resisting an attempt by the person killed to commit a crime or after such attempt has failed</p> <p>Manslaughter in the first degree is a Class C felony</p> <p><b>SDCL. 22-16-20. Manslaughter in the second degree</b></p> <p>Any reckless killing of one human being, including an unborn child, by the act or procurement of another which, under the provisions of this chapter, is neither murder nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree Manslaughter in the second degree is a Class 4 felony</p> <p><b>SDCL. 22-16-41. Vehicular homicide</b></p> <p>Any person who, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, without design to effect death, operates or drives a motor vehicle of</p>		
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				any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court may also order that the driver's license of any person convicted of vehicular homicide be revoked for such period of time as may be determined by the court but in no case less than two years.		
Texas	<p>Vernon's Texas Statutes and Codes Annotated (V T C A )</p> <p>V T C A , Penal Code § 1 07 (Westlaw 2003)</p> <p>V T C A , Penal Code § 19 06 (Westlaw 2003)</p> <p>V T C A , Penal Code § 20 01 (Westlaw 2003)</p> <p>V T C A , Penal Code § 22 12 (Westlaw 2003)</p> <p>V T C A , Penal Code § 49 12 (Westlaw 2003)</p> <p>SB 319 (2003)</p>	Unborn child	All crimes as though victim were adult	<p><b>V.T.C.A., Penal Code § 1.07. Definitions</b></p> <p>(a) In this code</p> <p>(26) "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.</p> <p>(38) "Person" means an individual, corporation, or association.</p> <p>(49) "Death" includes, for an individual who is an unborn child, the failure to be born alive.</p> <p><b>V.T.C.A., Penal Code § 19.06. Applicability to Certain Conduct</b></p> <p>This chapter [Criminal Homicide] does not apply to the death of an unborn child if the conduct charged is</p> <p>(1) conduct committed by the mother of the unborn child,</p> <p>(2) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent, if the death of the unborn child was the intended result of the procedure,</p> <p>(3) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160 102, Family Code, or</p> <p>(4) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.</p> <p><b>V.T.C.A., Penal Code § 20.01. Definitions</b></p> <p>In this chapter [Kidnapping and Unlawful Restraint]</p> <p>(4) "Person" means an individual, corporation, or association.</p> <p>(5) Notwithstanding Section 1 07, "individual" means a human being who has been born and is alive.</p> <p><b>V.T.C.A., Penal Code § 22.12. Applicability to Certain Conduct</b></p> <p>This chapter [Assaultive Offenses] does not apply to conduct charged as having been committed against an individual who is an unborn child if the conduct is</p> <p>(1) committed by the mother of the unborn child,</p>	Abortion, medical treatment, mother	

				<p>(2) a lawful medical procedure performed by a physician or other health care provider with the requisite consent,</p> <p>(3) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160 102, Family Code, or</p> <p>(4) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law</p> <p><b>V.T.C.A., Penal Code § 49.12. Applicability to Certain Conduct</b></p> <p>Sections 49 07 [Intoxicated Assault] and 49 08 [Intoxicated Manslaughter] do not apply to injury to or the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child</p>		
Utah	<p>West's Utah Code Annotated (U C A )</p> <p>U C A 1953 § 76-5-201 (Westlaw 2002)</p> <p>UT SB 178 (2002)</p>	Unborn child	<p>Aggravated murder, murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide, or automobile homicide</p>	<p><b>U.C.A. 1953 § 76-5-201. Criminal homicide--Elements--Designations of offenses</b></p> <p>(1) (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, with criminal negligence, or acting with a mental state otherwise specified in the statute defining the offense, causes the death of another human being, including an unborn child at any stage of its development</p> <p>(b) There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion</p> <p>(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide, or automobile homicide</p>	Abortion	<p><i>State v MacGuire</i> 84 P 3d 1171 (Utah 2004) [vagueness challenge]</p>
Virginia	<p>West's Annotated Code of Virginia (Va Code Ann )</p> <p>Va Code Ann. § 18 2-32 1 (Westlaw 1997)</p> <p>Va Code Ann. § 18 2-32 2 (Westlaw 2004)</p> <p>Va Code Ann. § 18 2-51.2</p>	Fetus	<p>Killing a fetus, aggravated malicious wounding</p>	<p><b>Va. Code Ann. § 18.2-32.1. Murder of a pregnant woman; penalty</b></p> <p>The willful and deliberate killing of a pregnant woman without premeditation by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth shall be punished by a term of imprisonment of not less than ten years nor more than forty years</p> <p><b>Va. Code Ann. § 18.2-32.2. Killing a fetus; penalty</b></p> <p>A. Any person who unlawfully, willfully, deliberately, maliciously and with premeditation kills the fetus of another is guilty of a Class 2 felony</p> <p>B Any person who unlawfully, willfully, deliberately and maliciously kills the fetus of another is guilty of a felony punishable by confinement in a state correctional facility for not less than five nor more than 40 years</p>		<p><i>Taylor v Commonwealth</i> 46 S E 2d 384 (Va 1948)</p>

	(Westlaw 1997)		<p><b>Va. Code Ann. § 18.2-51.2. Aggravated malicious wounding; penalty</b></p> <p>A If any person maliciously shoots, stabs, cuts or wounds any other person, or by any means causes bodily injury, with the intent to maim, disfigure, disable or kill, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment</p> <p>B If any person maliciously shoots, stabs, cuts or wounds any other woman who is pregnant, or by any other means causes bodily injury, with the intent to maim, disfigure, disable or kill the pregnant woman or to cause the involuntary termination of her pregnancy, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment</p> <p>C. For purposes of this section, the involuntary termination of a woman's pregnancy shall be deemed a severe injury and a permanent and significant physical impairment</p>		
West Virginia	<p>West's Annotated Code of West Virginia (W Va Code)</p> <p>W Va Code § 61-2-30 (Westlaw 2005)</p> <p>SB 146 (2005)</p>	Embryo or fetus	<p><b>W. Va. Code § 61-2-30 Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.</b></p> <p>(a) This section may be known and cited as the Unborn Victims of Violence Act</p> <p>(b) For the purposes of this article, the following definitions shall apply <i>Provided</i>, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used (i) To create or to imply that a civil cause of action exists, or (ii) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section</p> <p>(1) "Embryo" means the developing human in its early stages The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last menstrual period</p> <p>(2) "Fetus" means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth</p> <p>(c) For purposes of enforcing the provisions of sections one, four and seven of this article, subsections (a) and (c), section nine of said article, sections ten and ten-b of said article and subsection (a), section twenty-eight of said article, a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims</p> <p>(d) <i>Exceptions</i> -- The provisions of this section do not apply to</p> <p>(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law,</p> <p>(2) Acts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing or fertility treatment,</p>	Abortion, medical treatment, scientific research, self defense, mother	<p><i>State ex rel Atkinson v Wilson</i>, 332 S E 2d 807 (W Va 1984)</p>

				<p>(3) Acts or omissions by medical or health care personnel or scientific research personnel in performing lawful procedures involving embryos that are not in a stage of gestation in utero,</p> <p>(4) Acts involving the use of force in lawful defense of self or another, but not an embryo or fetus, and</p> <p>(5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying</p> <p>(e) For purposes of the enforcement of the provisions of this section, a violation of the provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection afforded by the provisions of subdivision (1), subsection (d) of this section</p> <p>(f) <i>Other convictions not barred</i> -- A prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant arising from the same incident</p>		
Wisconsin	<p>West's Wisconsin Statutes Annotated (W S A )</p> <p>W S A 939 75 (Westlaw 2003)</p> <p>W S A 939 24 (Westlaw 2001)</p> <p>W S A 939 25 (Westlaw 1997)</p> <p>W S A 940 01 (Westlaw 1997)</p> <p>W S A 940 02 (Westlaw 2001)</p> <p>W S A 940 05 (Westlaw 1997)</p> <p>W S A 940 06 (Westlaw 2001)</p> <p>W S A 940 08 (Westlaw 2001)</p>	Unborn Child	<p>First-degree intentional homicide, first-degree reckless homicide, second-degree intentional homicide, 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</p>	<p><b>W.S.A. 939.75. Death or harm to an unborn child</b></p> <p>(1) In this section and ss 939 24(1), 939 25(1), 940 01(1)(b), 940 02(1m), 940 05(2g) and (2h), 940 06(2), 940 08(2), 940 09(1)(c) to (e) and (1g)(c), (cm), and (d), 940 10(2), 940 195, 940 23(1)(b) and (2)(b), 940 24(2) and 940 25(1)(c) to (e), "unborn child" means any individual of the human species from fertilization until birth that is gestating inside a woman</p> <p>(2) (a) In this subsection, "induced abortion" means the use of any instrument, medicine, drug or other substance or device in a medical procedure with the intent to terminate the pregnancy of a woman and with an intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus</p> <p>(b) Sections 940 01(1)(b), 940 02(1m), 940 05(2g) and (2h), 940 06(2), 940 08(2), 940 09(1)(c) to (e) and (1g)(c), (cm), and (d), 940 10(2), 940 195, 940 23(1)(b) and (2)(b), 940 24(2) and 940 25(1)(c) to (e) do not apply to any of the following</p> <p>1 An act committed during an induced abortion This subdivision does not limit the applicability of ss 940 04, 940 13, 940 15 and 940 16 to an induced abortion</p> <p>2 An act that is committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a physician licensed under ch 448</p> <p>2h An act by any health care provider, as defined in s 155 01 (7), that is in accordance with a pregnant woman's power of attorney for health care instrument under ch 155 or in accordance with a decision of a health care agent who is acting under a pregnant woman's power of attorney for health care instrument under ch 155</p> <p>3 An act by a woman who is pregnant with an unborn child that results in the death of or great</p>		<p><i>State v Black</i>, 526 N W 2d 132 (Wis 1994) [due process challenge]</p>

	<p>W S A 940 09 (Westlaw 1993)</p> <p>W S A 940 10 (Westlaw 2001)</p>		<p>bodily harm, substantial bodily harm or bodily harm to that unborn child</p> <p>4 The prescription, dispensation or administration by any person lawfully authorized to do so and the use by a woman of any medicine, drug or device that is used as a method of birth control or is intended to prevent pregnancy</p> <p>(3) When the existence of an exception under sub (2) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under s 940 01(1)(b), 940 02(1m), 940 05(2g), 940 06(2), 940 08(2), 940 09(1)(c) to (e) or (1g)(c), (cm), or (d), 940 10(2), 940 195, 940 23(1)(b) or (2)(b), 940 24(2) or 940 25(1)(c) to (e)</p> <p><b>W.S.A. 939.24. Criminal recklessness</b></p> <p>(1) In this section, "criminal recklessness" means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk, except that for purposes of ss 940 02 (1m), 940 06 (2) and 940 23 (1) (b) and (2) (b), "criminal recklessness" means that the actor creates an unreasonable and substantial risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another and the actor is aware of that risk</p> <p>(2) Except as provided in ss 940 285, 940 29, 940 295, and 943 76, if criminal recklessness is an element of a crime in chs 939 to 951, the recklessness is indicated by the term "reckless" or "recklessly"</p> <p>(3) A voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness if, had the actor not been in that condition, he or she would have been aware of creating an unreasonable and substantial risk of death or great bodily harm to another human being</p> <p><b>W.S.A. 939.25. Criminal negligence</b></p> <p>(1) In this section, "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss 940 08 (2), 940 10 (2) and 940 24 (2), "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another</p> <p>(2) If criminal negligence is an element of a crime in chs 939 to 951 or s 346 62, the negligence is indicated by the term "negligent" or "negligently"</p> <p><b>W.S.A. 940.01. First-degree intentional homicide</b></p> <p>(1) Offenses (a) Except as provided in sub (2), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony</p>		
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			<p>(b) Except as provided in sub (2), whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class A felony</p> <p><b>W.S.A. 940.02. First-degree reckless homicide</b></p> <p>(1) Whoever recklessly causes the death of another human being under circumstances which show utter disregard for human life is guilty of a Class B felony</p> <p>(1m) Whoever recklessly causes the death of an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class B felony</p> <p><b>W.S.A. 940.05. Second-degree intentional homicide</b></p> <p>(2g) Whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class B felony if</p> <p>(a) In prosecutions under s 940 01, the state fails to prove beyond a reasonable doubt that the mitigating circumstances specified in s 940 01 (2) did not exist as required by s 940 01 (3), or</p> <p>(b) The state concedes that it is unable to prove beyond a reasonable doubt that the mitigating circumstances specified in s 940 01 (2) did not exist By charging under this section, the state so concedes</p> <p>(2h) In prosecutions under sub (2g), it is sufficient to allege and prove that the defendant caused the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another</p> <p>(3) The mitigating circumstances specified in s. 940 01(2) are not defenses to prosecution for this offense</p> <p><b>W.S.A. 940.06. Second-degree reckless homicide</b></p> <p>(2) Whoever recklessly causes the death of an unborn child is guilty of a Class D felony</p> <p><b>W.S.A. 940.08. Homicide by negligent handling of dangerous weapon, explosives or fire</b></p> <p>(2) Whoever causes the death of an unborn child by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class G felony</p> <p><b>W.S.A. 940.09. Homicide by intoxicated use of vehicle or firearm</b></p>		
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				<p>(1) Any person who does any of the following may be penalized as provided in sub (1c)</p> <p>(c) Causes the death of an unborn child by the operation or handling of a vehicle while under the influence of an intoxicant</p> <p>(cm) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood</p> <p>(d) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in s 340 01 (46m)</p> <p>(e) Causes the death of an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0 04 or more but less than 0 08</p> <p>(1g) Any person who does any of the following is guilty of a Class D felony</p> <p>(c) Causes the death of an unborn child by the operation or handling of a firearm or argun while under the influence of an intoxicant</p> <p>(cm) Causes the death of an unborn child by the operation or handling of a firearm or argun while the person has a detectable amount of a restricted controlled substance in his or her blood</p> <p>(d) Causes the death of an unborn child by the operation or handling of a firearm or argun while the person has an alcohol concentration of 0 08 or more</p> <p><b>W.S.A. 940.10. Homicide by negligent operation of vehicle</b></p> <p>(1) Whoever causes the death of another human being by the negligent operation or handling of a vehicle is guilty of a Class G felony</p> <p>(2) Whoever causes the death of an unborn child by the negligent operation or handling of a vehicle is guilty of a Class G felony</p> <p><b>W.S.A. 939.25. Criminal negligence</b></p> <p>(1) In this section, "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss 940 08 (2), 940 10 (2) and 940 24 (2), "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another.</p> <p>(2) If criminal negligence is an element of a crime in chs 939 to 951 or s 346.62, the negligence is</p>		
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			<p>indicated by the term "negligent" or "negligently"</p> <p><b>W.S.A. 940.23. Reckless injury</b></p> <p>(1)(a) Whoever recklessly causes great bodily harm to another human being under circumstances which show utter disregard for human life is guilty of a Class D felony</p> <p>(b) Whoever recklessly causes great bodily harm to an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class D felony</p> <p>(2)(a) Whoever recklessly causes great bodily harm to another human being is guilty of a Class F felony</p> <p>(b) Whoever recklessly causes great bodily harm to an unborn child is guilty of a Class F felony</p> <p><b>W.S.A. 940.24. Injury by negligent handling of dangerous weapon, explosives or fire</b></p> <p>(1) Whoever causes bodily harm to another by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class I felony</p> <p>(2) Whoever causes bodily harm to an unborn child by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class I felony</p> <p><b>W.S.A. 940.25. Injury by intoxicated use of a vehicle</b></p> <p>(1) Any person who does any of the following is guilty of a Class F felony</p> <p>(c) Causes great bodily harm to an unborn child by the operation of a vehicle while under the influence of an intoxicant</p> <p>(cm) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood</p> <p>(d) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a prohibited alcohol concentration, as defined in s 340 01 (46m)</p> <p>(e) Causes great bodily harm to an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0 04 or more but less than 0 08</p>		
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**Table 3: States with Coverage from Specific Point during Gestation until Birth (12):**

State	Citation(s)	Term	Start of Interval	Criminal Charge	Statute(s)	Exemptions	Court Cases
Arkansas	West's Arkansas Code Annotated (A C A )  A C A § 5-1-102 (Westlaw 2005)  A C A § 5-13-201 (Westlaw 2005)  SB 984 (2005)	Unborn child	12 weeks gestation	Capital murder, first degree murder, second degree murder, manslaughter, negligent homicide, first degree battery	<b>A.C.A. § 5-1-102. Definitions, general provisions</b>  As used in this code, unless the context otherwise requires  (13)(A) "Person", "actor", "defendant", "he", "she", "her", or "him" includes any natural person and, where appropriate, an organization as that term is defined in § 5-2-501(1)  (B) (i)(a) For the purposes of §§ 5-10-101–5-10-105, "person" also includes an unborn child in utero at any stage of development, (b) "Unborn child" means a living fetus of twelve (12) weeks or greater gestation  (ii) Subdivision (13)(B) of this section does not apply to  (a) Acts which cause the death of an unborn child in utero if those acts were committed during a legal abortion to which the woman consented,  (b) Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment, and  (c) Acts which are committed in the course of medical research, experimental medicine, or acts deemed necessary to save the life or preserve the health of the mother  (iii) Nothing in subdivision (13)(B) of this section shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero,  <b>A.C.A. § 5-13-201. Battery in the first degree</b>  (a) A person commits battery in the first degree if.  (1) With the purpose of causing serious physical injury to another person, he or she causes serious physical injury to any person	Legal abortion, medical practice/treatment, research/experimental treatment to save life of mother, Mother herself for actions causing death of child	

					<p>by means of a deadly weapon,</p> <p>(2) With the purpose of seriously and permanently disfiguring another person or of destroying, amputating, or permanently disabling a member or organ of that person's body, he or she causes such an injury to any person,</p> <p>(3) He or she causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life,</p> <p>(4) Acting alone or with one (1) or more other persons, he or she commits or attempts to commit a felony, and in the course of and in furtherance of the felony, or in immediate flight therefrom</p> <p>(A) He or she or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life,</p> <p>(B) Another person who is resisting the offense or flight causes serious physical injury to any person, or</p> <p>(5) With the purpose of causing serious physical injury to an unborn child or to the woman who is pregnant with the unborn child, he or she causes serious physical injury to the unborn child,</p> <p>(6) He or she knowingly causes physical injury to a pregnant woman in the commission of a felony or a Class A misdemeanor, and in so doing, causes serious physical injury to the woman's unborn child, and the unborn child is subsequently born alive,</p> <p>(7) He or she intentionally or knowingly without legal justification causes serious physical injury to one he knows to be twelve (12) years of age or younger, or</p> <p>(8) With the purpose of causing physical injury to another person he or she causes physical injury to any person by means of a firearm</p> <p>(b) It is an affirmative defense in any prosecution under subdivision (a)(4) of this section in which the defendant was not the only participant that the defendant</p>		
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					<p>(1) Did not commit the battery or in any way solicit, command, induce, procure, counsel, or aid its commission, and</p> <p>(2) Was not armed with a deadly weapon, and</p> <p>(3) Reasonably believed that no other participant was armed with a deadly weapon, and</p> <p>(4) Reasonably believed that no other participant intended to engage in conduct which could result in serious physical injury</p> <p>(c) Battery in the first degree is a Class B felony</p>		
California	<p>West's Annotated California Codes - Penal Code (West's Ann Cal Penal Code)</p> <p>West's Ann Cal Penal Code § 187 (Westlaw 1996)</p>	Fetus	7 to 8 weeks	Murder	<p><b>West's Ann. Cal. Penal Code § 187. Murder defined</b></p> <p>(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought</p> <p>(b) This section shall not apply to any person who commits an act that results in the death of a fetus if any of the following apply</p> <p>(1) The act complied with the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code</p> <p>(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not</p> <p>(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus</p> <p>(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law</p>	Abortion, medical treatment, mother	<p>"[W]e cannot hold this petitioner to answer for murder by reason of his alleged act of killing an unborn--even thought viable--fetus "</p> <p><i>Keeler v. Superior Court of Amador County</i>, 470 P 2d 617 at 624 (Cal 1970)</p> <p>"The third party killing of a fetus with malice aforethought is murder under section 187, subdivision (a), as long as the state can show that the fetus has progressed beyond the embryonic stage of seven to eight weeks"</p> <p><i>People v. Davis</i>, 872 P 2d 591 at 602 (Cal 1994)</p> <p>"A defendant shoots a woman, killing her. As a result, her fetus also dies. In the absence of evidence the defendant knew the woman was pregnant, may the defendant be held liable for the second degree implied malice murder of the fetus? We conclude he may"</p>

						<p><i>People v Taylor</i>, 86 P 3d 881 at 882(Cal 2004)</p> <p><i>People v Apodaca</i>, 76 Cal App 3d 479 (Cal App 5 Dist 1978)</p> <p><i>People v Bunyard</i>, 756 P 2d 795 (Cal 1988)</p> <p><i>People v Dennis</i>, 950 P 2d 1035 (Cal 1998)</p> <p><i>People v Hamilton</i>, 48 Cal 3d 1142 (Cal 1989)</p> <p><i>People v Smith</i>, 59 Cal App 3d 751 (Cal App 2 Dist 1976) [Limiting law to viable fetuses]</p>	
Florida	West's Florida Statutes Annotated (West's F S A)  West's F S A 316 193 (Westlaw 2005)  West's F S A § 782 09 (Westlaw 2005)  West's F S A 782 071 (Westlaw 2001)  FL HB 233 (2005)	Unborn quick child	At viability	Murder (3 degrees), manslaughter, DUI manslaughter, vehicular homicide	<b>West's F.S.A. 316.193. Driving under the influence; penalties</b>  (3) Any person  (a) Who is in violation of subsection (1),  (b) Who operates a vehicle, and  (c) Who, by reason of such operation, causes or contributes to causing  3 The death of any human being, or unborn quick child, commits DUI manslaughter, and commits  a A felony of the second degree, punishable as provided in s 775 082, s 775 083, or s 775 084  b A felony of the first degree, punishable as provided in s 775 082, s 775 083, or s 775 084, if  (l) At the time of the crash, the person knew, or should have known, that the crash occurred, and	Abortion, mother	

					<p>(II) The person failed to give information and render aid as required by s 316 062</p> <p>For the purposes of this subsection, the definition of the term "unborn quick child" shall be determined in accordance with the definition of viable fetus as set forth in s 782 071.</p> <p><b>West's F.S.A. 782.09. Killing of unborn quick child by injury to mother</b></p> <p>(1) The unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother Any person, other than the mother, who unlawfully kills an unborn quick child by any injury to the mother</p> <p>(a) Which would be murder in the first degree constituting a capital felony if it resulted in the mother's death commits murder in the first degree constituting a capital felony, punishable as provided in s 775 082</p> <p>(b) Which would be murder in the second degree if it resulted in the mother's death commits murder in the second degree, a felony of the first degree, punishable as provided in s 775 082, s 775 083, or s 775 084</p> <p>(c) Which would be murder in the third degree if it resulted in the mother's death commits murder in the third degree, a felony of the second degree, punishable as provided in s 775.082, s 775 083, or s 775 084</p> <p>(2) The unlawful killing of an unborn quick child by any injury to the mother of such child which would be manslaughter if it resulted in the death of such mother shall be deemed manslaughter A person who unlawfully kills an unborn quick child by any injury to the mother which would be manslaughter if it resulted in the mother's death commits manslaughter, a felony of the second degree, punishable as provided in s 775 082, s 775 083, or s 775 084</p> <p>(3) The death of the mother resulting from the same act or criminal episode that caused the death of the unborn quick child does not bar</p>	
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					<p>prosecution under this section</p> <p>(4) This section does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to chapter 390</p> <p>(5) For purposes of this section, the definition of the term "unborn quick child" shall be determined in accordance with the definition of viable fetus as set forth in s 782 071</p> <p><b>West's F.S.A. 782.071. Vehicular homicide</b></p> <p>"Vehicular homicide" is the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another</p> <p>(1) Vehicular homicide is</p> <p>(a) A felony of the second degree, punishable as provided in s 775 082, s 775 083, or s 775 084</p> <p>(b) A felony of the first degree, punishable as provided in s 775 082, s 775 083, or s 775 084, if</p> <p>1 At the time of the accident, the person knew, or should have known, that the accident occurred, and</p> <p>2 The person failed to give information and render aid as required by s 316 062</p> <p>This paragraph does not require that the person knew that the accident resulted in injury or death</p> <p>(2) For purposes of this section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures</p>		
Georgia	West's Code of Georgia Annotated (Ga. Code Ann ) Ga Code Ann	Unborn child	At quickening	feticide, vehicular feticide, feticide by vessel	<p><b>Ga. Code Ann. § 16-5-80. Feticide</b></p> <p>(a) A person commits the offense of feticide if he willfully kills an unborn child so far developed as to be ordinarily called "quick" by any injury to the mother of such child, which would be murder if it resulted in the death of such mother</p>	Mother	<p><i>Smith v Newsome</i>, 815 F 2d 1386, C A 11 (Ga 1987) [Roe challenge]</p> <p><i>Brinkley v State</i>, 322 S E 2d 49 (Ga 1984) [vagueness and due</p>

	<p>§ 16-5-80 (Westlaw 1982)</p> <p>Ga Code Ann § 40-6-393 1 (Westlaw 1991),</p> <p>Ga Code Ann § 52-7-12 3 (Westlaw 1995)</p>			<p>(b) A person convicted of the offense of feticide shall be punished by imprisonment for life</p> <p><b>Ga. Code Ann. § 40-6-393.1. Feticide by vehicle in the first degree</b></p> <p>(a) (1) A person commits the offense of feticide by vehicle in the first degree if he causes the death of an unborn child so far developed as to be ordinarily called "quick" by any injury to the mother of such child through the violation of Code Section 40-6-390 or 40-6-391, which would be homicide by vehicle in the first degree as provided in subsection (a) or (c) of Code Section 40- 6-393 if it resulted in the death of such mother</p> <p>(2) A person convicted of the offense of feticide by vehicle in the first degree shall be punished by imprisonment for not less than two years nor more than 15 years</p> <p>(b) (1) A person commits the offense of feticide by vehicle in the second degree if he causes the death of an unborn child so far developed as to be ordinarily called "quick" by any injury to the mother of such child by violating any provision of this title other than Code Section 40-6-390 or 40-6-391, which would be homicide by vehicle in the second degree as provided in subsection (b) of Code Section 40-6-393 if it resulted in the death of such mother</p> <p>(2) A person convicted of the offense of feticide by vehicle in the second degree shall be punished as provided in Code Section 17-10-3</p> <p><b>Ga. Code Ann. § 52-7-12.3. Feticide by vessel</b></p> <p>(a) (1) A person commits the offense of feticide by vessel in the first degree if he or she causes the death of an unborn child so far developed as to be ordinarily called "quick" by any injury to the mother of such child through the violation of subsection (j) of Code Section 52-7-8 2 or Code Section 52- 7-12 or Code Section 52-7-12.1 or subsection (b) of Code Section 52-7-13 or subsection (a) of Code Section 52-7-14 or subsection (c) of Code Section 52-7-25, which would be homicide by vessel in the first degree as provided in subsection (a) of Code Section 52-7-12 2 if it resulted in the death of such mother</p>		process challenge]
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					<p>(2) A person convicted of the offense of feticide by vessel in the first degree shall be guilty of a felony and shall be punished by imprisonment for not less than two years nor more than 15 years</p> <p>(b) (1) A person commits the offense of feticide by vessel in the second degree if he or she causes the death of an unborn child so far developed as to be ordinarily called "quick" by any injury to the mother of such child by violating any provision of this title other than subsection (j) of Code Section 52-7-8 2 or Code Section 52-7-12 or Code Section 52-7-12 1 or subsection (b) of Code Section 52-7-13 or subsection (a) of Code Section 52-7-14 or subsection (c) of Code Section 52-7-25, which would be homicide by vessel in the second degree as provided in subsection (b) of Code Section 52-7-12 2 if it resulted in the death of such mother</p> <p>(2) A person convicted of the offense of feticide by vessel in the second degree shall be guilty of a misdemeanor and shall be punished as provided in Code Section 17-10-3</p>	
Indiana	<p>West's Annotated Indiana Code (IC)</p> <p>IC 35-41-1-25 (Westlaw 1997)</p> <p>IC 35-42-1-1 (Westlaw 2001)</p> <p>IC 35-42-1-3 (Westlaw 1997)</p> <p>IC 35-42-1-4 (Westlaw 1997)</p> <p>IC 35-42-1-6 (Westlaw 1995)</p>	Fetus, human pregnancy	At viability	<p>Murder, voluntary manslaughter, involuntary manslaughter, feticide, aggravated battery</p>	<p><b>IC 35-41-1-25 "Serious bodily injury" defined</b></p> <p>Sec 25 "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes</p> <p>(5) loss of a fetus</p> <p><b>IC 35-42-1-1 Murder</b></p> <p>Sec 1 A person who</p> <p>(4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);</p> <p>commits murder, a felony</p> <p><b>IC 35-42-1-3 Voluntary Manslaughter</b></p> <p>Sec 3 (a) A person who knowingly or intentionally</p> <p>(2) kills a fetus that has attained viability (as defined in IC 16-18-2-365),</p> <p>while acting under sudden heat commits voluntary manslaughter, a</p>	<p><i>Horn v Hendrickson</i>, 824 N E 2d 690 (Ind App 2005)</p> <p><i>Shane v State</i>, 716 N E 2d 391 (Ind 1999)</p>

	<p>IC 35-42-2-1.5 (Westlaw 1997)</p> <p>IC 35-50-2-9 (Westlaw 2003)</p> <p>IC 16-18-2-365 (Westlaw 1993)</p>			<p>Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.</p> <p>(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.</p> <p><b>IC 35-42-1-4 Involuntary Manslaughter</b></p> <p>(d) A person who kills a fetus while committing or attempting to commit</p> <p>(1) a Class C or Class D felony that inherently poses a risk of serious bodily injury,</p> <p>(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury, or</p> <p>(3) battery,</p> <p>commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.</p> <p><b>IC 35-42-1-6 Feticide</b></p> <p>Sec. 6. A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus commits feticide, a Class C felony. This section does not apply to an abortion performed in compliance with</p> <p>(1) IC 16-34, or</p> <p>(2) IC 35-1-58.5 (before its repeal).</p> <p><b>IC 35-42-2-1.5 Aggravated battery</b></p> <p>Sec. 1.5. A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes</p> <p>(1) serious permanent disfigurement,</p> <p>(2) protracted loss or impairment of the function of a bodily member</p>		
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					<p>or organ, or</p> <p>(3) the loss of a fetus,</p> <p>commits aggravated battery, a Class B felony</p> <p><b>IC 35-50-2-9 Death sentence; life imprisonment without parole</b></p> <p>Sec 9 (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b) In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35- 36-9 that the defendant is a mentally retarded individual</p> <p>(b) The aggravating circumstances are as follows</p> <p>(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365)</p> <p><b>IC 16-18-2-365 Viability</b></p> <p>Sec 365. "Viability", for purposes of IC 16-34, means the ability of a fetus to live outside the mother's womb</p>		
<b>Maryland</b>	<p>West's Annotated Code of Maryland (MD Code, Criminal Law)</p> <p>MD Code, Criminal Law, § 2-103 (Westlaw 2005)</p> <p>MD Code,</p>	Fetus	At viability	Murder, manslaughter	<p><b>MD Code, Criminal Law, § 2-103</b></p> <p>(A) For purposes of a prosecution under this title, "viable" has the meaning stated in § 20-209 of the health - general article</p> <p>(B) Except as provided in subsections (D) through (F) of this section, a prosecution may be instituted for murder or manslaughter of a viable fetus</p> <p>(C) A person prosecuted for murder or manslaughter as provided in subsection (B) of this section must have</p> <p>(1) Intended to cause the death of the viable fetus,</p>	Abortion, medical treatment, mother	

	<p>Health - General, § 20-209 (Westlaw 2005)</p> <p>HB 398 (2005)</p>				<p>(2) Intended to cause serious physical injury to the viable fetus, or</p> <p>(3) Wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus</p> <p>(D) Nothing in this section applies to or infringes on a woman's right to terminate a pregnancy as stated in § 20-209 of the health - general article</p> <p>(E) Nothing in this section subjects a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care</p> <p>(F) Nothing in this section applies to an act or failure to act of a pregnant woman with regard to her own fetus</p> <p>(G) Nothing in this section shall be construed to confer personhood or any rights on the fetus</p> <p>(H) The commission of first degree murder of a viable fetus under this section, in conjunction with the commission of another first degree murder arising out of the same incident, does not constitute an aggravating circumstance subjecting a defendant to the death penalty under § 2-303(G)(IX) of this article</p> <p><b>MD Code, Health - General, § 20-209. State intervention</b></p> <p>(a) In this section, "viable" means that stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus's sustained survival outside the womb</p> <p>(b) Except as otherwise provided in this subtitle, the State may not interfere with the decision of a woman to terminate a pregnancy</p> <p>(1) Before the fetus is viable, or</p> <p>(2) At any time during the woman's pregnancy, if.</p> <p>(i) The termination procedure is necessary to protect the life or health of the woman, or</p>		
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					<p>(ii) The fetus is affected by genetic defect or serious deformity or abnormality</p> <p>(c) The Department may adopt regulations that</p> <p>(1) Are both necessary and the least intrusive method to protect the life or health of the woman, and</p> <p>(2) Are not inconsistent with established medical practice</p> <p>(d) The physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion under this section made in good faith and in the physician's best medical judgment in accordance with accepted standards of medical practice</p> <p>SECTION 2 AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any crime committed before the effective date of this Act</p> <p>SECTION 3 AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2005</p>	
Massachusetts	Established in case law	Viable fetus	At viability	Vehicular homicide, involuntary manslaughter		<p>"We believe that our criminal law should extend its protection to viable fetuses "</p> <p><i>Commonwealth v Cass</i>, 467 N E 2d 1324 at 1329 (Mass 1984)</p> <p>"A viable fetus is a "person" for purposes of the vehicular homicide statute as applied to homicides occurring after the date of this decision"</p> <p><i>Commonwealth v Cass</i>, 467 N E 2d 1324 at 1330 (Mass 1984)</p> <p>"[O]ur reasoning in <i>Cass</i> rejected the ancient common law rule that a person must be "born alive" in order to be protected by the criminal law, and thus is equally applicable to the common law crime of murder "</p>

							<i>Commonwealth v. Lawrence</i> , 536 N E 2d 571 at 575 (Mass 1989)
<b>Nevada</b>	West's Nevada Revised Statutes Annotated (N R S )  N R S 200 210 (Westlaw 1995)	Unborn quick child	At quickening	Manslaughter	<b>N.R.S. 200.210. Killing of unborn quick child; penalty</b>  A person who wilfully kills an unborn quick child, by any injury committed upon the mother of the child, commits manslaughter and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000		
<b>Rhode Island</b>	General Laws of Rhode Island Annotated (R I Gen Laws)  R I Gen Laws 11-23-5 (Westlaw 1975)	Unborn quick child	At viability	Manslaughter	<b>R.I. Gen. Laws 11-23-5. Willful killing of unborn quick child.</b>  (a) The willful killing of an unborn quick child by any injury to the mother of the child, which would be murder if it resulted in the death of the mother, the administration to any woman pregnant with a quick child of any medication, drug, or substance or the use of any instrument or device or other means, with intent to destroy the child, unless it is necessary to preserve the life of the mother, in the event of the death of the child, shall be deemed manslaughter  (b) In any prosecution under this section, it shall not be necessary for the prosecution to prove that any necessity existed  (c) For the purposes of this section, "quick child" means an unborn child whose heart is beating, who is experiencing electronically-measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of usual medical care and facilities available in this state		
<b>South Carolina</b>	Established in case law	Unborn child	At viability	Homicide			"Therefore, we hold an action for homicide may be maintained in the future when the state can prove beyond a reasonable doubt the fetus involved was viable, i.e., able to live separate and apart from its mother without the aid of artificial support"

							<p><i>State v. Horne</i>, 319 S E 2d 703 at 704 (S C 1984)</p> <p>"Indeed, it would be absurd to recognize the viable fetus as a person for purposes of homicide laws and wrongful death statutes but not for purposes of statutes proscribing child abuse "</p> <p><i>Whitner v. State</i>, 492 S E 2d 777 at 780 (S C 1997)</p> <p><i>State v. Ard</i>, 505 S E 2d 328 (S C 1998)</p> <p><i>State v. Peppers</i>, 552 S E 2d 288 (S C 2001)</p>
Tennessee	<p>West's Tennessee Code Annotated (T C A )</p> <p>T C A § 39-13-214 (Westlaw 1990)</p>	Unborn child	At viability	First degree murder, second degree murder, voluntary manslaughter, vehicular homicide, or reckless homicide	<p><b>T. C. A. § 39-13-214. Victims; viable fetuses; construction of law</b></p> <p>(a) For purposes of this part, "another" and "another person" include a viable fetus of a human being when any such terms refers to the victim of any act made criminal by the provisions of this part</p> <p>(b) Nothing in this section shall be construed to amend the provisions of § 39-15-201, or §§ 39-15-203–39-15-205 and 39-15-207 [abortion]</p> <p>(c) It is the legislative intent that this section shall in no way affect abortion which is legal in Tennessee. This section shall in no way apply to acts which are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment</p>		
Washington	<p>West's Revised Code of Washington Annotated (West's RCWA)</p> <p>West's RCWA § 9A 32 060 (Westlaw 1997)</p>	Unborn quick child	At quickening	Manslaughter	<p><b>West's RCWA 9A.32.060. Manslaughter in the first degree</b></p> <p>(1) A person is guilty of manslaughter in the first degree when</p> <p>(a) He recklessly causes the death of another person, or</p> <p>(b) He intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child</p> <p>(2) Manslaughter in the first degree is a class A felony</p>		

**Table 4: States with Protections that Do Not Recognize Separate Fetal Victims (8):**

State	Citation(s)	Statute(s)	Court Cases
Delaware	Delaware Code Annotated (Del C )  11 Del C § 222 (Westlaw 2004)  11 Del C § 605 (Westlaw 1999)	<b>11 Del.C § 222 General definitions.</b>  (21) "Person" means a human being who has been born and is alive"  <b>11 Del.C § 605 Abuse of a pregnant female in the second degree; class C felony.</b>  (a) A person is guilty of abuse of a pregnant female in the second degree when in the course of or in furtherance of the commission or attempted commission of assault third degree or any violent felony against or upon a pregnant female, or while in immediate flight therefrom, the person recklessly and without her consent causes the unlawful termination of her pregnancy  (b) It is no defense to a prosecution under this section that the person was unaware that the victim was pregnant  (c) Prosecution under this section does not preclude prosecution under any other section of the Delaware Code Abuse of a pregnant female in the second degree is a class C felony	
Iowa	Iowa Code Annotated (I C A )  I C A. 707 7 (Westlaw 1996)  I C A 707 8 (Westlaw 1996)	<b>I.C.A. 707.7. Feticide</b>  Any person who intentionally terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus results commits feticide Feticide is a class "C" felony  Any person who attempts to intentionally terminate a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus does not result commits attempted feticide Attempted feticide is a class "D" felony  This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life or health of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of a viable fetus  Any person who terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, who is not a person licensed to practice medicine and surgery under the provisions of chapter 148, or an osteopathic physician and surgeon licensed to practice osteopathic medicine and surgery under the provisions of chapter 150A, commits a class "C" felony  <b>I.C.A. 707.8. Nonconsensual termination--serious injury to a human pregnancy</b>  1 A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a forcible felony is guilty of a class "B" felony  2 A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a felony or felonious assault is guilty of a class "C" felony.	Abortion



		<p>3 A person who intentionally terminates a human pregnancy without the knowledge and voluntary consent of the pregnant person is guilty of a class "C" felony</p> <p>4 A person who unintentionally terminates a human pregnancy by any of the means provided pursuant to section 707 6A, subsection 1, is guilty of a class "C" felony</p> <p>5 A person who by force or intimidation procures the consent of the pregnant person to a termination of a human pregnancy is guilty of a class "C" felony</p> <p>6 A person who unintentionally terminates a human pregnancy while drag racing in violation of section 321 278 is guilty of a class "D" felony</p> <p>7 A person who unintentionally terminates a human pregnancy without the knowledge and voluntary consent of the pregnant person by the commission of an act in a manner likely to cause the termination of or serious injury to a human pregnancy is guilty of an aggravated misdemeanor</p> <p>8 A person commits an aggravated misdemeanor when the person intentionally causes serious injury to a human pregnancy by the commission of an act in a manner likely to cause the termination of or serious injury to a human pregnancy</p> <p>9 A person commits an aggravated misdemeanor when the person unintentionally causes serious injury to a human pregnancy by any of the means described in section 707 6A, subsection 1</p> <p>10 A person commits a serious misdemeanor when the person unintentionally causes serious injury to a human pregnancy by the commission of an act in a manner likely to cause the termination of or serious injury to the human pregnancy</p> <p>11 For the purposes of this section "serious injury to a human pregnancy" means, relative to the human pregnancy, disabling mental illness, or bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ, and includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones</p> <p>12 As used in this section, actions which cause the termination of or serious injury to a pregnancy do not apply to any of the following</p> <ul style="list-style-type: none"> <li>a An act or omission of the pregnant person</li> <li>b A termination of or a serious injury to a pregnancy which is caused by the performance of an approved medical procedure performed by a person licensed in this state to practice medicine and surgery or osteopathic medicine and surgery, irrespective of the duration of the pregnancy and with or without the voluntary consent of the pregnant person when circumstances preclude the pregnant person from providing consent</li> <li>c An act committed in self-defense or in defense of another person or any other act committed if legally justified or excused</li> </ul>	
Kansas	<p>Kansas Statutes Annotated (K S A )</p> <p>K S A 21-3440</p>	<p><b>K.S.A. 21-3440. Injury to a pregnant woman.</b></p> <p>(a) Injury to a pregnant woman is injury to a pregnant woman by a person other than the pregnant woman in the commission of a felony or misdemeanor causing the pregnant woman to suffer a miscarriage as a result of that injury</p>	<p>"Imposing criminal liability for the killing of a fetus is a legislative function</p>

	<p>(Westlaw 2001)</p> <p>K S A 21-3441 (Westlaw 1995)</p>	<p>(b) As used in this section, 'miscarriage' means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception</p> <p>(c) Injury to a pregnant woman in the commission of a felony is a severity level 4, person felony Injury to a pregnant woman in the commission of a violation of K S A 21-3412, subsection (a)(1) of K S A 21-3413, subsections (b)(1) and (b)(2) of K S A 2004 Supp 21-3412a or K S A 21-3517, and amendments thereto, is a severity level 5, person felony Injury to a pregnant woman in the commission of a misdemeanor other than a violation of K S A 21-3412, subsection (a)(1) of K S A 21-3413, subsections (b)(1) and (b)(2) of K S A 2004 Supp 21-3412a or K S A 21-3517, and amendments thereto, is a class A person misdemeanor</p> <p>(d) The provisions of this section shall be part of and supplemental to the Kansas criminal code</p> <p><b>K.S.A. 21-3441. Injury to a pregnant woman by vehicle.</b></p> <p>(a) Injury to a pregnant woman by vehicle is injury to a pregnant woman by a person other than the pregnant woman in the unlawful operation of a motor vehicle causing the pregnant woman to suffer a miscarriage as a result of that injury</p> <p>(b) As used in this section, "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception</p> <p>(c) (1) Injury to a pregnant woman by vehicle while committing a violation of K S A 8-1567 and amendments thereto is a severity level 5, person felony</p> <p>(2) Injury to a pregnant woman by vehicle while committing a violation of law related to the operation of a motor vehicle other than K S A 8-1567 and amendments thereto is a class A person misdemeanor</p>	<p>We are prohibited from construing "viable fetus" to be within the term "human being" since such action exceeds our judicial power and denies the defendant due process of law"</p> <p><i>State v Green</i>, 781 P 2d 678 at 682 (Kan 1989)</p> <p><i>State v Trudell</i>, 755 P 2d 511(Kan 1988)</p>
<p><b>Maine</b></p>	<p>Maine Revised Statutes Annotated (M R S A )</p> <p>17-A M R S A § 208-C (Westlaw 2005)</p>	<p><b>17-A M.R.S.A. § 208-C. Elevated aggravated assault on pregnant person</b></p> <p>1. A person is guilty of elevated aggravated assault on a pregnant person if that person intentionally or knowingly causes serious bodily injury to a person the person knows or has reason to know is pregnant For the purposes of this subsection, "serious bodily injury" includes bodily injury that results in the termination of a pregnancy This subsection does not apply to acts committed by</p> <p style="padding-left: 40px;">A Any person relating to an abortion for which the consent of the pregnant person, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law, or</p> <p style="padding-left: 40px;">B Any person for any medical treatment of the pregnant person or the fetus</p> <p>2 Elevated aggravated assault on a pregnant person is a Class A crime</p>	
<p><b>New Hampshire</b></p>	<p>Revised Statutes Annotated of the State of New Hampshire (N H. Rev. Stat )</p>	<p><b>N.H. Rev. Stat. 631:1 First Degree Assault.</b></p> <p>I A person is guilty of a class A felony if he</p> <p style="padding-left: 40px;">(c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth, or</p>	

	<p>N H Rev Stat 631 1 (Westlaw 1993)</p> <p>N H Rev Stat 631 2 (Westlaw 1992)</p>	<p>II In this section</p> <p>(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus, and</p> <p>(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion</p> <p><b>N.H. Rev. Stat. 631:2 Second Degree Assault.</b></p> <p>I A person is guilty of a class B felony if he</p> <p>(e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth</p> <p>II In this section</p> <p>(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus, and</p> <p>(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion</p>	
New Mexico	<p>West's New Mexico Statutes Annotated (N M S A. 1978)</p> <p>N M S A 1978, § 30-3-7 (Westlaw 1985)</p> <p>N M S A 1978, § 66-8-101 1 (Westlaw 1985)</p>	<p><b>N. M. S. A. 1978, § 30-3-7. Injury to pregnant woman</b></p> <p>A Injury to pregnant woman consists of a person other than the woman injuring a pregnant woman in the commission of a felony causing her to suffer a miscarriage or stillbirth as a result of that injury</p> <p>B As used in this section</p> <p>(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception, and</p> <p>(2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion, and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heart beat, pulsation of the umbilical cord or definite movement of voluntary muscles</p> <p>C. Whoever commits injury to pregnant woman is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978</p> <p><b>N. M. S. A. 1978, § 66-8-101.1. Injury to pregnant woman by vehicle</b></p> <p>A Injury to pregnant woman by vehicle is injury to a pregnant woman by a person other than the woman in the unlawful operation of a motor vehicle causing her to suffer a miscarriage or stillbirth as a result of that injury</p>	

		<p>B As used in this section</p> <p>(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception, and</p> <p>(2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion, and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles</p> <p>C Any person who commits injury to pregnant woman by vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while violating Section 66-8-113 NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code shall not per se be a basis for violation of Section 66-8-113 NMSA 1978</p>	
North Carolina	<p>West's North Carolina General Statutes Annotated (N C G S A)</p> <p>N C G S A § 14-18.2 (Westlaw 1999)</p>	<p><b>N.C.G.S.A. § 14-18.2. Injury to pregnant woman</b></p> <p>(a) Definitions --The following definitions shall apply in this section</p> <p>(1) Miscarriage --The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G S 14-45 1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus</p> <p>(2) Stillbirth --The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G S 14-45 1</p> <p>(b) A person who in the commission of a felony causes injury to a woman, knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed</p> <p>(c) A person who in the commission of a misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes causes injury to a woman, knowing the woman to be pregnant, which results in miscarriage or stillbirth by the woman is guilty of a misdemeanor that is one class higher than the misdemeanor committed. If the offense was a Class A1 misdemeanor, the defendant is guilty of a Class 1 felony</p> <p>(d) This section shall not apply to acts committed by a pregnant woman which result in a miscarriage or stillbirth by the woman</p>	
Wyoming	<p>Wyoming Statutes 1977 (W S 1977)</p> <p>W S 1977 § 6-2-502 (Westlaw 1984)</p>	<p><b>W.S.1977 § 6-2-502 Aggravated assault and battery; penalty.</b></p> <p>(a) A person is guilty of aggravated assault and battery if he</p> <p>(iv) Intentionally, knowingly or recklessly causes bodily injury to a woman whom he knows is pregnant</p> <p>(b) Aggravated assault and battery is a felony punishable by imprisonment for not more than ten (10) years</p>	<p>"A defendant may be prosecuted both for the act of killing an unborn child during an assault and battery on a pregnant woman and for the assault and battery on the pregnant</p>

			woman (or, as here, her killing) without violating the rule against double jeopardy "
			<i>Goodman v State</i> 601 P 2d 178 at 185 (Wyo 1979)

**Table 5: States without Any Coverage for Fetal Victims (9):**

State	Citation(s)	Statute(s)	Court Cases
Alabama	Code of Alabama (Ala Code)  Ala Code 1975 § 13A-6-1 (Westlaw 1975)	<b>Ala.Code 1975 § 13A-6-1. Definitions.</b>  The following terms shall have the meanings ascribed to them by this section  (2) PERSON Such term, when referring to the victim of a criminal homicide, means a human being who had been born and was alive at the time of the homicidal act	
Alaska	Alaska Statutes (AS)  AS 11 41 140 (Westlaw 1978)	<b>AS 11.41.140 Definition.</b>  In AS 11 41 100 - 11 41 140 "person", when referring to the victim of a crime, means a human being who has been born and was alive at the time of the criminal act A person is "alive" if there is spontaneous respiratory or cardiac function or, when respiratory and cardiac functions are maintained by artificial means, there is spontaneous brain function	
Colorado	West's Colorado Revised Statutes Annotated (C R S A )  C R S A § 18-3-101 (Westlaw 1995)	<b>C.R.S.A. § 18-3-101. Homicide--definition of terms</b>  As used in this part 1, unless the context otherwise requires  (1) "Homicide" means the killing of a person by another  (2) "Person", when referring to the victim of a homicide, means a human being who had been born and was alive at the time of the homicidal act	
Connecticut			"This court finds that the definition of a "person" in Connecticut criminal law includes those who are born and are alive"  <i>State v Courchesne</i> , 757 A 2d 699 at 703 (Conn Super 1999)
Hawaii	Hawaii Revised Statutes Annotated (HRS)	<b>HRS § 707-700 Definitions of terms in this chapter.</b>  GENERAL PROVISIONS RELATING TO OFFENSES AGAINST THE PERSON	

	HRS § 707-700 (Westlaw 2004)	"Person" means a human being who has been born and is alive	
Montana	Montana Code Annotated (MCA)  MCA 45-2-101 (Westlaw 2001)	<b>MCA 45-2-101. General definitions</b>  (28) "Human being" means a person who has been born and is alive	
New Jersey			"The homicide and death by auto statutes, N J S A 2C 11-2(a) and 2C 11-5(a) do not express a clear intention on the part of the legislature to include a fetus within the protected class thereunder. Quite the contrary, the legislative history is indicative of an intention on the part of the legislature to exclude a fetus from the protected class"  <i>State in Interest of A W S</i> , 440 A 2d 1174 at 1177 (1980)
Oregon	West's Oregon Revised Statutes Annotated (O R S )  O R S 163 005 (Westlaw 1971)	<b>O.R.S. 163.005. Criminal homicide</b>  (1) A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being  (2) "Criminal homicide" is murder, manslaughter or criminally negligent homicide  (3) "Human being" means a person who has been born and was alive at the time of the criminal act	
Vermont			"[w]e interpret the legislature's intent in using the word "person" in § 1091(c) as limiting the application of the statute to circumstances involving the death of individuals who have already been born"  <i>State v Oliver</i> , 563 A 2d 1002 at 1003 (1989)

**Table 6: New York State's Conflicting Statutes**

State	Citation	Term	Duration	Criminal Charge	Statute(s)	Exemptions	Court Cases
New York	McKinney's Consolidated Laws of New York Annotated- Penal Law (McKinney's	Unborn child	24 weeks gestation	Homicide	<b>McKinney's Penal Law § 125.00 Homicide defined</b>  Homicide means conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than twenty-four weeks under circumstances constituting murder, manslaughter in the first degree, manslaughter in the second	Abortion, medical treatment, mother	<i>People v Joseph</i> , 496 N Y S 2d 328 (N.Y Co Ct 1985)  <i>People v Vercelletto</i> ,

Penal Law)				degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree		514 N Y S 2d 177 (Co Ct 1987)
McKinney's Penal Law § 125.00 (Westlaw 1965)				<b>McKinney's Penal Law § 125.05 Homicide, abortion and related offenses; definitions of terms</b>		
McKinney's Penal Law § 125.05 (Westlaw 1970)				The following definitions are applicable to this article		
				1 "Person," when referring to the victim of a homicide, means a human being who has been born and is alive		
				2 "Abortional act" means an act committed upon or with respect to a female, whether by another person or by the female herself, whether she is pregnant or not, whether directly upon her body or by the administering, taking or prescription of drugs or in any other manner, with intent to cause a miscarriage of such female		
				3 "Justifiable abortional act " An abortional act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such is necessary to preserve her life, or, (b) within twenty-four weeks from the commencement of her pregnancy A pregnant female's commission of an abortional act upon herself is justifiable when she acts upon the advice of a duly licensed physician (1) that such act is necessary to preserve her life, or, (2) within twenty-four weeks from the commencement of her pregnancy The submission by a female to an abortional act is justifiable when she believes that it is being committed by a duly licensed physician, acting under a reasonable belief that such act is necessary to preserve her life, or, within twenty-four weeks from the commencement of her pregnancy		

**Table 7: States by Likelihood of Banning Abortion if *Roe v. Wade* is Overturned**

Highly Likely to Ban Abortions	Moderately Likely to Ban Abortions	Unlikely to Ban Abortions
Alabama, Arkansas, Colorado, Delaware, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Wisconsin	Arizona, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, New Hampshire, Pennsylvania	Alaska, California, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Tennessee, Vermont, Washington, West Virginia, Wyoming

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Ferguson v. City of Charleston, 532 U.S. 67 (2001)

Ford v. Ahitow, 104 F 3d 926, C.A.7 (Ill. 1997)

Goodman v. State, 601 P 2d 178 (Wyo. 1979)

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