

# DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

## Chapter 1 : Unborn Victims of Violence Act - Wikipedia

*The debate over fetal rights is not new to the legislative arena. Every session, pro-life and pro-choice advocates garner support for policies around this issue. The debate concerning "fetal homicide" hinges on the issue of fetuses killed by violent acts against pregnant women. Pro-life.*

History[ edit ] Prior to enactment of the federal law, the fetus in utero was, as a general rule, not recognized as a victim of federal crimes of violence. Thus, in a federal crime that injured a pregnant woman and killed the child in utero," no homicide was recognized, in most cases. Spencer , F. It passed the House of Representatives in and , but not the Senate. In , the bill was reintroduced in the House as H. Melissa Hart of Pennsylvania. It was ultimately co-sponsored by other members of the House before it passed by a vote of in favor to against on February 26, After several amendments were rejected, it was passed in the Senate by a vote of on March 25, It was signed into law by President George W. Bush on April 1, A photo of Tracy Marciniak, holding the body of her son Zachariah. Marciniak was seriously injured, and Zachariah was killed, by an assault during the ninth month of the pregnancy. This photo was on display as Ms. Marciniak testified at a televised hearing in favor of the Unborn Victims of Violence Act before a subcommittee of the Committee on the Judiciary, U. House of Representatives, on July 8, It was also displayed, in poster size, on the floors of the U. Senate during the subsequent debates on the legislation. During his remarks at the ceremony, Bush said, "Any time an expectant mother is a victim of violence, two lives are in the balance, each deserving protection, and each deserving justice. On July 3, , the U. In addition, Foster argued against passage of an alternative bill by Rep. Zoe Lofgren , which would have provided "additional punishment for certain crimes against women when the crimes cause an interruption in the normal course of their pregnancies" but not treated the unborn child as a second victim. Those who support the single-victim substitute would deny women justice. Wade decision said that the human fetus is not a "person" under the Fourteenth Amendment to the Constitution, and that if the fetus were a Fourteenth Amendment "person," then they would have a constitutional right to life. However, the laws of 38 states also recognize the human fetus as the legal victim of homicide and often, other violent crimes during the entire period of prenatal development 27 states or during part of the prenatal period nine states. Wade or other U. Supreme Court precedents, have been uniformly rejected by both the federal and the state courts, including the supreme courts of California, Pennsylvania, and Minnesota. Wade, such as Prof. Colb of Rutgers Law School , have written that fetal homicide laws do not conflict with Roe v. Reproductive Health Services , US Until such language becomes the basis for laws that specify penalties for abortion, the issue is not even before the court, of whether or not such language conflicts with Roe, and if so, which should be struck down. Protection of unborn children a 1 Whoever engages in conduct that violates any of the provisions of law listed in subsection b and thereby causes the death of, or bodily injury as defined in section to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section. B An offense under this section does not require proof thatâ€” i the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or ii the defendant intended to cause the death of, or bodily injury to, the unborn child. C If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph A , be punished as provided under sections , , and of this title for intentionally killing or attempting to kill a human being. D Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section. The provision amending the Uniform Code of Military Justice is functionally the same, except for minor technical points.

# DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

## Chapter 2 : Fetal Homicide Laws: The Policing of Women's Bodies - Inquiries Journal

*Currently 38 states have fetal homicide laws in place, with 23 of these applying to the earliest stages of pregnancy (including conception and fertilization). 9 These laws could be considered reasonable, and even necessary, when viewed in the context of violence against pregnant women.*

The law specifies that the offenses apply to an unborn child at any stage in its development. The law specifies that the defendant shall not be released until the completion of 35 years if the murdered person was under 15 years of age or was an unborn child. The law states that for the purposes of punishment, an unborn child shall be treated like a minor under 12 years of age. The law specifies that these provisions do not apply to an act that causes the death of an unborn child in utero if the act was committed during a legal abortion to which the woman consented, an act committed pursuant to a usual and customary standard of medical practice during testing or treatment, or an act committed in the course of medical research, experimental medicine or an act deemed necessary to save the life or preserve the health of the woman. At the end of the subsection, the state defines unborn child as a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law defines "embryo" or "fetus" as any human in utero. These laws do not apply to conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law, or to any person for any medical treatment of the pregnant woman or her embryo or fetus. The laws also specify that these provisions do not apply to acts which cause the death of an unborn child if those acts were committed during any abortion to which the pregnant woman has consented or to acts which were committed pursuant to usual and customary standards of medical practice during testing or treatment. The law specifies that "person" and "human being" shall also mean an unborn child as used in Kan. The laws define fetal homicide in the first, second, third, and fourth degrees. These laws do not apply to acts performed during any abortion for which the consent of the pregnant woman has been obtained or for which the consent is implied by law in a medical emergency. 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. 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. Criminal Law Code Ann. The case refers to Mass. The law also defines an assault of an unborn child and provides penalties. The law defines murder of an unborn child in the first, second and third degrees and provides penalties. The law excludes acts committed by the mother, a medical procedure performed by a medical professional or lawfully prescribed medication. It states in part: Effective January 1, , 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. Montana Montana Code Ann. The law defines premeditation and unborn child. The law defines murder of an unborn child in the first degree, murder in the second degree, manslaughter and motor vehicle homicide. The law was amended in to change provisions relating to driving under the influence and amends provisions regarding motor vehicle homicide. Provides a penalty for motor vehicle homicide of an unborn child and recognizes an action for an unborn child in wrongful death cases. The law defines assault of the unborn child in the first, second and third degree. The law repeals N. The law defines the murder and manslaughter of an unborn child and provides penalties. The law applies to a person, which includes an "unborn member of the species *Homo sapiens*, who is or was carried in the womb of another. Laws, Chap , HB Okla. A mother shall not be prosecuted for the death of an unborn child unless the death was a result of criminal behavior. Section was amended in to provide

## DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

for the sentence of the first degree murder and second degree murder of an unborn child HB The law also provides that the person must be punished for murder or attempted murder if the person intentionally killed or attempted to kill the unborn child. The law defines "unborn child" as a child in utero, and "child in utero" or "child who is in utero" as a member of the species Homo sapiens, at any state of development, who is carried in the womb. The law does not apply to conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law, or to a person for any medical treatment of the pregnant woman or her unborn child. The case refers to S. Amended in to revise provisions concerning court suspensions and revocations of driver licenses; relates to driving while under the influence of alcohol or controlled substances and causing the death of another person, including an unborn child HB The law provides for penalties. The law defines an individual as a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth. The amendment also states that a woman is not guilty of criminal homicide of her own unborn child if the death of her unborn child is caused by a criminally negligent act or reckless act of the woman and is not caused by an intentional or knowing act of the woman. The law also provides penalties. No cause of action for the death of the fetus may be brought against the mother of the fetus. List may not be comprehensive, but is representative of state laws that exist. NCSL appreciates additions and corrections. These laws are considered different than fetal homicide laws because they do not create a separate criminal charge for the loss of the fetus. The laws in these states consider the loss of or harm to a fetus in relation to the pregnant woman or her pregnancy. Depending on interpretation, some entities may view the scope of this issue differently. This webpage is intended to include a range of legislation on this issue and is not intended to serve as a source for legal definitions. The law defines the intentional killing of a pregnant woman with the knowledge that she was pregnant as an aggravating factor. It is a Class B felony and carries a minimum prison sentence of 5 years. This charge can be added to the charge of assault in the first degree. It is a Class A felony. A person is guilty of this crime if they commit assault of a pregnant woman and it results in the termination of pregnancy. It is a Class D felony and carries a minimum prison sentence of 2 years. This charge can be added to the charge of assault or larceny in the second degree. It is a Class D felony and carries a minimum prison sentence of 3 years. This charge can be added to the charge of assault in the second degree or assault in the second degree with a firearm. It is a Class A misdemeanor and carries a minimum prison sentence of 1 year. This charge can be added to the charge of assault in the third degree. Abuse of a pregnant woman in the second degree is a class C felony. The charge is applied when anyone causes the unintentional termination of a pregnancy while committing or attempting to commit a third degree assault or any violent felony. 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. Abuse of a pregnant woman in the first degree is a class B felony. The charge is applied when anyone causes the intentional termination of a pregnancy while committing or attempting to commit a third degree assault or any violent felony. Abuse of a pregnant female in the first degree is a class B felony. Specifically, the law defines penalties for a person who terminates a human pregnancy without the consent of the pregnant person under specified circumstances. The law also defines serious injury to a human pregnancy and provides for penalties to a person who causes serious injury to a human pregnancy under specified circumstances.

# DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

## Chapter 3 : Fetal Homicide Laws | Abortion - Abortion Clinics, Abortion Pill, Abortion Information

*The term "fetal homicide law" is not particularly accurate, because many of these laws protect embryos as well as fetuses. Some pro-choice supporters object to the term "unborn victim law" because they don't regard an embryo or fetus in an early stage of development as having attained personhood.*

State and federal laws in the U. Overview of "fetal homicide" laws: These laws criminalize injury or death to an embryo or fetus as a result of violence. They provide that when a pregnant woman is attacked or killed, there are two victims: These laws usually contain clauses that specifically exclude consideration of: Abortion procedures, Medical treatment, such as the removal of a uterine cancer or termination of a ectopic pregnancy. The latter refers to the implantation by the embryo outside the uterus, often in a fallopian tube. Both procedures kill the embryo or fetus as an unintended side-effect, or Any action by the mother herself. These laws generally define a fertilized ovum, an embryo, and a fetus as a full human person at any stage of development. Some define the range of the legislation as extending from conception to live birth. Others define it as beginning when pregnancy begins and extending until birth. The difference between conception and implantation is not particularly meaningful in this case because the presence of a pre-embryo -- sometimes popularly called a "just-fertilized ovum" -- cannot normally be detected until after it becomes implanted. However, defining personhood as starting at conception has profound importance to many pro-life supporters, particularly in reference to emergency contraception and stem cell research. The term "fetal homicide law" is not particularly accurate, because many of these laws protect embryos as well as fetuses. Thus, they feel that at least some embryos and fetuses cannot be a victim. These laws have been opposed by many pro-choice groups and individuals because they view them as an attempt to define pre-embryos, embryos, and fetuses as full human persons, either from conception or from the start of pregnancy. They view such laws as the next step in a battle to totally eliminate elective abortion, and replace free access to early abortions with compulsory childbirth for almost all pregnant women. They prefer an alternative approach: These laws have been supported by many pro-life groups and individuals who believe that human personhood begins at conception. Thus when a pregnant woman is killed, the perpetrators is viewed as having actually committing two acts of murder: In some states, convicting a perpetrator of having committed multiple murders make them eligible for the death penalty whereas a single murder would take execution off the table. State "fetal homicide" laws: Another 9 recognize them as victims during part of this interval.

# DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

## Chapter 4 : "Fetal homicide" and "unborn victims" of crime

*A Look at Fetal Protection Statutes and Wrongful Death Actions on Behalf of Fetuses*No state interest described by fetal rights advocates has enough force to override a woman's fundamental rights of privacy, bodily integrity, and self-determination.

If you wish to view or download a breakdown of state fetal homicide laws as a PDF document, click here. A separate Arkansas law makes it a battery to cause injury to a woman during a Class A misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury under conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. 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. Indiana Code , , , The Supreme Court of Michigan interpreted this statute to apply to only those unborn children who are viable. However, a separate Michigan law, effective Jan. It states in part: Effective January 1, , 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. Supreme Court, in Webster v. Reproductive Health Services , declined to invalidate this law, holding that it was up to the Missouri courts to determine its application outside of the scope of the abortion-related rights that had been established in past U. Other state court rulings have specifically applied the principle to the crimes of involuntary manslaughter State v. Effective July 1, HB , enacted as Pub. See Tennessee Code Annotated, Sections and Effective July 1, , Code of Virginia Section Code of West Virginia Section These laws are gravely deficient because they do not recognize unborn children as victims during certain periods of their pre-natal development. Nevertheless, they are described here for informational purposes. The killing of an unborn child after viability is vehicular homicide. The killing of an unborn child after viability is involuntary manslaughter. Conflicting Statutes New York:

## DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

### Chapter 5 : State Laws on Fetal Homicide and Penalty-enhancement for Crimes Against Pregnant Women

*Fetal homicide laws do not apply to any case where the death of the preborn child occurs with the mother's consent. To claim that a fetal homicide bill threatens women's rights is a gross insult to the families grieving the loss of a child whose life and death cannot be acknowledged under New Hampshire's current homicide statutes.*

Her marriage had fallen apart, and her new boyfriend had broken his promise to leave his wife for her. In a desperate moment, the Indiana woman swallowed rat poison in an attempt to commit suicide. She survived; her fetus, delivered by caesarean section, did not. But instead of being sent home to receive mental health care, Shuai was charged with murder for attempting to kill the 8-month-old fetus, which enjoys its own separate protection under Indiana law. In August, she made a deal with prosecutors to plead guilty to criminal recklessness after spending more than a year in jail. Shuai is one of hundreds of women who have found themselves caught in a gray area that appears to be widening in American law. Thanks to a patchwork of state court decisions and laws passed to protect pregnant women, punish abusers, promote public health, and discourage abortions, fetuses have steadily been gaining legal rights in American courts—rights that often conflict with those of the women who carry them. Within the last five years, pregnant women have been arrested under fetal-harm statutes after falling down the stairs and driving with blood-alcohol levels of just half the legal limit. Other women have been forced against their will to undergo caesarean sections, or spend months on bed rest. In Wisconsin last summer, a pregnant woman named Alicia Beltran was taken to court in handcuffs after refusing to take an anti-addiction drug for a painkiller habit she had already kicked on her own. The court initially ignored her requests for a lawyer, but appointed a legal guardian for her week-old fetus. Advertisement Lawyer and activist Lynn Paltrow, who is helping represent Beltran in a suit against several officials, coauthored a recent paper cataloging such cases and says she has found more than instances since of women arrested, detained, or subjected to forced medical interventions because of issues related to their pregnancies. She is part of a group of legal scholars who are starting to raise the alarm about the breadth and meaning of what they see as a largely unappreciated shift in American law. Get Today in Opinion in your inbox: Sign Up Thank you for signing up! Whatever the motives, the laws have an effect with no real parallel elsewhere in the law: Essentially, two entities have begun to compete for rights in one body. Underlying the phenomenon, the scholars are realizing, is an unsolved moral and philosophical question: This approach followed a view that had existed since at least the 4th century BC, when Aristotle proposed a three-part framework of fetal development: Wade, which ruled that the fetus has no independent status in the first trimester. But the past 40 years have seen big shifts in both politics and technology that have made the fetus contested ground in American law. The most significant shift was Roe v. Wade, which created a motivated opposition looking for ways to push back against the legality of abortion, in part by creating a political movement around the threatened fetus. Their case has been helped by technology. Medicine has steadily pushed back the date at which a fetus is viable outside the womb; and the ultrasound, which came into wide use in the s, offered the first visual encounter between the born and the unborn. Since then, fetuses have increasingly been mentioned in laws and court decisions. Fetal rights have arisen through two broad mechanisms: The best-known law may be the federal Unborn Victims of Violence Act, passed in , which recognizes fetuses at any state of development as legal victims if they are harmed or killed during the commission of certain federal crimes. Today, some form of fetal homicide laws are enforced in 38 states, including Massachusetts. Advertisement These laws are often passed after well-publicized tragedies, and usually framed as ways to protect pregnant women from domestic violence. Murder is a leading cause of death for pregnant women in the United States. Passage of the Unborn Victims of Violence Act, for example, was triggered by the case of the pregnant California woman Laci Peterson, whose murder at the hands of her husband dominated cable news in The ACLU and others have observed that the laws have changed over time: The newer wave of laws, unlike most fetal homicide bills written in the s, are less likely to specify they apply

## DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

to viable fetuses. Not all the laws involve prosecution. Some allow women to be detained, or let authorities intervene in their medical decisions, for the sake of fetal health. Seventeen states consider substance abuse during pregnancy to be child abuse, and three explicitly give authorities the power to confine pregnant women suspected of substance abuse because they are endangering their future child. Even where states have not passed laws that explicitly mention the fetus, courts and prosecutors are often willing to interpret existing laws written to prevent child abuse and drug use to apply to protect the fetus—even if the perpetrator is the woman carrying the baby. Since then, Paltrow has counted more than cases in which women have been arrested for endangering their fetuses. That scare has since subsided. But a continuing wave of laws passed in the last decade explicitly address fetal health and fetuses as separate legal victims of crimes. Although these trends originate in different places, and some are more politically motivated than others, they are converging to have significant implications for pregnant women—particularly, Goodwin points out, the low-income women who are more likely to find themselves in the crosshairs of law enforcement. The problem comes when this notion intersects with American law: How, exactly, is the legal system supposed to express this extra value? The newer idea that the fetus has rights of its own creates the conflict Paltrow and others are worried about: It is a way of acknowledging a special moral status for pregnant women, but one that can sometimes work against them. In some sense, the legal issue is driven by a deeper question that America has simply not resolved: At the other extreme, the notion that a fetus is deserving of full human protections from the point of conception is a theological position that has virtually no legal support. Public opinion polls and election results suggest that many Americans take a rather subtle approach to the question of fetal protection. A clear majority favor at least limited rights to legal abortion, but polling at the time of the Unborn Victims of Violence Act also found the vast majority approve of laws making fetal homicide a crime. Expressed as absolutes, those positions would directly contradict each other. The issue tends to get caught in the calcified rhetoric of the abortion debate, and some see a missed opportunity there—a chance to grapple with an unresolved national question of deep moral significance. It is progressives who have historically pushed to expand civil rights, yet who now find themselves concerned about the expansion of rights to fetuses. So far, however, such arguments have yet to emerge into the legal mainstream. Meanwhile, the situation on the ground is changing yearly, and in some ways the states seem to be moving in different directions. As for the pregnant women themselves, what they can expect on their own behalf seems ever more elusive. Ruth Graham, a writer in New Hampshire, is a regular contributor to Ideas. An earlier version of this article stated that murder is the No. 1 leading cause of death for pregnant women in the US.

## DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

Chapter 6 : Sorry, this content is not available in your region.

*At least 38 states, according to the National Conference of State Legislatures, have fetal homicide laws that define the fetus as a person deserving of rights and protection.*

Some argue they are necessary to protect pregnant women from violence and provide for restitution in cases of assault that result in the loss of the fetus. Others contend it is simply another means to grant the unborn personhood status and erode abortion rights. This analysis is organized as follows: I open with a discussion of the legislative history of fetal protection laws. Next, I explore the effects of these laws on women, and cases in which women have been deprived of personal liberty in order to protect the fetus. Finally, I evaluate the moral dilemmas surrounding these laws. In conclusion, I concede there is a legitimate need to provide protection for pregnant women, but stress that it must be done in a way that does not subvert their rights.

History of Fetal Protection Laws According to English common law, the destruction of a fetus was not considered homicide. In the case that followed, *Mone v. The first fetal homicide laws were enacted in a period of overwhelming violence against pregnant women. Bush in , was intended to categorize unborn children as victims. However, these laws grant fetuses a distinct legal status, and create a potential adversarial relationship between mother and child. In fact, women themselves are increasingly being targeted by these laws and prosecuted for harm that befalls the fetus in utero whether intentional or not. As of , only 24 of 36 states had laws that expressly exempted pregnant women from being prosecuted for causing injury to their own fetus. Laura Pemberton, a resident of Florida, had previously delivered a baby by C-section. When she became pregnant again, she attempted to find a physician that would allow her to deliver vaginally. Unable to do so, Pemberton decided to give birth with the assistance of a midwife. On January 13, , after a day of labor, she decided that she needed to go to the hospital. Upon arrival she requested only an IV so that she could return home and finish the delivery. Instead, the hospital set in motion a process used for patients who declined medically necessary treatment. A hearing was held where two doctors testified that vaginal delivery would pose a substantial risk of uterine rupture, resulting in the death of the baby. Pemberton, who had since returned home, was forced to return to the hospital against her will. In , Samantha Burton was 25 weeks pregnant and began showing signs of miscarrying. Her doctor advised that she go on bed rest, possibly until delivery, but Burton had two toddlers and a job. She planned on getting a second opinion, but the doctor asked the state to step in. She was ordered to remain at the hospital and undergo any medical treatment that her doctor, acting in the interest of the fetus, deemed necessary. Three days later, Burton miscarried. In , Chinese immigrant Bei Bei Shuai, who was 30 weeks pregnant, attempted suicide by swallowing rat poison. The father of the baby had broken off his relationship with Shuai, who then became desperate. She survived and went to the hospital, complying with all medical staff. She then gave birth to a baby girl, who did not survive. Prior to her suicide attempt, Shuai had left a note to the father stating she was going to kill herself and take the child with her. Under Indiana law, it is a crime to knowingly or intentionally kill a viable fetus. Prosecutors used this to argue that she had intended to kill the baby. However, the molecular structure of the rat poison ingested does not easily cross the placenta, and it is not clear that this is the reason the baby died. Shuai was imprisoned for over a year until the charges were dropped and she plead guilty to criminal recklessness. In , Alicia Beltran, 28, went in for a prenatal checkup and revealed to a health-care provider that she previously had a drug addiction to the painkiller Percocet. The prior fall, she willed herself off the drug. She then obtained Suboxone, a medicine that blocks opiates and is often used in pregnancy, which she stopped taking three days before her appointment. A urine test found traces of Suboxone, but no other opiates, and three days later another test came back completely clean. On July 18, she was taken into custody under a Wisconsin law that allows child-welfare authorities to forcibly confine a pregnant woman who uses drugs or alcohol to a severe degree and refuses treatment Minnesota, South Dakota and Oklahoma have similar laws in place. She spent days at a drug treatment center, losing her job in the process. The most extreme case yet involved immigrant Purvi Patel. In the summer of ,*

## DOWNLOAD PDF POINT : FETAL HOMICIDE LAWS THREATEN WOMENS RIGHTS

Patel went to a hospital emergency room and said that she had a miscarriage. When authorities inquired where the fetus was, she replied that she had put the body in a bag and left it in the dumpster. She stated that the baby was stillborn and, although she had tried to revive it, she was unsuccessful. Patel was charged with feticide and felony child neglect. The pathologist who testified for the defense held that the baby was stillborn, and only 23 or 24 weeks old. The pathologist for the prosecution, however, testified that the fetus was 25 or 30 weeks old. His report stated that the fetus was born alive and relied partially on a lung test dating back from the 17th century that has largely been discredited by science. Yet if she did try to perform CPR on the fetus as she said she did, air could have potentially entered the lungs, thus causing them to float. Patel was sentenced to 20 years in prison. In August of , an appeals court vacated the charges and found that Patel should be resentenced on a lower-level child neglect charge This carries a maximum three-year sentence. These five cases represent only a small portion of the hundreds involving the deprivation of liberty of pregnant women. There are numerous other possible causes of miscarriage,<sup>34</sup> and in reality, it can be difficult for medical professionals to determine with certainty what caused it. As cases such as the aforementioned increase, criminalization could potentially prevent women from seeking necessary medical help for fear of being prosecuted. Not only is this dangerous for the woman, but it could also affect fetal health as well. Moral and Ethical Dilemmas The primary difficulty that arises from fetal homicide laws lies in the categorization of the fetus as a legal entity that is separate from the mother. In effect, the fetus is granted personhood for the purpose of prosecuting violent crimes. This is dangerous, because the mother no longer maintains the same set of rights that she did prior to conceiving. For women to operate as equal members in society, their personal liberty cannot be determined by their childbearing status. A potential person, who is not protected by the Constitution, cannot be granted legal rights that supersede those of an already existing person. The protection and rights that are enjoyed by legal persons due process, voting, and equal protection to name a few cannot be exercised by a fetus. If personhood status is granted to fetuses even if only for the purpose of prosecuting violent crimes , women must relinquish their personal liberty for the duration of their pregnancy. This essentially creates a second-class citizenry whose individual rights are entirely dependent on whether their womb is vacant or occupied. To say that a woman has a legal right to terminate her pregnancy if she chooses but yet the death of the same fetus is murder when caused by someone else or herself is morally problematic. Although it is a travesty for a woman to lose a fetus that she intended to bring to term due to the recklessness or violence of another, this issue is not remedied by charging the offender with murder which implies that the deceased is a person who possesses the right to life. Either the fetus is a person legally protected from death whether by assault or abortion, or it is a potential person that does not yet possess this right in any capacity. When fetal homicide laws were first enacted, critics spoke out against the legislation, arguing that it would be used to prosecute pregnant women themselves. Proponents scoffed, and accused the opposition of employing slippery slope arguments. However, it has become increasingly evident that these laws are not meant to protect women, and in some cases are being used to erode the availability of abortion. Mark Waller of Colorado introduced HB concerning crimes against an unborn child. If the issue at stake truly was the protection of pregnant women, then such language would not be an issue. Women that fail to properly fulfill this duty are viewed as deviants that need to be punished in order to maintain societal order. By default, this inequality extends to all women capable of bearing children because at any point they too could become pregnant and lose their right to bodily autonomy. Since men biologically cannot reproduce, they enjoy the privilege of possessing a full set of rights that is not dependent on the existence of another. For women to operate as equal members of society, they must also possess this same privilege. Conclusion The dilemma that must be solved then, is how to provide protection to pregnant women without violating their individual rights. Since pregnant women are at an increased risk of violence and homicide, it is crucial to make such crimes as unattractive as possible. One potential solution is to craft laws that are specific to assault on pregnant women. Such legislation, however, would have to classify the woman as the only victim and avoid any language that could be construed to confer legal rights or personhood on the fetus. Protecting pregnant women is a pressing moral

