Bill as Introduced

HB 1644-FN – AS INTRODUCED

2010 SESSION

10-2038
04/01

HOUSE BILL ***1644-FN***

AN ACT including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

SPONSORS: Rep. Wendelboe, Belk 1; Rep. Hagan, Rock 7; Rep. Bettencourt, Rock 4; Sen. Bradley, Dist 3

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides that an unborn child shall be included in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

10-2038
04/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Homicide; Capital Murder; Definition of Unborn Child. Amend RSA 630:1, IV to read as follows:

IV. As used in this section [~~and RSA 630:1-a, 1-b, 2, 3 and 4~~], the meaning of "another" does not include a [~~foetus~~] ***fetus***.

2 New Paragraphs; First Degree Murder; Definition of Another; Exemption for Abortion. Amend RSA 630:1-a by inserting after paragraph III the following new paragraphs:

IV. For the purpose of this section and RSA 630:1-b, RSA 630:2, RSA 630:3, and RSA 630:4, the meaning of "another" shall include an unborn child as defined in paragraph V.

V.(a) Nothing in this section or RSA 630:1-b, RSA 630:2, RSA 630:3, or RSA 630:4 shall apply to any act committed by the mother of the unborn child, to any medical procedure including abortion, performed by a physician or other licensed medical professional at the request of the pregnant woman or her legal guardian, or to the lawful dispensation or administration of lawfully prescribed medication. For the purposes of this section and RSA 630:1-b, RSA 630:2, RSA 630:3, or RSA 630:4, "abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of an unborn child, or to remove a dead unborn child caused by spontaneous abortion, or to remove an ectopic pregnancy.

(b) In this section:

(1) "Conception" means the fusion of a human spermatozoon with a human ovum.

(2) "Pregnant" means the female reproductive condition of having an unborn child in the woman's body.

(3) "Unborn child" means the offspring of human beings from conception until birth.

3 Effective Date. This act shall take effect upon its passage.

LBAO
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HB 1644-FN - FISCAL NOTE

AN ACT including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

FISCAL IMPACT:

The Judicial Branch, the Judicial Council, the Department of Justice, the Department of Corrections, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2010 and each year thereafter. There will be no fiscal impact on local expenditures or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill will add RSA 630:1-a, IV to include an unborn child in the definition of "another" for purposes of first and second degree murder, manslaughter, and negligent homicide. The Branch states this bill may result in an additional count in cases that would have occurred where both an unborn child and someone else are victims of the crime or in a criminal case that would not otherwise have been brought in situations where the only victim is the unborn child. If this bill results in an additional count in a case the fiscal impact will be less than if an entirely new criminal case is brought. The Branch has no information to estimate how many prosecutions or the severity of the charges that will be brought as a result of this bill but does have information on the cost for one full day of a jury trial. A full day (based on a 7 and half hour day) cost for a full day's jury trial in Superior Court is $1,662.33 in FY 2010 and each year thereafter. The cost of a day's jury trial is as follows:

Position	Daily Cost
Judge	$728.78
Jury	$280.00
Jury Mileage	$84.00
Court Monitor	$182.40
Deputy Clerk	$317.18
Bailiff	$69.97
Total	**$1,662.33**

LBAO
10-2038
12/16/09

Additionally, there would be costs associated with preliminary hearings, time to write a charge to the jury, and for clerical processing that would result in the cost of jury trial in excess of $2,000 per day.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states this bill will potentially expand the number of homicide cases, typically the most costly cases in the criminal justice system. If the public defender does not have a conflict of interest and is able to represent the case, they would be paid a flat fee of $20,000. If an assigned counsel attorney must be used, the hourly rate of $60 with a fee cap of $20,000 for homicide cases will apply. The fee cap is readily increased by the Court. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal. The Council states to defend a capital murder case costs can easily exceed $1 million.

The Department of Justice states this bill may result in an increase in expenditures. The Department states it would be responsible for handling the prosecution for cases involving first degree murder, second degree murder, and manslaughter. On average, there are 20 murders a year in the State. The Department has no information on how many new prosecutions will be brought as a result of this bill, however it is estimated it will generate one or two homicide prosecutions a year.

The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2009 was $33,110. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2009 was $744. The Department states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted.

The New Hampshire Association of Counties states to the extent an individual is charged with the new law and detained pre-trial in a county correctional facility or an individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained or incarcerated as a result of this bill. The average cost to incarcerate an individual in a county facility is $35,342 a year.

Speakers

1:00 P.M.

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1644-FN Date January 19, 2010

Committee Criminal Justice & Public Safety

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep Sherm Packard	House Republican Office			X	
Sen. Jeb Bradley	D 3			✓	
Kurt Wuelper	1336 PARKER MT Rd STRATHAM		UHRTZ	✓	
Phyllis Woods	1 Barry St.	749-2177	Self	✓	
Frances Potter	Merrimack		state		X
Pilar Olivo	18 Lowtne Concord NH 03301		NARAL Pro-Choice NH		✓
Rachel Canova	27 Uniper Dr. Bedford, NH 03110		NARAL Intern		✓
Kathleen Souza	628 Belmont St Man			✓	
[illegible] Wall	Strafford (Durham)				✓
Phil Preston,	Grafton 8				✓
Amanda Grady,	NHCADSV	224-8893 x326			✓
Rep Barbara C. French	Meriden				✓
Shannon McGinley,	Cornerstone Action, Manchester			✓	
Rep Charlotte Houde	Qumb PO 95, Meriden 03770			✓	
(Rep.) LEE HAMMOND	LEBANON		self.		X
Rep. D.J. Bettencourt	Salem		Rock. 4: Salem/Windham	X	
LINDA GRIEBSCH	GREENLAND NH	436-7588	FHC-P		X
Kary Neall	Jencks		PPNNE		X
MO BAXLEY	19 LOW AVE		NHFTM		X

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1644-FN

BILL TITLE: including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

DATE: JANUARY 19, 2010

LOB ROOM: 204 **Time Public Hearing Called to Order:** 1:07 P.M.

Time Adjourned: 2:03 P.M.

(please circle if present)

Committee Members: Reps. Shurtleff, Pantelakos, Berube, Robertson, Movsesian, Burridge, Cushing, Rodd, Chandley, B. McCarthy, M. Ryder, Welch, Charron, Fesh, Weare, Stevens, Villeneuve, Gagne, Swinford and Willette.

Bill Sponsors: Rep. Wendelboe, Belk 1; Rep. Hagan, Rock 7; Rep. Bettencourt, Rock 4; Sen. Bradley, Dist 3

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Wendelboe** - Prime sponsor.

- This is not an abortion bill and does not impact Roe v. Wade.
- Has a handout on "fetal homicide".
- Has definition of "born alive".
- Federal law passed for fetal homicide on Federal property.
- Provided a handout of topics covered by her testimony.

Shannon McGinley - Cornerstone Action (Supports)

- Said previous speaker covered most of the points.
- 38 Sates have a law like this.
- No court has found these laws unconstitutional.

Michael Bianchini - Self (Supports.

- What you call an "unborn child" is immaterial. It is a huge loss to the family.
- Getting hung up on wording.
- Spoke of the death of his son.

***Peter Cataldo** Diocese of Manchester (Supports)

- Has written testimony.

Claire Ebel - N.H. Civil Liberties Union (Opposed)

- Spoke of inheritance rights.
- Despite language, conferring personhood on a fetus will create problems beyond measure.

Kathleen Souza - Self (In support)

- The "steep and slippery slope" apparently is of no concern in 37 other States.
- "Unborn child" is found throughout our N.H. Statutes.
- Had several handouts for the record.

Phyllis Woods - Self (In support)

- Repeated much of previous testimony.

Respectfully Submitted:

Rep. Stanley E. Stevens, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1644-FN

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DATE:

LOB ROOM: 204 **Time Public Hearing Called to Order:**

Time Adjourned:

(please circle if present)

Committee Members: Reps. Shurtleff, Pantelakos, Berube, Robertson, Movsesian, Burridge, Cushing, Rodd, Chandley, B. McCarthy, M. Ryder, Welch, Charron, Resh, Weare, Stevens, Villeneuve, Gagne, Swinford and Willette.

Bill Sponsors: Rep. Wendelboe, Belk 1; Rep. Hagan, Rock 7; Rep. Bettencourt, Rock 4; Sen. Bradley, Dist 3

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB 1644-FN 19 Jan 2010

Start: 1307
Finish 1403

Rep Wendelboe prime sponsor

- this is not an abortion bill and does not impact Roe v. Wade
- has a handout on "fetal homicide."
- has definition of "born alive."
- Federal law passed for fetal homicide on Federal property.
- [redacted]
- provided a handout of topics covered by her testimony.

Shannon McGinley Cornerstone Action (supports)

- said previous speaker covered most of the points.
- 38 States have a law like this
- no court has found these laws unconstitutional

Michael Brainchini self (supports)

- what you call an "unborn child" is immaterial. It is a huge loss to the family.
- getting hung up on wording.

- spoke of the death of his son.

Peter Caldo — Diocese of Manchester — (supports)

- has written testimony.

Claire Ebel — N.H. Civils Liberties Union — (opposed)

- spoke of inheritance rights
- despite language, conferring personhood on a foetus will create problems beyond measure.

Kathleen Souza — self — (in support)

- the "steep and slippery slope" apparently is of no concern in 37 other States.
- "unborn child" is found throughout our N.H. Statutes.
- had several handouts for the record

Phyllis Woods — self — (in support)

- repeated much of previous testimony.

Testimony

Rep. Wendelboe

THE SUPREME COURT OF NEW HAMPSHIRE

Hillsborough-northern judicial district
2008-189

THE STATE OF NEW HAMPSHIRE

v.

JOSHUA LAMY

Argued: January 15, 2009
Opinion Issued: April 8, 2009

Kelly A. Ayotte, attorney general (Susan P. McGinnis, senior assistant attorney general, on the brief and orally), for the State.

Theodore Lothstein, assistant appellate defender, of Concord, on the brief and orally, for the defendant.

DUGGAN, J. After a jury trial in the Superior Court (Abramson, J.), the defendant, Joshua Lamy, was convicted of three felony counts of aggravated driving while impaired, see RSA 265:82 (2004) (repealed 2006; current version at RSA 265-A:3 (Supp. 2008)), two counts of second degree assault, see RSA 631:2 (2007), two counts of manslaughter, see RSA 630:2 (2007), and two counts of negligent homicide, see RSA 630:3 (2007), and was sentenced to the state prison for forty-and-one-half to eighty-one years. He appeals his convictions, arguing that the trial court erred in not dismissing the manslaughter indictment pertaining to the death of D.E., in not granting a

mistrial because of juror misconduct, and in drawing the inference at sentencing that he lacked remorse. We affirm in part, reverse in part, and remand.

The jury could have found the following facts. Around 1:00 a.m. on February 18, 2006, the defendant, while intoxicated, drove his car down Maple Street in Manchester. Traveling at speeds over 100 miles per hour, the defendant ran multiple red lights before colliding with a taxi. The collision caused serious injuries to the defendant and his passenger, as well as the driver of the taxi, Brianna Emmons, and her passenger. The passenger in the taxi later died from her injuries.

Because Emmons was seven months pregnant at the time of the collision, she was brought directly to the labor and delivery floor at Elliot Hospital. As a result of the injuries she sustained, blood flow to the fetus, D.E., was cut off, necessitating an emergency Cesarean section. Prior to the Cesarean section, D.E. showed a severely depressed heart rate of fifty beats per minute. However, by the time doctors extracted D.E. they noted that "he was limp, pale, had no spontaneous breathing on his own, and no detectible heart rate." He was "basically in cardiac arrest."

Nine-and-a-half minutes later, doctors were able to stimulate D.E.'s heart with medication and return his heart rate to normal levels. Through "heroic resuscitative efforts, medications, lines, intubation, and so forth," the doctors were able to stabilize D.E. Once a heart rate was reestablished, doctors immediately gave him medication to maintain his blood pressure and put him on a respirator to assist with his breathing. A birth certificate was issued.

From the moment of extraction, D.E. never showed any evidence of neurological function, and never manifested the ability to breathe on his own. He was removed from life support about two weeks later and died of perinatal asphyxia resulting from maternal abdominal trauma, which was caused by decreased blood flow after Emmons sustained injuries.

At the close of the State's evidence, the defendant moved to dismiss the manslaughter indictment pertaining to D.E., arguing that the State had failed to prove that D.E. was "born alive," as required under New Hampshire law. The trial court denied the motion, stating: "[T]here is evidence from Doctor Andrew that the child was born alive and the weight, if any, to be given to Doctor Andrew's testimony is an issue for the jury and not the court." The case was submitted to the jury, which returned guilty verdicts on all charges.

At sentencing, the trial court stated that it had considered the goals of sentencing, the pre-sentence investigation (PSI) report, the arguments of

counsel, the defendant's prior record, the nature of the charges, the victim impact statements and the defendant's own statement before reaching a sentence. The court then stated:

> [I]n considering all these factors, in light of the goals of sentencing, you have shown complete disregard for human life. . . . In addition, there is a clear escalation of your behavior as evidenced by your motor vehicle and your criminal records. In conclusion, I find that you have learned nothing from those records. You cannot begin to fathom the damage that you have caused because nothing haunts you, and I've also taken into account that you've shown really no remorse, and as point in fact I would put on the record that on the second day of trial, after hours of grueling testimony about the human wreckage at the accident scene, your concern at the end of that day was to dispatch your attorney up to the bench to point out that you want to get back to the House of Corrections in time to be able to take your shower. I watched you today as the victims were reading their statements to the Court and you were looking around the courtroom every time a door opened as if you were bored with the entire thing. You've shown absolutely no remorse.

The trial court then imposed the PSI recommendation, sentencing the defendant to the state prison for forty-and-one-half to eighty-one years. Sentencing for the negligent homicide convictions was held in abeyance pending appeal.

On appeal, the defendant makes three arguments: (1) that the trial court erred in not dismissing the manslaughter indictment pertaining to D.E.; (2) that the trial court erred in not granting a mistrial because of juror misconduct; and (3) that the trial court erroneously drew the inference that he lacked remorse based upon his request to shower after the second day of trial.

I

We first address the defendant's argument that the trial court erred in not dismissing the manslaughter indictment as to D.E. In New Hampshire, to be guilty of manslaughter or negligent homicide, a person must "cause[] the death of another." RSA 630:2, I, :3, II. Our homicide statutes, however, specifically provide that "the meaning of 'another' does not include a foetus." RSA 630:1, IV (2007). This language codifies the common law "born alive" rule. Under that rule, "an infant could not be the subject of homicide at common law unless it had been born alive." Keeler v. Superior Court of Amador County, 470 P.2d 617, 620 (Cal. 1970).

The defendant argues that the State failed to present sufficient evidence to prove beyond a reasonable doubt that D.E. was in fact "born alive," thus necessitating dismissal under RSA 630:1, IV. Specifically, he argues that the born alive standard requires a fetus to show spontaneous signs of life and be capable of independent existence, that D.E. lacked both, and was therefore not "another" for purposes of the statute.

This case does not require us to decide the oft-debated question of whether to adopt the born alive rule because, as the State and the defendant agree, the legislature already explicitly adopted the rule when it enacted RSA 630:1, IV. Rather, we must first interpret RSA 630:1, IV to determine the point at which a fetus becomes "another" for purposes of criminal liability, and then determine whether there was sufficient evidence to prove that D.E. was "another" as defined in the statute.

We review a trial court's interpretation of a statute de novo. State v. Horner, 153 N.H. 306, 309 (2006). We are the final arbiters of the legislative intent as expressed in the words of the statute considered as a whole. State v. Dansereau, 157 N.H. 596, 598 (2008). We begin by examining the language of the statute, State v. Whittey, 149 N.H. 463, 467 (2003), and ascribe the plain and ordinary meaning to the words used, State v. Langill, 157 N.H. 77, 84 (2008). We interpret legislative intent from the statute as written and will neither consider what the legislature might have said nor add language that the legislature did not see fit to include. Dansereau, 157 N.H. at 598. We also interpret a statute in the context of the overall statutory scheme and not in isolation. Id. If a statute is ambiguous, however, we consider legislative history to aid our analysis. Whittey, 149 N.H. at 467. Our goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme. Id. We construe the Criminal Code provisions "according to the fair import of their terms and to promote justice." RSA 625:3 (2007); see State v. Foss, 148 N.H. 209, 211 (2002).

We have recognized that our Criminal Code is largely derived from the Model Penal Code. State v. Donohue, 150 N.H. 180, 183 (2003). For that reason, we have looked to the Model Penal Code and its commentaries when interpreting analogous New Hampshire statutes. Id. The Model Penal Code also adopted the born alive rule, defining a human being as "a person who has been born and is alive." Model Penal Code § 210.0(1), at 4 (1980). The comments to the Model Penal Code state that "[t]he effect of this language is to continue the common-law rule limiting criminal homicide to the killing of one who has been born alive." Id. § 210.1 cmt. 4(c), at 11. Thus, insofar as RSA 630:1, IV is consistent with pre-existing common law, we interpret it as a continuation thereof as opposed to a new enactment. We must therefore look

to the common law origins of the born alive rule and its meaning at the time the Criminal Code was enacted. Cf. State v. Aldrich, 124 N.H. 43, 48 (1983).

The born alive rule emerged in fourteenth century England as an evidentiary standard requiring observation of the child to prove the corpus delecti in the killing of an infant. See Forsythe, Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms, 21 Val. U. L. Rev. 563, 581 (1987). Because of high infant mortality rates during childbirth, courts required some evidence of a live birth before finding criminal culpability. Id. at 590. As it evolved, the common law regarded infanticide as murder "'only if the foetus is (1) quickened, (2) born alive, (3) lives for a brief interval, and (4) then dies.'" Keeler, 470 P.2d at 620 (quoting Means, The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality, 14 N.Y.L.F. 411, 420 (1968)). Since the rule's inception, the crux of the matter has been the determination of whether or not the infant was ever "alive." See Atkinson, Life, Birth, and Live-birth, 20 L.Q. Rev. 134, 141-56 (1904) (chronicling debate over definition of live birth and proof thereof). Nineteenth century English cases required that the child be "wholly born" with "independent circulation." See Rex v. Crutchley, (1837) 173 Eng. Rep. 355, 356; Rex v. Brain, (1834) 172 Eng. Rep. 1272, 1272. Proof that the child was separated from the mother and that it breathed was usually enough to satisfy the standard, Regina v. Reeves, (1839) 173 Eng. Rep. 724, 725; Rex v. Poulton, (1832) 172 Eng. Rep. 997, 997, though breathing was not essential, Brain, 172 Eng. Rep. at 1272.

The rule was widely adopted in early American jurisprudence, but received little attention until the nineteenth century, when some state legislatures began enacting feticide statutes, thus modifying the common law. See Quay, Justifiable Abortion—Medical and Legal Foundations, 49 Geo. L.J. 395, 447-520 (1961) (providing text and development of state laws on feticide). The most high-profile and oft-cited decision addressing the born alive rule was the California Supreme Court's opinion in Keeler, 470 P.2d at 624. That court held that the California homicide statute did not encompass the death of a fetus when an estranged husband announced his intent to kill the baby, and then beat and kicked the mother's stomach, causing the death of the fetus. Id. at 618. As a result of the decision, a number of states, including California, amended their homicide statutes to include some form of criminal liability for the killing of a fetus. See, e.g., Cal. Penal Code § 187(a) (Deering 2008); Ind. Code. § 35-42-1-1(4) (Supp. 2004). The New Hampshire legislature did not then, and has not since, amended our homicide statutes' adoption of the born alive rule.

Today, thirty states have abandoned the born alive rule and imposed some form of liability for the killing of a fetus. The vast majority have done so

statutorily,[1] while a small minority have done so judicially.[2] Among those jurisdictions abandoning the rule, the standard varies widely as to when criminal liability attaches, ranging from conception to quickening or viability. See 2 W. LaFave, Substantive Criminal Law § 14.1(c), at 422-23 (2d ed. 2003).

Eighteen states, including New Hampshire, retain some form of the born alive rule.[3] Under the rule as it survives today, "If the child is born alive, despite an attack upon it and an injury to the mother while it was in the mother's womb, and the child thereafter dies as a result of the prenatal injury, a homicide has been committed." 2 C. Torcia, Wharton's Criminal Law § 116, at 140 (15th ed. 1994).

In clarifying the rule, courts have held that a child is "born alive" when it has an existence separate and independent of the mother. See State v. Dellatore, 761 A.2d 226, 230 (R.I. 2000); Jackson v. Commonwealth, 96 S.W.2d 1014, 1014 (Ky. Ct. App. 1936); Harris v. State, 12 S.W. 1102, 1103 (Tex. Ct. App. 1889). Before the advances of modern medicine, the extent of an infant's life support was its connection to its mother. Once removed, if unable to show some sign of life and sustain itself, it would die. Thus, the standard required evidence that the infant demonstrate some sign of life after expulsion and detachment from the mother, such as breathing or a detectable pulse. See People v. Bolar, 440 N.E.2d 639, 645 (Ill. Ct. App. 1982); Huebner v. State, 111

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[1] See Ala. Code § 13A-6-1 (Supp. 2008); Ariz. Rev. Stat. Ann. § 13-1103A(5) (LexisNexis 2008); Ark. Code Ann. § 5-1-102(13)(B) (2006); Cal. Penal Code § 187(a); Fla. Stat. Ann. § 782.09 (LexisNexis 2008); Ga. Code Ann. § 16-5-80 (2007); 720 Ill. Comp. Stat. Ann. 5/9-1.2 (West 2002); Ind. Code § 35-42-1-1(4); Iowa Code Ann. § 707.8 (West 2003); Kan. Stat. Ann. § 21-3452 (2007); Ky. Rev. Stat. Ann. § 507A (LexisNexis 2008); La. Rev. Stat. Ann. § 14.2(7) (Supp. 2008); Mich. Comp. Laws. Ann. § 750.322 (West 2004); Minn. Stat. Ann. § 609.2661 (West 2003); Miss. Code Ann. § 97-3-37 (2006); Mo. Rev. Stat. § 1.205 (2000); Nev. Rev. Stat. Ann. § 200.210 (LexisNexis 2006); N.D. Cent. Code § 12.1-17.1-01 to -06 (1997); Ohio Rev. Code Ann. § 2901.01(B)(1)(a)(ii) (LexisNexis Supp. 2008); 18 Pa. Cons. Stat. Ann. §§ 2601-2609 (West 1998); R.I. Gen. Laws § 11-23-5 (2002); S.D. Codified Laws § 22-1-2(50A) (Supp. 2008); Tenn. Code. Ann. § 39-13-214 (2006); Tex. Penal Code Ann. § 1.07(26) (Vernon Supp. 2008); Utah Code Ann. § 76-5-201(1)(a) (2003); Wash. Rev. Code § 9A.32.060(b) (2008); Wis. Stat. § 940.01(1)(b) (2008).

[2] See Com. v. Cass, 467 N.E.2d 1324, 1325 (Mass. 1984); Hughes v. State, 868 P.2d 730, 734-35 (Okla. Crim. App. 1994); State v. Horne, 319 S.E.2d 703, 704 (S.C. 1984).

[3] See Alaska Stat. § 11.41.140 (2008); Colo. Rev. Stat. § 18-3-101(2) (2008); Del. Code Ann. tit. 11 § 222(22) (Supp. 2008); Haw. Rev. Stat. Ann. § 707-700 (2008); Mont. Code Ann. § 45-2-101(29) (2007); Neb. Rev. Stat. § 28-302(2) (1995); N.H. RSA 630:1, IV; N.Y. Penal Law § 125.05 (McKinney 2004); Or. Rev. Stat. § 163.005(3) (Supp. 2008); State v. Anonymous (1986-1), 516 A.2d 156, 160 (Conn. Super. Ct. 1986); Williams v. State, 550 A.2d 722, 726 (Md. Ct. Spec. App. 1988), aff'd 561 A.2d 216 (Md. 1989); State in the Interest of A. W. S., 440 A.2d 1144, 1145 (N.J. Super. Ct. App. Div. 1981); State v. Willis, 652 P.2d 1222, 1226 (N.M. Ct. App. 1982); State v. Beale, 376 S.E.2d 1, 4 (N.C. 1989); State v. Oliver, 563 A.2d 1002, 1004 (Vt. 1989); Lane v. Com., 248 S.E.2d 781, 784 (Va. 1978); State ex rel. Atkinson v. Wilson, 332 S.E.2d 807, 812 (W. Va. 1984); Bennett v. State, 377 P.2d 634, 636 (Wyo. 1963).

N.W. 63, 64 (Wis. 1907) (taking several breaths sufficient to show independent existence with respiration and circulation); Harris, 12 S.W. at 1103 (air in an infant's lungs is sufficient corroboration of fact it was born alive).

As medical technology has advanced, however, so too has the born alive rule. Through the efforts of doctors and technology, a fetus can now be delivered with no heartbeat, no breathing, and no brain function, yet have those functions artificially resuscitated and maintained some time later. Because of these advances, states employing the born alive doctrine have required that the child show some spontaneous sign of life, as well as the ability to exist independent of artificial support at some point in the future. See Alaska Stat. § 11.41.140 ("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."); Dellatore, 761 A.2d at 230-31 (affirming jury instruction that child must have lived separate and apart from its mother without artificial means); People v. Chavez, 176 P.2d 92, 95 (Cal. Dist. Ct. App. 1947) (holding that if separated from its mother, the child must be able to "live and grow in the normal manner").

We now turn to the interpretation of our own statute, and the determination of when a fetus becomes "another" for the purposes of criminal liability. Like other states facing the same task, we begin by considering the legislature's definition of live birth in the vital statistics statutes. See, e.g., People v. Flores, 4 Cal. Rptr. 2d 120, 125 (Ct. App. 1992); Bolar, 440 N.E.2d at 644; State v. Green, 781 P.2d 678, 683 (Kan. 1989). Under RSA 5-C:19 (Supp. 2008), hospitals and institutions must report every live birth to the division of vital records administration within the New Hampshire Department of State. As to which births must be reported, the legislature provided:

> "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

RSA 5-C:1, XIX (Supp. 2008). Both provisions were part of a broad revision of RSA chapter 5-C prior to transference of the vital records administration from the department of health and human services to the department of state. Laws 2005, 268:1. Though informative to our analysis, the civil statute does not control our interpretation of the Criminal Code.

The State does not argue that the born alive rule does not apply in this case. Rather, it argues that the definition of live birth in RSA 5-C:1, XIX supersedes the common law born alive rule, and requires only that the child either take a breath or have circulation independent of the mother, irrespective of artificial life support. Whether a fetus is born alive, the State argues, is a matter of medical determination, and the issuance of a birth certificate should be prima facie evidence of such a birth. The State argues that under that standard, there was sufficient evidence to prove that D.E. was born alive. We disagree.

To apply the definition of live birth in RSA 5-C:1, XIX to our homicide statutes without considering the legislature's explicit adoption of the born alive rule and the common law definition of "born alive" would be inconsistent with the approach taken by other states and our own application of the Criminal Code. See Donohue, 150 N.H. at 183 (looking to the Model Penal Code); Aldrich, 124 N.H. at 48 (looking to common law definitions when Criminal Code was adopted); see also Chavez, 176 P.2d at 95; Flores, 4 Cal. Rptr. 2d at 125; Dellatore, 761 A.2d at 230-31; Bolar, 440 N.E.2d at 644; Green, 781 P.2d at 683. Although the definition of live birth in RSA 5-C:1, XIX does not mention artificial life support, it does require "evidence of life." We read this to be consistent with the common law surrounding the born alive rule, which also requires such evidence, demonstrated by some spontaneous sign of life. See Chavez, 176 P.2d at 95; Dellatore, 761 A.2d at 231. The inclusion of "definite movement of voluntary muscles" within RSA 5-C:1, XIX demonstrates the legislature's intent that the evidence concerning live birth must be of a spontaneous nature as opposed to artificially supported vital functions. We therefore hold that, at the very least, an expelled or extracted fetus must show some spontaneous sign of life before it is considered "another" and its death can result in criminal prosecution.

Indeed, had the legislature intended to overturn established common law defining when criminal liability attaches to the killing of a fetus, it would have done so in one of the six revisions of RSA 630:1 since its enactment in 1971. In 1967, the legislature established a commission to study and recommend a consolidated and modern Criminal Code. Laws 1967, ch. 451. When the Criminal Code was first put before the legislature for enactment four years later, the commission reported that the bill "'perhaps received more time and study than any other single legislative proposal in [New Hampshire's] history on the part of people interested in its work.'" N.H.S. Jour. 1642 (1971) (quoting statement of then Chief Justice Kenison). In 1974, the legislature created our capital murder statute, but did not amend or repeal the definition of "another" in RSA 630:1, IV. See Laws 1974, 34:1. In 1977 the legislature revisited the capital murder statute and provided procedural requirements for such cases, leaving RSA 630:1, IV intact. See Laws 1977, 440:1, 588:41. In 1988, 1990 and 1994, the legislature again amended the capital murder statute,

broadening its application to additional offenses, but only amended RSA 630:1, IV so as to apply it to the newly created capital offenses. See Laws 1988, 69:1, :2; Laws 1990, 199:1; Laws 1994, 128:1, :2. Finally, in 2005, the legislature limited application of the capital murder statute to individuals over the age of eighteen, but did not amend the definition of "another." See Laws 2005, 35:1. The history of our homicide statutes demonstrates the legislature's intent to adopt and continue the application of the common law born alive rule in New Hampshire.

Next, we must determine whether the State presented sufficient evidence to prove that D.E. was born alive under this standard. In making that determination, we examine the evidence in the light most favorable to the State. State v. Hudson, 151 N.H. 688, 690 (2005). We also take all inferences from the evidence in the light most favorable to the State. Id.

Even if we assume, as the State argues, that a birth certificate is prima facie evidence of a live birth, such evidence, by definition, creates only a rebuttable presumption. See Black's Law Dictionary 1228 (8th ed. 2004) (prima facie means: "Sufficient to . . . raise a presumption unless disproved or rebutted"); see also State v. Buckwold, 122 N.H. 111, 112 (1982) (stating presumption is rebuttable); Abbott v. Insurance Co., 89 N.H. 149, 153 (1937) (holding death certificate is prima facie evidence of cause of death, but can be overcome by evidence demonstrating its lack of reasonable credibility). The issuance of a birth certificate reflects a doctor's belief that a "live birth" has occurred, but has no effect upon the interpretation of the statute and the common law surrounding the born alive doctrine, which is a matter of law.

Here, D.E. never displayed any spontaneous sign of life. The medical examiner testified that D.E. was essentially in cardiac arrest when born, and was only able to manifest some signs of life after extensive resuscitative efforts. D.E. was never able to breathe without the aid of a respirator, required medication to maintain his blood pressure and never acquired any brain function. The medical examiner testified that D.E.'s brain "was liquified by the time [he] examined him at age fourteen days," and he never experienced consciousness. The medical examiner based his opinion that D.E. was born alive upon D.E.'s pre-extraction heart rate, his body's reaction to resuscitative efforts and doctors' ability to artificially restore and maintain a heart rate. There was, however, no testimony that D.E. ever exhibited any spontaneous sign of life "such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles." RSA 5-C:1, XIX. Because there was no evidence to support a finding of spontaneous signs of life, there was insufficient evidence to support the convictions, and it was error to allow the question to go to the jury.

We recognize, as have many other courts, that the born alive doctrine may be an outdated anachronism often producing anomalous results. See Atkinson, 332 S.E.2d at 810; People v. Greer, 402 N.E.2d 203, 209 (Ill. 1980); A. W. S., 440 A.2d at 1146; People v. Guthrie, 293 N.W.2d 775, 778 (Mich. App. 1980). However, because the legislature explicitly chose to adopt the rule as statutory law, we cannot "mold, change, [or] reverse" the doctrine as we could were it still common law. Guthrie, 293 N.W.2d at 778. In cases of criminal law, "[i]t is the province of the legislature to enact laws defining crimes and to fix the degree, extent and method for punishment." State v. Rix, 150 N.H. 131, 134 (2003) (quotation omitted); accord Atkinson, 332 S.E.2d at 810; Green, 781 P.2d at 683; Greer, 402 N.E. at 209; Guthrie, 293 N.W.2d at 778, 780. Should the legislature find the result in this case as unfortunate as we do, it should follow the lead of many other states and revisit the homicide statutes as they pertain to a fetus.

II

The defendant argues that the trial court erred in not granting his motion for a mistrial because of juror misconduct. During jury deliberations, Juror 3 reported that Juror 9 had made comments indicating that he had returned to the scene of the collision to investigate after the jury's pretrial view. The trial court conducted a voir dire of Juror 9, who denied having returned, and insisted that his comments pertained to the pretrial view of the scene. The trial court then conducted a voir dire of Juror 3, who maintained that Juror 9 had said: "I went back to the scene and I looked over that metal object and you could see two hundred feet." She was adamant that Juror 9 had not been referring to the pretrial view, but had returned independently. The trial court then conducted an individual voir dire of the remaining jury members.

Juror 2 remembered Juror 9 saying that he "had been to that intersection and looked to the right to see if he could see how far down the road," and believed he had done so during the trial. Juror 4 remembered Juror 9 saying that he had looked right at the intersection, but was unable to remember if he said he had gone back independently. Juror 5 thought she heard Juror 9 say he had returned to the scene, but thought he may have been referring to his observations during the sanctioned view. Juror 6 stated: "[H]e said he went back, stopped at the . . . light, and then . . . looked down." Juror 7 recalled that Juror 9 told the others that he had returned to the scene and "looked at it from different angles." Jurors 1, 8, 10, 11 and 12 did not recall Juror 9 making any such comment.

After the initial voir dire, the trial court was unable to determine whether any misconduct had actually occurred, but, out of an abundance of caution, dismissed Juror 9. The trial court then individually recalled those jurors who believed Juror 9 had said he returned to the scene and asked them if they

could remain impartial. Juror 3 said that she would be unable to remain impartial and the trial court dismissed her. The remaining jurors had either not heard the comment, or assured the trial judge that they could disregard the comment and remain impartial in their deliberations. The defendant moved for a mistrial, which the trial court denied. The trial court added two alternates to the panel and instructed the jury to restart deliberations.

It is axiomatic that a defendant has a right to be tried by a fair and impartial jury. State v. Brown, 154 N.H. 345, 348 (2006). Any juror found to be disqualified before or during trial should be removed. Id.; see RSA 500-A:12, II (1997). "We have previously decided that when there is also an allegation that a juror has been biased by extrinsic contact or communication, the trial court must undertake an adequate inquiry to determine whether the alleged incident occurred and, if so, whether it was prejudicial." Brown, 154 N.H. at 348 (quotation omitted).

"In a criminal case, a defendant must prove actual prejudice, although such prejudice is presumed when there are communications between jurors and individuals associated with the case or when the juror's unauthorized communications are about the case." State v. Bathalon, 146 N.H. 485, 487 (2001). "In those instances the burden shifts to the State to prove that any prejudice was harmless beyond a reasonable doubt." Id. at 488. The defendant argues that this presumption should also apply when a juror returns to the scene for an unauthorized view. He argues that our cases concerning extraneous communications are analogous, in that the misconduct here involved extrinsic influence upon the jury's deliberation.

In previous cases we have limited the presumption of prejudice to communications, but only because the misconduct in those cases involved communications. See id. at 487. We now extend the same presumption to a juror's unauthorized view of the crime scene. The same danger is present here as when a juror is party to extraneous communications concerning the case. In both instances, the juror may base his or her decision upon evidence that the defendant never had any opportunity to examine and present to the jury. See State v. Coburn, 724 A.2d 1239, 1241 (Me. 1999); State v. Bell, 731 P.2d 336, 341 (Mont. 1987). We therefore hold that, when a juror is exposed to extraneous information sufficiently related to the issues presented at trial, a presumption of prejudice is established, and the burden of proof shifts to the State to prove that the prejudice was harmless beyond a reasonable doubt.

The State argues that even if we adopt the presumption, it met its burden to prove that the prejudice was harmless. We agree. In cases such as this, it is within the trial court's discretion to determine what constitutes an "adequate inquiry" into juror misconduct. State v. Rideout, 143 N.H 363, 365 (1999). The most common approach is to remove the offending juror and

undertake individual voir dire of the panel. See Bathalon, 146 N.H. at 488; see also United States v. Resko, 3 F.3d 684, 691 (3d Cir. 1993). This is a fact-specific determination, which we review for an unsustainable exercise of discretion. Brown, 154 N.H. at 349; Bathalon, 146 N.H. at 488; Rideout, 143 N.H at 365.

Here, the trial court was not able to determine if any misconduct had even occurred. For the purposes of its evaluation, however, it assumed that Juror 9 returned to the scene and that his doing so was misconduct, and therefore dismissed him. The trial court also dismissed Juror 3, the only juror to say that she could not disregard the statement. After individual voir dire of the remaining jurors, the trial court was convinced that the panel could reach an unbiased verdict based solely upon the evidence introduced at trial. In reaching this conclusion, it relied upon the jurors' statements that they could remain impartial and would follow the trial court's instructions. Because there was sufficient evidence upon which the trial court could conclude that any prejudice was harmless beyond a reasonable doubt, the State met its burden. Based upon the trial court's procedure, the jurors' testimony and the curative instruction, we cannot say that the trial court erred in finding no actual prejudice and denying the defendant's motion for a mistrial. See United States v. Boylan, 898 F.2d 230, 262 (1st Cir.) ("[A] juror is well-qualified to say whether he has an unbiased mind in a certain matter." (quotations omitted)), cert. denied, 498 U.S. 849 (1990); see also State v. Smart, 136 N.H. 639, 658 ("Our system of justice is premised upon the belief that jurors will follow the court's instructions.") cert. denied, 510 U.S. 917 (1993).

III

We now turn to the defendant's argument that the trial court erred in drawing the inference that he lacked remorse based in part upon his request to return to the house of corrections in time to shower after the second day of trial. The defendant acknowledges that he did not contemporaneously object to the trial court's statement, and relies upon our plain error rule in seeking review. See Sup. Ct. R. 16-A.

The plain error rule allows us to consider errors either not brought to the attention of the trial court or not raised in the notice of appeal. Id. "The rule should be used sparingly, its use limited to those circumstances in which a miscarriage of justice would otherwise result." State v. MacInnes, 151 N.H. 732, 736-37 (2005). Thus, to fall within the plain error rule: (1) there must be an error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings. Id. at 737. We have looked to the United States Supreme Court's standards for the application of the federal plain error rule to inform our application of the State rule. See id.

On appeal, the defendant argues that the plain error was the trial court's reliance upon impermissible factors in reaching a sentence. Specifically, he relies upon State v. Burgess, 156 N.H. 746 (2008), to argue that consideration of his request to shower was a violation of the basic principles of due process. In Burgess, we held that a trial court cannot consider a defendant's silence as a factor in determining lack of remorse when the defendant has maintained his innocence throughout trial. Burgess, 156 N.H. at 757-58. Because expressing remorse requires some admission of guilt, we reasoned that it would be incongruous to penalize a defendant for not accepting responsibility for a crime of which he believes he is innocent. Id. at 757. We went on, however, to specifically limit our holding "to situations where a defendant maintains his innocence throughout the criminal process and risks incriminating himself if he expresses remorse at sentencing." Id. at 760. Where a defendant has made some admission of guilt, an inference from his silence at sentencing would not violate the privilege against self-incrimination. Id. Thus, "[t]he sentencing judge may legitimately consider a defendant's lack of feeling about killing a fellow human being, when the defendant admits to the killing." Id. at 761 (quotation omitted).

Here, the defendant read a statement at the sentencing hearing. Part of that statement read:

> I can only imagine the pain you guys have been through. I had to learn how to walk again in jail, but I also have to live with the fact that innocent people died due to poor decisions. I don't expect anyone to forgive, but I just want you to understand I'm not heartless, I'm not a monster and it was an accident. So for what it's worth I'm very sorry that this had to happen.

The defendant therefore admitted that his decisions led to death and injury, although he maintained that it was an accident. In light of the defendant's admission of his actions, the trial court acted within its discretion to conclude that he lacked remorse based in part upon his preoccupation with showering after listening to "grueling" testimony concerning the accident. See Burgess, 156 N.H. at 761.

Moreover, even if we were to assume that there was an error, and that the error was plain, the defendant is unable to prove that the error affected substantial rights. As the trial court explained, other factors also supported the conclusion that he lacked remorse. Before imposing the sentence, the trial court stated:

> [I]n sum, we have one woman dead, one baby dead, we have one woman grievously injured and one man who is brain damaged. We have a significant criminal record, a significant motor vehicle

> record. We have five aggravating factors as outlined by the State and no mitigating factors, and we have zero remorse, and for those reasons the math adds up . . . to the sentence recommended in the PSI.

Given the other considerations meriting a severe sentence, the defendant has provided nothing to show that the error seriously affected the fairness, integrity or outcome of the proceeding. See United States v. Olano, 507 U.S. 725, 734-35 (1993); State v. Emery, 152 N.H. 783, 787 (2005).

IV

In conclusion, we reverse the defendant's manslaughter and negligent homicide convictions pertaining to the death of D.E., and remand this case for further proceedings consistent with this opinion. The remaining convictions and sentences are affirmed.

Affirmed in part; reversed in part; and remanded.

BRODERICK, C.J., and DALIANIS and HICKS, JJ., concurred.

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ABANDONMENT AND RECONCILIATION: ADDRESSING POLITICAL AND COMMON LAW OBJECTIONS TO FETAL HOMICIDE LAWS

DOUGLAS S. CURRAN†

ABSTRACT

Fetal homicide laws criminalize killing a fetus largely to the same extent as killing any other human being. Historically, the common law did not generally recognize feticide as a crime, but this was because of the evidentiary "born-alive" rule, not because of the substantive understanding of the term "human being." As medicine and science have advanced, states have become increasingly willing to abandon this evidentiary rule and to criminalize feticide as homicide.

Although most states have recognized the crime of fetal homicide, fourteen have not. This is largely the result of two independent obstacles: (judicial) adherence to the born-alive rule and (legislative) concern that fetal homicide laws could erode constitutionally protected reproductive rights.

This Note explores a variety of fetal homicide laws that states have adopted, demonstrating that popular opinion has shifted toward recognizing this crime. It then directly confronts the objections that have prevented other states from adopting such laws: it first reviews the literature suggesting that the born-alive rule should be abandoned, as it is an obsolete evidentiary standard; it then argues that constitutionally protected reproductive liberties can be reconciled with, and in fact augmented by, punishing the killing of a fetus as a homicide.

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† Duke University School of Law, J.D. expected 2009. Georgetown University, Walsh School of Foreign Service, B.S.F.S. 2006. I would like to thank Professor Sara Beale for her invaluable guidance and support, the editors of the *Duke Law Journal* for their tireless determination, and especially my parents for their unwavering encouragement.

choose. In this way, fetal homicide laws and the constitutionally protected right to an abortion are not adversaries; rather, they are complements that can be harmoniously reconciled.

Moreover, the born-alive rule serves no purpose in the modern law other than to blindly imitate the past. The rule has simply outlived both its necessity and utility, and states should accordingly abandon it. Those states that continue to apply the rule and decline to extend the scope of homicide statutes to include a fetus as a potential homicide victim do their citizens—both born and unborn—an injustice.

In 1970, when the California legislature amended the state homicide statute to include the term "fetus," the state was a maverick, blazing a trail away from the accepted notion that homicide laws did not apply to the unborn. Over the following decades, other courts and legislatures followed suit until, in 1990, feticide was regarded as a homicide in nineteen states.[213] In that year, however, legislative creation of a comprehensive statutory regime to address fetal homicide was still seen as "most unusual."[214] As of 2009, thirty-six states have classified the killing of an unborn child as homicide. The fourteen others that have not ought to bring their laws in line with modern understandings of justice by adopting a comprehensive, internally consistent statutory regime that incorporates feticide into traditional homicide laws. Only in this manner can the law fully protect both a mother and her unborn child.

213. State v. Merrill, 450 N.W.2d 318, 321 (Minn. 1990).
214. *Id.*

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January 19, 2010

The Honorable Stephen Shurtleff
Criminal Justice and Public Safety Committee
New Hampshire House of Representatives
Legislative Office Building, Room 204
Concord, NH 03301

Re: HB 1644 (including "unborn child" in the definition of "another" for the purpose of murder, manslaughter, negligent homicide)

Dear Representative Shurtleff and Members of the Committee:

As Director of Respect Life for the Diocese of Manchester and on behalf of Bishop John B. McCormack, I am testifying before your Committee to express our support for House Bill 1644. I would like to preface my comments by stating that the Diocese does not express its support for HB 1644 as a matter of religious doctrine valid only for those who assent to Catholic teaching. Rather, the issue raised by HB 1644 involves demonstrable scientific evidence and universal values concerning human life and the protection it deserves. It is precisely for these reasons that the Diocese wishes to make its opinion and recommendation known.

When a pregnant woman is the victim of injury or death which causes injury or death to her unborn child, there are two victims of crime as defined in this bill, not one. Recognition of this fact of course means recognizing that the human embryo and fetus are fully human. It is critically important for the deliberation of this bill to consider the human status of the unborn child. Embryology and fetology demonstrate that the unborn child from the moment he or she is conceived is an actual, not a potential, self-integrating and self-directing human individual. From the very beginning, the human embryo is not a mass or bundle of unorganized, directionless cells. Rather, embryology shows that it is a self-integrating and self-directing unified individual. Moreover, its nature is not anything except human nature. It may not look like or function as a newborn baby or an adult, but that is because it looks and functions just like an early human being should.

"Fetus" is the term used to identify the same individual from its eighth week of development. But the human fetus is not for this reason more of a human being that the human embryo. Rather, the human fetus is the very same human individual who was an embryo, who develops along a continuum, and who remains throughout the gestation process as the proper bearer of human rights.

It is often said that the unborn child should be given respect only gradually as it develops certain physical capacities such as a neverous system and a brain that support consciousness. The fact of the matter is that from the moment of conception the unborn child does have this

capacity simply by being a human individual; it just cannot exercise it until there is more physical development. A lack of specific function is not equal to a lack of capacity. An unborn child does not lack the capacity for consciousness in the way that a doll or a tree lack it. Rather, the human embryo and fetus have this human characteristic and every other human characteristic as a real aspect of what it is.

The characteristics that make all of us in this room to be human beings with a fundamental right to life are no different for the human embryo and fetus. There should be no mistake. When a human fetus is injured or dies as a result of violence to the mother, there are two victims of crime; two human beings whose rights have been offended. Thus, the baby who suffers injury or death is equally deserving of legal protection. For all the reasons cited here, we urge the Committee to recommend that HB 1644 ought to pass.

We thank you for your consideration and for your public service.

Sincerely,

Peter J. Cataldo, Ph.D.

Suspect's mom: 'He'll pay'

◆Mourners gather: Mom of Manchester victim says she intends to press for a law that would make it a crime to harm an unborn child.

By KATHRYN MARCHOCKI
Union Leader Staff

MANCHESTER — Two mothers stood before a young woman's flower-draped, white coffin yesterday, crippled with unbearable grief.

One was the mother of Brandi Bernard, 19, slain last Thursday in her Manchester home.

The other was the mother of the man accused of killing her.

"I'm so sorry my son did that to you!" cried Carmen Torres, collapsing on the casket when she came forward to pay her respects.

"I'll make sure he pays! I promise . . . I love you, Brandi," wailed Torres, of Newark, N.J., whose son, Robert Lopez, 35, is charged with second-degree murder in Bernard's death.

As she was led away from the coffin, Torres sobbed, "Why did he have to do this? Why?"

Meanwhile, Bernard's mother hoped to wake up from what seemed like a very

▶ See **Mother,** Page A2

BOB LaPREE/UNION LEADER

More than 120 gathered to mourn murder victim Brandi Bernard in Manchester yesterday.

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Mother

Continued From Page A1

bad dream.

"I'm still numb. I can't believe I am burying my daughter. I literally can't believe I'm not going to see her walk through my door again," said Christina Chenette, 40.

"It's like a bad nightmare . . . I just don't want to be in this dream anymore," said Chenette, whose daughter moved into her 193 Westland Ave. duplex a week before she was beaten to death.

Bernard was 2½ months pregnant with Lopez's child, her family said.

Chenette said she intends to press her congressman to file federal legislation that would make it a crime to harm an unborn child.

"We are asking for a Brandi Bernard law for mothers who are pregnant," Chenette said. "They don't consider that baby a live human being."

The state Attorney General's Office is not commenting on whether Bernard was pregnant.

BERNARD
buried yesterday

CHENETTE
still numb

However, an assault on an unborn child carries no criminal culpability under New Hampshire law, Assistant Attorney General David W. Ruoff said.

Ruoff noted an attempt to pass legislation last year that would make it a crime to commit assaults on an unborn child did not pass the Legislature.

More than 120 mourners gathered in the chapel at Phaneuf Funeral Homes & Crematorium where the Rev. Douglas Rickard sought to console them for the life that was "so quickly and brutally" taken away.

Sprays of vivid orange and pink flowers filled the room. Family photographs chronicling Bernard's life from delivery room to her 2003 Central High School graduation slide... ly flashed on a large screen.

"She loved life and she didn't waste life . . . and may her spirit, and her love and her laughter and her beauty energize and inspire us as we continue on," said Rickard, pastor of Manchester First Presbyterian Church.

Bernard was a fun-loving, industrious, honors student who worked as a customer service representative at Labor Ready temporary employment agency in Manchester, relatives said. She found a sense of purpose there in helping many of the city's jobless, homeless and destitute find work and put food on their tables, they said.

Bernard's cousin, Brittany Paquette, read a poem composed by her sister, Sharee Paquette, 15, of Manchester:

"Your heart is pounding,
Your mind is racing,
We all are hating,
Traumatized, scared.

Not knowing what happened
In the event of your demise,
Everyone cries, feelings get hurt,

Knowing that you got buried in the dirt.

The thought of it hurts the soul

And kills the heart . . .

How did this whole relationship start . . . ?"

Bernard met Lopez at Labor Ready shortly after Lopez came to New Hampshire in January, relatives and authorities have said.

Lopez served 11 years in Pennsylvania state prison for the savage 1994 stabbing of his previous girlfriend, Olivia Williams. He completed his sentence Jan. 18.

City man indicted in girlfriend's death

1/22 A2

MANCHESTER — A Hillsborough County grand jury has indicted Robert Lopez, 35, for first-degree murder in the bludgeoning death of his pregnant girlfriend, Brandi Bernard, 19.

The indictment says Lopez purposely caused Bernard's death "by inflicting multiple blows to her head with a hammer."

Bernard was 10 weeks pregnant when she died on July 21 in the 193 Westland Ave. apartment she had been sharing with Lopez.

Witnesses told investigators Lopez had told Bernard he wished she and the baby were dead and he had threatened to split her head open.

According to police affidavits, investigators removed two hammers and three wooden shelf pieces from the apartment.

Kathleen Lynch

Here is what three state supreme courts have had to say:

A. California Supreme Court, *People v. Davis*, 872 P.2d 591 (1994):

Court upheld constitutionality of fetal homicide law and rejected need for "viability" requirement.

Court specifically stated that: **"We conclude, therefore, that when the mother's privacy interests are not at stake, the Legislature may determine whether, and at what point, it should protect life inside a mother's womb from homicide.** Here, the Legislature determined that the offense of murder includes the murder of a fetus with malice aforethought."

B. Georgia Supreme Court, *Brinkley v. State*, 322 S.E.2d 49 (1984):

Court upheld the constitutionality of the fetal homicide state and discussed inapplicability of *Roe v. Wade* and *Doe v. Bolton* decisions (i.e. abortion jurisprudence).

The Court specifically stated: "Nothing in *Roe v. Wade* nor *Doe v. Bolton* is in conflict with our holding here. There the court dealt with a balance between a woman's right of privacy affording her the choice to decide the question of abortion of her child as against the state's interest in safeguarding health, maintaining medical standards, and in protecting potential life. In striking that balance the court focused on the trimesters of pregnancy. **But here we deal with the interest of the state in protecting both the mother and the fetus from the intentional wrongdoing of a third party who can claim no right for his actions.**"

C. Minnesota Supreme Court, *State v. Merrill*, 450 N.W.2d 318 (1990). Further, the U.S. Supreme Court refused to hear an appeal in this case, 496 U.S. 931 (1990).

Court upheld the constitutionality of the fetal homicide statute and dismissed claims that to do so would confer "personhood" under the 14th Amendment to an unborn child (and violate *Roe v. Wade*).

Here's the Court's analysis:

"If we understand defendant correctly, he is claiming the statutory classification, by not distinguishing between viable and nonviable fetuses, exposes him to conviction as a murderer of an unborn child during the first trimester of pregnancy, while others who intentionally destroy a nonviable fetus, such as a woman who obtains a legal abortion and the doctor who performs it, are not murderers. In other words, defendant claims the unborn child homicide statutes expose him to serious penal consequences, while others who intentionally terminate a nonviable fetus or embryo are not subject to criminal sanctions. In

Unborn child dies in city accident

MANCHESTER — An unborn child died yesterday following a two-vehicle crash on Elm Street involving the mother and another driver, police said.

Police did not release the name of the mother, saying they wanted to be sure that next of kin had been notified.

Police said the accident took place at 3:09 p.m. at Elm Street and Brown Avenue; it involved a 2004 Chevy Ventura van and a 1993 Honda Civic.

The woman, who is 21, was taken to a hospital, but an emergency procedure to save the unborn child was unsuccessful.

Her whereabouts and condition were not released last night by police.

County Attorney Marguerite L. Wageling last night said that she could not say with certainty how far into the pregnancy the woman was, but she could say that the baby would have been developed enough to live outside the womb had it survived.

The other driver, a woman, received minor injuries.

Wageling said the Hillsborough County Attorney's Office is investigating the matter along with Manchester Police.

She would not say if police believed drugs or alcohol were a factor in the accident.

When life begins

NH House isn't sure; but saves Fido

HOW APPROPRIATE that, as the Holy Father personally and painfully demonstrated the sanctity of life through his own suffering, and as a woman in Florida was allowed to die of starvation, the New Hampshire House also addressed life issues last week.

The House, on a 212-138 vote, rejected a bill that would have created a criminal penalty for those who injure an unborn baby while committing a crime.

But don't despair, pro-lifers. The House also passed a bill making it a felony to intentionally harm — a guide dog! And it also made it a misdemeanor to interfere with such an animal.

Opponents of the injured-fetus bill said it went too far inside the abortion debate. The Criminal Justice Committee explained this by noting that the bill would establish an "assumption" that life begins at conception, something not now accepted by state law.

It may not be accepted by New Hampshire law, but the "assumption" that life begins at conception is biologically indisputable. One may argue over who controls that life or whether it should be created, in our brave new world, simply as a vehicle to harvest body parts or to serve as a medical Tinker Toy set. But life is life and no legislative language or court edict changes that fact.

MANCHESTER

Woman's condition stable after crash

Police yesterday identified Bryonie Heath, 21, of Manchester as the woman who lost her unborn child after a two-car accident on Elm Street.

Heath remained hospitalized yesterday in stable condition at Catholic Medical Center.

She was injured about 3:10 p.m. Wednesday when her 2004 Chevrolet Venture van was involved in a collision with a 1993 Honda Civic being driven by Helene Hinis, 44, of Jamaica Plain, Mass., police said.

Sgt. Brian Blais said Hinis had just had her car washed and was exiting Manchester Auto-Wash, 47 Elm St., when the accident happened. A motorist had slowed to allow Hinis to make a left turn onto Elm Street to head south, police said.

"The investigation is continuing," Blais said.

Hillsborough County Attorney Marguerite Wageling has said the baby was developed enough to have lived outside the womb had it survived.

...police made
...he killed Treasure Genaw and left her body.

6/22/05

Jury deciding fate of man who killed pregnant girlfriend

By BRIAN DEKONING
Union Leader Correspondent

DOVER — The jury began deliberating yesterday afternoon and will now decide if Anthony O'Leary will spend the rest of his life in prison for stabbing to death his pregnant, ex-fiancee and leaving her body on a dirt road in Maine.

In his closing argument yesterday, prosecutor Charles Keefe said O'Leary, 20, should be convicted of nothing less than first-degree murder because he made a conscious decision to kill 17-year-old Treasure Genaw when he stabbed her nine times in her parked car in Somersworth on June 7, 2004.

"Just because in that car, the defendant made an emotional decision, doesn't mean he didn't decide," Keefe said. "Just because he may regret his decision doesn't mean he didn't decide."

Keefe pointed to the number and brutality of Genaw's wounds as evidence of first-degree murder. Testimony from a Maine medical examiner showed Genaw had two stab wounds to the throat, one of which tore her jugular vein, as well as four stab wounds to the chest and one to the stomach.

O'Leary has admitted killing Genaw and would be sentenced to a mandatory life sentence without parole in Strafford County Superior Court if convicted of first-degree murder as Keefe and fellow N.H. Assistant Attorney General David Ruoff want. O'Leary, a graduate of Manchester Central High School who worked as a roofer on the Seacoast, was indicted on first-degree murder.

North Berwick, Maine, who aspired to be a nurse. She worked two jobs.

Testimony revealed Genaw ended the relationship at the end of May 2004, telling O'Leary she wanted him out of her life and that she was considering an abortion.

Keshen said in her closing argument that Genaw had given O'Leary mixed signals and that the couple were happy when they found out she was carrying O'Leary's baby in April 2004.

"By May, it's all over," Keshen said. She's fallen out of love with Tony. She doesn't want to be with him. Tony is completely confused. His head is turned all around."

O'Leary's mother testified Monday that her adopted son called her to ask for advice on Genaw and thought she was rejecting him because of hormonal changes related to her pregnancy.

Keefe's closing argument centered on the gruesome details of Genaw's death and how O'Leary aimed to stab her in vital locations like her throat, heart and stomach. He also said discrepancies among statements O'Leary gave to police in Massachusetts, Maine and New Hampshire showed O'Leary was trying to protect himself after being taken in to custody.

Treasure can't lie about what the defendant did to her in that car. But the defendant had the opportunity to lie and he took it, Keefe said.

O'Leary's public defenders, Barbara Keshen and Meegan Reis, admit O'Leary killed Genaw and want the jury to consider the lesser included offense of manslaughter, which would carry a sentence of 15 to 30 years. Keshen also urged the jury to consider second-degree murder, which carries a sentence of up to life in prison with possible parole.

In her closing argument, Keshen told the jury O'Leary was a teenage boy who lost control of his emotions when he killed Genaw of South Berwick, Maine. O'Leary was 19 at the time.

"What we're talking about here is the state of mind. Tony caused Treasure's death. There's no question about that. Did he do it purposely?" Keshen asked the jury.

Keshen pointed to mementos O'Leary had from his relationship with Genaw as proof he was "devoted" to her, but classified their young love as "a ninth-grade relationship.

"They were trying to act like adults, but folks, they were just unsupervised children," Keshen said.

O'Leary and Genaw were in a relationship that lasted more than a year including a brief engagement. Genaw was 3 months pregnant with O'Leary's baby.

Genaw was a high school senior at Noble High School in

Keefe repeatedly said O'Leary could not accept that Genaw no longer wanted him in her life and told the jury that statements O'Leary made to police proved he was thinking rationally when he killed Genaw.

"I knew then I was going down for murder," Keefe quoted O'Leary's statement to a New Hampshire state trooper. "By his own words, he starts to convict himself of first-degree murder."

At one point, Keefe placed a roofer's utility knife in front of the jury like the one O'Leary used to kill Genaw. Keefe asked the jury to be silent for a minute to think about how many times O'Leary could have stabbed Genaw in that time and how many thoughts might have gone through O'Leary's head. O'Leary told police the stabbing happened in about five minutes.

Earlier in the day, prosecutors played a police videotape from June 9, 2004, in which O'Leary drove in a car with police and showed them where he killed Genaw, threw out the utility knife he used to stab her, and where he left her body.

Judge Bruce Mohl instructed the jury to consider first- and second-degree murder as well as manslaughter. He also designated two men and one woman as alternate jurors, leaving seven men and five women in the jury of 12 that will decide the case.

Charges sought in fatal accident

ANDOVER, Mass. (AP) — Police are seeking to charge a Haverhill woman involved in a two-car accident that killed a New Hampshire woman and her unborn daughter.

Susan McNamara, 39, has been cited with two misdemeanor counts of negligent operation of a motor vehicle resulting in death, Lt. James D. Hashem told the Eagle-Tribune of Lawrence. McNamara was driving on the wrong side of the road, police said.

McNamara's car struck a vehicle driven by Krista Raymond, 22, who was eight months pregnant. Raymond was killed, along with her unborn child.

In the Nov. 17 crash, McNamara was turning left out of a daycare center on Route 28 in Andover, and struck Raymond's car. Raymond was on her way to a surprise baby shower at another daycare center, Bright Horizons Family Solutions in North Reading, where she worked.

"She was traveling north in the southbound lane when the two vehicles collided," Hashem said of McNamara.

McNamara, who along with her three children was not injured, will be summonsed before a Lawrence District Cour magistrate, who will decide i formal charges should be filed She could face up to a total o five years in jail.

Unionleader 11/19/05 B1

Salem woman, 22, and her unborn baby killed in crash

◆In Andover, Mass.: She was on her way to a baby shower.

By MIKE KALIL
Union Leader Correspondent

SALEM — A pregnant Salem woman and her unborn child were killed Thursday in a two-car crash in Andover, Mass., officials said.

Krista Raymond, 22, of 27 Norwood Road, was weeks away from giving birth and on her way to a baby shower at the North Reading, Mass., day care center where she worked. Her car was hit by a sport utility vehicle pulling out of the Children's World Learning Center.

Raymond was flown to Brigham & Women's Hospital in Boston, where she and her unborn child were pronounced dead later that night, said Steve O'Connell, spokesman for the Essex County district attorney's office. A passenger in her car was not seriously injured.

Raymond's mother, Sheila Caron of Lawrence, Mass., said it was too soon to comment on her daughter's death last night.

"It's just too much," she said.

The crash happened about 6:10 p.m. on Route 28 in Andover when a Nissan Pathfinder driven by Susan McNamara, 39, of Bradford, Mass., crashed into Raymond's 1995 Acura Integra.

McNamara was not seriously injured in the crash, nor were her three child passengers, O'Connell said.

KRISTA RAYMOND

The exact cause of the crash and whether McNamara will face charges were unclear yesterday.

Andover Police Lt. William Mackenzie said the investigation into the accident will likely take a few days to wrap up. He said police interviewed McNamara yesterday in an attempt to pin down the circumstances of the crash.

"It just seems to be a tragic accident," he said.

Raymond had been temporarily living in Salem with her fiance, George Demers, in his parents' house until they found their own place, a Demers family acquaintance said. The couple planned to move to Lawrence, Mass., after their baby was born.

Raymond had worked at the Bright Horizons Family Solutions day care center for the past four years, said Lisa Lapusata, the center's director. Her co-workers had put together a baby shower for her on Thursday night. She would have gone on maternity leave yesterday.

"While we won't have the joy of seeing her grow into the wonderful mother she was soon to be, she has made the lives of dozens of children brighter and has opened boundless worlds of discovery and growth for every preschooler she taught," Lapusata said in the statement.

No one answered the door yesterday at the Norwood Road home, and a telephone call to George Demers was not returned.

Paula Demers, who would have become Raymond's mother-in-law, told WMUR-TV: "In two weeks, we would've had a granddaughter. I think she would have made a wonderful mother."

◆

The Associated Press contributed to this report.

The Brandi Law

We need your help and support to pass "The Brandi Law"

Brandi

Baby (boy)
Bernard

Are you aware that NH does not have a law that recognizes the unborn child when the Mother's life has been taken by murder or other fatalities?

The Brandi Law would charge the individual for the murder of the Mother and Baby.

With your signature we are one step closer in the fight to pass *The Brandi Law*.

No answers at grave

◆Only silence: As murder trial is about to begin, mom goes every day to the cemetery where her daughter lies buried.

By KATHRYN MARCHOCKI
Union Leader Staff

MANCHESTER — Each day at dusk a blue Chevrolet Cavalier pulls up alongside a grave at the back end of Mount Calvary Cemetery and Christina Chenette steps out to talk with her daughter and grandson, buried beneath a white, plastic cross that stands in for a headstone.

Most times, Chenette simply tells her daughter, Brandi Bernard, how things went that day and how much she misses her. Sometimes, she will open her car door and play her 19-year-old daughter's favorite song, "Brandy (You're a Fine Girl)," on her stereo. Family members usually accompany her on the visits, reminiscing before they light a candle and say a prayer.

But those days when she

▷ See **Grave**, Page A2.

Christina Chenette of Manchester visits her daughter's grave as her son, Robbie Bernard, and daughter, Angelina Lower, look on at Mount Calvary Cemetery in Manchester.

MARK BOLTON/ UNION LEADER

8/2006

Grave

Continued From Page A1

goes alone, Chenette will cry and beg the cold ground for answers.

"I will say, 'Brandi, why didn't you run out of the house? Why didn't you call 911?'," Chenette, 41, said of her vain effort to understand what happened the hot July 21, 2005 day when her pregnant daughter was beaten to death in her bedroom with a hammer.

"I get no response," she said, adding, "There will probably never be answers."

Never again

With the trial of Bernard's accused killer and father of her unborn child, Robert Lopez, 36, set to begin this week, Chenette remains focused on seeing justice done in her daughter's brutal murder, keeping the teen's memory alive and winning passage of "Brandi's Law," which would make an unborn child a victim under the state's homicide statutes.

"She wasn't just a daughter to me. She was my best, best friend," Chenette said in a voice straining with emotion. "It breaks my heart to know she is not here to talk to anymore, to see her beautiful smile, the sparkle in her eyes. ... She had a way of taking your breath away."

"The hardest thing for me is I get to spend my time with my daughter at a grave," she added.

Lopez faces mandatory life in prison without chance of parole if convicted of the first-degree murder charge. Jury selection begins tomorrow in Hillsborough County Superior Court with opening arguments scheduled Sept. 18. The trial is expected to run at least two weeks.

"I would like him to pay for the rest of his life. God gave her to me. No one had any right to take her from me," Chenette said.

While a first-degree murder conviction will not bring relief from her pain, Chenette said "that he can never do this to another girl again will be my satisfaction. ... It's unfortunate it took my daughter's life, but I pray every day that he never does this to anybody again."

Lopez was convicted in the vicious, near-fatal stabbing of another 19-year-old girlfriend, Olivia Williams, in Bethlehem, Pa., in 1994. Williams said she still bears the scars from when Lopez stabbed her 13 times in the head, face, arms, hand and neck. Half of the 7-inch kitchen knife snapped off in her skull behind her eye and had to be surgically removed.

Trust violated

Lopez completed his maximum 11-year sentence in Pennsylvania state prison Jan. 18, 2005 and moved to Manchester later that month.

He met Bernard at Labor Ready, a temporary employment agency where Bernard worked as a dispatcher. Soon, the two began dating and Bernard became pregnant with Lopez's child, Chenette said. Their relationship souring, Bernard moved into her mother's 193 Westland Ave. duplex about a week before she was killed.

Lopez prevailed upon the family to allow him to stay with them, promising to leave for New Jersey when he got his paycheck at the end of the work week, Chenette said. That week, relatives told police they heard Lopez tell Bernard he wished she and her baby were dead. The day before Lopez's expected departure, Bernard's bludgeoned body was discovered in an upstairs bedroom.

"I trusted my baby in his hands. We welcomed him into our home and we treated him with nothing but respect. He took our respect and just basically didn't care that we were human beings — that we loved this person," said Chenette, who is disabled and the mother of two other children.

Lopez pleaded not guilty to the charge and is being held at Hillsborough County jail. William J. Schultz, the public defender who is representing him, could not be reached for comment Friday.

Bernard, who graduated from Central High School with high honors in 2003, was 10 weeks pregnant when she was killed.

A show of support

Williams, the Pennsylvania woman Lopez stabbed in 1994, said she plans to attend the first days of the trial to support Chenette.

"I know how hard this is going to be because I went through it," said Williams, now 32 and the mother of a 19-month-old girl.

Williams said she also wants "to let him (Lopez) know 'Your time is up.' I'm there to finally feel good, too. There is a time for him to understand this isn't a game no more ... this isn't a world of taking lives. We're not God and we're not here to take lives."

Chenette said she will continue to press for passage of the so-called "Brandi's Law." The bill failed in the House this year, but will be re-filed in the next legislative session, said state Rep. Barbara Hagan, R-Manchester.

Currently, an assault on unborn child carries no criminal culpability.

"If you kill somebody knowing they are pregnant, then you automatically know you are going to end up killing that child, too. I feel you should have a double homicide," Chenette said.

State of the States: Where Are We Now? 2006

Current State Laws:

Homicide of the Unborn:

Thirty-six states treat the killing of an unborn child as a form of homicide:

- Twenty-four states define the killing of an unborn child at any stage of gestation as a form of homicide: AL, AK, AZ, GA, ID, IL, KY, LA, MI, MN, MS, MO, NE, ND, OH, OK, PA, SC, SD, TX, VA, UT, WV, and WI.

- One state defines the killing of an unborn child after the "embryonic stage" as a form of homicide: CA.

- One state defines the killing of an unborn child after twelve weeks of gestation as a form of homicide: AR.

- Four states define the killing of an unborn child after "quickening" (discernible movement within the womb) as a form of homicide: FL, NV, RI, and WA.

- Four states define the killing of an unborn child after "viability" as a form of homicide: IN, MD, MA, and TN.

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

Nonfatal Assaults on the Unborn:

- Nineteen states define nonfatal assaults on the unborn as criminal offenses: AL, AK, AZ, GA, ID, IL, LA, MI, MN, MS, NE, ND, OH, OK, PA, SD, TX, WV, and WI.

P.O. Box 353
Concord, NH 03302-0353
Phone: (603)-224-8893
fax: (603)-228-6096
www.nhcadsv.org
www.reachoutnh.com

NEW HAMPSHIRE COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE

Statewide Toll Free Hotlines
Domestic Violence:
1-866-644-3574
Sexual Assault:
1-800-277-5570

HB 1644, including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide

January 19, 2010

Dear Chairman Shurtleff and Honorable members of the House Criminal Justice and Public Safety Committee,

NHCADSV and its 14 member programs are opposed to HB 1644.

The New Hampshire Coalition Against Domestic and Sexual Violence (NHCADSV) is a statewide network of independent 14 crisis centers across the state. Our mission is to provide services to victims of domestic and sexual violence and stalking, and to be a voice for victims before the NH Legislature. No organization is more committed to holding offenders of domestic and sexual violence accountable for their actions.

NHCADSV advocates for the safety of victims of domestic violence, which in turn may lead to healthier pregnancies and births. Unfortunately, HB 1644 does not provide additional protections that battered women need to establish safety.

According to the U.S. Department of Justice, each year approximately 1.5 million women in the U.S. are raped or physically assaulted by an intimate partner.[1] This number includes more than 324,000 women who were pregnant when the violence occurred.[2]

NHCADSV's crisis center advocates in NH have seen the effects of this type of violence against pregnant women firsthand. In these cases it has been evident that the batterers' intent was to cause physical and emotional injury to the woman, and to establish his power and control over her. Since murder is the second most common cause of injury-related death for pregnant women (31%) after car accidents,[3] our response to the problem should be one that truly

---

[1] U.S Department of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence: Research Report iii* (2000)

[2] Gazamarian, JA, et al., "Violence and Reproductive Health. Current Knowledge and Future Research Directions," *Maternal and Child Health Journal*, Vol. 4, No.2, pg. 18 (2000)

[3] Jeani Chang, MPH, Cynthia J. Berg, MD, MPH, Linda E. Saltzman, PhD and Joy Herndon, MS, "Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991-1999," American Journal of Public Heath, Vol. 95, No. 3, pg. 471-77 (2005)

protects pregnant women by early intervention before such a tragedy occurs.

HB 1644 is not designed to protect women. The goal of the legislation is to create a new cause of action on behalf of the unborn. Under NH law, we have provisions under RSA 631:1 and 631:2 to hold those accountable who cause injury to another that result in miscarriage or stillbirth. HB 1644 would create a shift in the law that diverts focus from a crime committed against a woman to the impact of that crime on the fetus. While such an act is severe, NH law already covers these offenses.

The NH Coalition Against Domestic and Sexual Violence fully recognizes the tragic loss of a pregnancy due to domestic violence. However, the most appropriate ways to help battered women is to provide comprehensive health care, safety planning, and domestic violence prevention and intervention.

Thank you,

Amanda Grady
Public Policy Director

Jennifer Durant
Public Policy Specialist

NARAL
Pro-Choice New Hampshire

January 19, 2010

To: Rep. Steve Shurtleff, Chair, Criminal Justice and Public Safety Committee

From: Pilar Olivo, Interim Executive Director, NARAL Pro-Choice New Hampshire

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On behalf of our more than 1000 members state-wide, NARAL Pro-Choice New Hampshire opposes HB 1644: including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

- **Violence against women, especially pregnant women, is unacceptable,** but it is an issue that affects women in New Hampshire. According to research done by the NH Coalition Against Domestic and Sexual Violence in 2007,
    - Nearly one in four women in New Hampshire has been sexually assaulted.
    - At least a third of New Hampshire women have been the victim of a physical assault by an intimate partner.
    - More than half of all women in our state have experienced sexual and/or physical assault over the course of their lifetime.
    - Homicide is the leading cause of death for pregnant and recently pregnant women.
    - Pregnant women are 60-percent more likely to be abused than non-pregnant women.
- **The pro-choice community is dedicated to preserving every woman's right to a safe and healthy pregnancy – and any criminal act that robs her of that right is tragic and intolerable**. Attacks against pregnant women must be vigorously prosecuted and severely punished, and women's rights advocates have long urged lawmakers to pass laws to do just that.
- **Unfortunately, HB 1644 puts anti-abortion politics ahead of focusing on ways to prevent or reduce this violence against pregnant women.**
    - **Legislation already exists and we need stronger enforcement.** Since 1991, NH law has imposed an additional penalty for assailants who commit a violent act toward a pregnant woman resulting in miscarriage or stillbirth.
    - **Legislation is well-intentioned, but misguided.** Rather than enacting unnecessary laws that depart from current state law, lawmakers should instead ensure that existing laws that deter and punish violence against women are adequately enforced.
- **In the last 10 years, NH state legislators have considered and rejected five attempts to interject abortion politics into the problem of violence against pregnant women**: 2000 (HB 1292), 2001 (HB 319), 2005 (HB 209), 2006 (HB 1649).

TITLE LXII
CRIMINAL CODE

CHAPTER 631
ASSAULT AND RELATED OFFENSES

Section 631:1

631:1 First Degree Assault. –

I. A person is guilty of a class A felony if he:

(a) Purposely causes serious bodily injury to another; or

(b) Purposely or knowingly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or

(c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth; or

(d) Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.

II. In this section:

(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

(b) ""Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

Source. 1971, 518:1. 1979, 126:1. 1990, 95:2. 1991, 75:1. 1992, 71:1, eff. Jan. 1, 1993.

Section 631:2

631:2 Second Degree Assault. –

I. A person is guilty of a class B felony if he:

(a) Knowingly or recklessly causes serious bodily injury to another; or

(b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or

(c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or

(d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or

(e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth.

II. In this section:

(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

(b) ""Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

Source. 1971, 518:1. 1979, 126:2. 1985, 181:1. 1990, 95:3. 1991, 75:2, eff. Jan. 1, 1992.

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1644-FN

BILL TITLE: **including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.**

DATE: February 2, 2010

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. David A. Welch

Seconded by Rep. Stanley E. Stevens

Vote: 5-14 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Lori A. Movsesian

Seconded by Rep. Beth Rodd

Vote: 14-5 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1644-FN

BILL TITLE: **including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.**

DATE: 2-2-10

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Welch

Seconded by Rep. Stevens

Vote: 5-14 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Mouslesian

Seconded by Rep. Rokk

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

OFFICE OF THE HOUSE CLERK 2010 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 1644-FN Title: including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

PH Date: 01 / 19 / 2010 Exec Session Date: 2 / 2 / 10

Motion: OTP Amendment #:

MEMBER	YEAS	NAYS
Shurtleff, Stephen J, Chairman		✓
Pantelakos, Laura C, V Chairman		✓
Berube, Roger R		
Robertson, Timothy N		✓
Movsesian, Lori A		✓
Burridge, Delmar D		✓
Cushing, Robert R		✓
Rodd, Beth		✓
Chandley, Shannon E		✓
McCarthy, Barbara A		✓
Ryder, Mark R		✓
Welch, David A	✓	
Charron, Gene P		✓
Fesh, Robert M		✓
Weare, Everett A		✓
Stevens, Stanley E, Clerk	✓	
Villeneuve, Moe	✓	
Gagne, Larry G	✓	
Swinford, Elaine B		✓
Willette, Robert F	✓	
	5	14
TOTAL VOTE:		

Printed: 12/18/2009

OFFICE OF THE HOUSE CLERK 2010 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: ~~HB 1644-FN~~ 1644-FN Title: including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

PH Date: 01/19/2010 Exec Session Date: 2/2/10

Motion: ITL Amendment #:

MEMBER	YEAS	NAYS
Shurtleff, Stephen J, Chairman	✓	
Pantelakos, Laura C, V Chairman	✓	
Berube, Roger R		
Robertson, Timothy N	✓	
Movsesian, Lori A	✓	
Burridge, Delmar D	✓	
Cushing, Robert R	✓	
Rodd, Beth	✓	
Chandley, Shannon E	✓	
McCarthy, Barbara A	✓	
Ryder, Mark R	✓	
Welch, David A		✓
Charron, Gene P	✓	
Fesh, Robert M	✓	
Weare, Everett A	✓	
Stevens, Stanley E, Clerk		✓
Villeneuve, Moe		✓
Gagne, Larry G		✓
Swinford, Elaine B	✓	
Villette, Robert F		✓
	14	5
OTAL VOTE:		

rinted: 12/18/2009

Committee Report

REGULAR CALENDAR

February 4, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB1644-FN,

AN ACT including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide. Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Lori A Movsesian

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	**CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number:	**HB1644-FN**
Title:	**including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.**
Date:	**February 2, 2010**
Consent Calendar:	**NO**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The NH legislature has consistently rejected legislation aimed at creating separate legal status for a fetus. This bill is another attempt to define "unborn child" in statute. NH law already imposes an additional penalty for assailants who commit a violent act toward a pregnant woman resulting in miscarriage or stillbirth. In 1991, NH passed laws that punish an assailant who "purposely or knowingly causes injury to another resulting in miscarriage, or stillbirth" (RSA 631:2e) An assault on the mother is an assault on the fetus. This bill is simply unnecessary.

Vote 14-5

Rep. Lori A Movsesian
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB1644-FN, including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide. **INEXPEDIENT TO LEGISLATE.** Rep. Lori A Movsesian for the **Majority** of CRIMINAL JUSTICE AND PUBLIC SAFETY. The NH legislature has consistently rejected legislation aimed at creating separate legal status for a fetus. This bill is another attempt to define "unborn child" in statute. NH law already imposes an additional penalty for assailants who commit a violent act toward a pregnant woman resulting in miscarriage or stillbirth. In 1991, NH passed laws that punish an assailant who "purposely or knowingly causes injury to another resulting in miscarriage, or stillbirth" (RSA 631:2e) An assault on the mother is an assault on the fetus. This bill is simply unnecessary. **Vote 14-5.**

Original: House Clerk
Cc: Committee Bill File

HB 1644, ITL 14-5 REGULAR CALENDAR
REP. LORI MOVSESIAN

The NH legislature has consistently rejected legislation aimed at creating separate legal status for a fetus. This bill is another attempt to define "unborn child" in statute. NH law already imposes an additional penalty for assailants who commit a violent act toward a pregnant woman resulting in miscarriage or stillbirth. In 1991, NH passed laws that punish an assailant who "purposely or knowingly causes injury to another resulting in miscarriage, or stillbirth" (RSA 631:2e) An assault on the mother is an assault on the fetus. This bill is simply unnecessary.

HB 1644 BLURB

The New Hampshire legislature has consistently rejected legislation aimed at creating separate legal status for a fetus. HB 1644 is another attempt to define "unborn child" in statute. New Hampshire law already imposes an additional penalty for assailants who commit a violent act toward a pregnant woman resulting in miscarriage or stillbirth. In 1991, NH passed laws that punish an assailant who "purposely or knowingly causes injury to another resulting in miscarriage or stillbirth" (RSA 631:1c), or who "recklessly or negligently causes injury to another resulting in miscarriage or stillbirth" (RSA 631:2e). An assault on the mother is an assault on the fetus. This bill is simply unnecessary.

Rep. Lori Mousesian

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REGULAR CALENDAR

February 4, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB1644-FN,

AN ACT including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. David A Welch

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	**CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number:	**HB1644-FN**
Title:	**including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.**
Date:	**February 2, 2010**
Consent Calendar:	**NO**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill does not impact a woman's right to choose or Roe v Wade. The bill explicitly protects this right and protection for the mother and her abortionist in section V.(a). This bill is not an abortion bill nor is it unconstitutional. What this bill does is recognize the death of an unborn child in the definition of "another" for the purpose of first and second-degree murder, manslaughter, and negligent homicide. Thirty-five other states have enacted such protection. This bill, "Dominick's law", is in response to a recent NH supreme court decision. Dominick's mother, driving a taxi in Manchester, was struck by a drunk driver driving in excess of 85 miles an hour. Her female passenger was killed and Dominick's mother – almost 8 months pregnant – was rushed to the hospital. Dominick was in fetal distress and was delivered by c-section and put on life support. He lived for two weeks and died when taken off life support. A birth and death certificate were issued. The drunk driver was charged with 2 counts of vehicular manslaughter and was found guilty. The driver challenged the sentence in court and the NH supreme court set aside his conviction on Dominick's death citing NH's existing definition of born alive and the fact we did not have the protection of a fetal homicide law. The NH supreme court stated in their decision, "We recognize, as have many other courts, that the born-alive doctrine may be an outdated anachronism often producing anomalous results". They continued "should the legislature find the result in this case as unfortunate as we do, it should follow the lead of many other states and revisit the homicide statutes as they pertain to a fetus." This is not the first time this bill has been filed and in the past the arguments against it was that it was unconstitutional. Dominick's case clearly shows our own supreme court does not think fetal homicide laws are unconstitutional. Not a single state fetal homicide law has been struck down. It is time to honor the loss of an unborn child and the loss of the child's mother and father so grievously felt.

Original: House Clerk
Cc: Committee Bill File

Rep. David A Welch
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

HB 1644 Minority – OTP DAVID WELCH FOR THE MINORITY

This bill does not impact a woman's right to choose or Roe v Wade. The bill explicitly protects this right and protection for the mother and her abortionist in section V.(a). This bill is not an abortion bill nor is it unconstitutional. What this bill does is recognize the death of an unborn child in the definition of "another" for the purpose of first and second-degree murder, manslaughter, and negligent homicide. Thirty-five other states have enacted such protection. This bill, "Dominick's law", is in response to a recent NH supreme court decision. Dominick's mother, driving a taxi in Manchester, was struck by a drunk driver driving in excess of 85 miles an hour. Her female passenger was killed and Dominick's mother – almost 8 months pregnant – was rushed to the hospital. Dominick was in fetal distress and was delivered by c-section and put on life support. He lived for two weeks and died when taken off life support. A birth and death certificate were issued. The drunk driver was charged with 2 counts of vehicular manslaughter and was found guilty. The driver challenged the sentence in court and the NH supreme court set aside his conviction on Dominick's death citing NH's existing definition of born alive and the fact we did not have the protection of a fetal homicide law. The NH supreme court stated in their decision, "We recognize, as have many other courts, that the born-alive doctrine may be an outdated anachronism often producing anomalous results". They continued "should the legislature find the result in this case as unfortunate as we do, it should follow the lead of many other states and revisit the homicide statutes as they pertain to a fetus." This is not the first time this bill has been filed and in the past the arguments against it was that it was unconstitutional. Dominick's case clearly shows our own supreme court does not think fetal homicide laws are unconstitutional. Not a single state fetal homicide law has been struck down. It is time to honor the loss of an unborn child and the loss of the child's mother and father so grievously felt.

Corrected Copy

HB 1664 Minority – OTP DAVID WELCH FOR THE MINORITY

This bill does not impact a woman's right to choose or Roe v Wade. The bill explicitly protects this right and protection for the mother and her abortionist in section V.(a). This bill is not an abortion bill nor is it unconstitutional. What this bill does is recognize the death of an unborn child in the definition of "another" for the purpose of first and second-degree murder, manslaughter, and negiligent homicide. Thirty-five other states have enacted such protection. This bill, "Dominick's law", is in response to a recent NH supreme court decision. Dominick's mother, driving a taxi in Manchester, was struck by a drunk driver driving in excess of 85 miles an hour. Her female passenger was killed and Dominick's mother – almost 8 months pregnant – was rushed to the hospital. Dominick was in fetal distress and was delivered by c-section and put on life support. He lived for two weeks and died when taken off life support. A birth and death certificate were issued. The drunk driver was charged with 2 counts of vehicular manslaughter and was found guilty. The driver challenged the sentence in court and the NH supreme court set aside his conviction on Dominick's death citing NH's existing definition of born alive and the fact we did not have the protection of a fetal homicide law. The NH supreme court stated in their decision, "We recognize, as have many other courts, that the born-alive doctrine may be an outdated anachronism often producing anomalous results". They continued "should the legislature find the result in this case as unfortunate as we do, it should follow the lead of many other states and revisit the homicide statutes as they pertain to a fetus." This is not the first time this bill has been filed and in the past the arguments against it was that it was unconstitutional. Dominick's case clearly shows our our supreme court does not think fetal homicide laws are unconstitutional. Not a single state fetal homicide law has been struck down. It is time to honor the loss of an unborn child and the loss of the child's mother and father so greviously felt.

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB1644-FN, including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide. **OUGHT TO PASS.**

Rep. David A Welch for the **Minority** of CRIMINAL JUSTICE AND PUBLIC SAFETY. This bill does not impact a woman's right to choose or Roe v Wade. The bill explicitly protects this right and protection for the mother and her abortionist in section V.(a). This bill is not an abortion bill nor is it unconstitutional. What this bill does is recognize the death of an unborn child in the definition of "another" for the purpose of first and second-degree murder, manslaughter, and negligent homicide. Thirty-five other states have enacted such protection. This bill, "Dominick's law", is in response to a recent NH supreme court decision. Dominick's mother, driving a taxi in Manchester, was struck by a drunk driver driving in excess of 85 miles an hour. Her female passenger was killed and Dominick's mother – almost 8 months pregnant – was rushed to the hospital. Dominick was in fetal distress and was delivered by c-section and put on life support. He lived for two weeks and died when taken off life support. A birth and death certificate were issued. The drunk driver was charged with 2 counts of vehicular manslaughter and was found guilty. The driver challenged the sentence in court and the NH supreme court set aside his conviction on Dominick's death citing NH's existing definition of born alive and the fact we did not have the protection of a fetal homicide law. The NH supreme court stated in their decision, "We recognize, as have many other courts, that the born-alive doctrine may be an outdated anachronism often producing anomalous results". They continued "should the legislature find the result in this case as unfortunate as we do, it should follow the lead of many other states and revisit the homicide statutes as they pertain to a fetus." This is not the first time this bill has been filed and in the past the arguments against it was that it was unconstitutional. Dominick's case clearly shows our own supreme court does not think fetal homicide laws are unconstitutional. Not a single state fetal homicide law has been struck down. It is time to honor the loss of an unborn child and the loss of the child's mother and father so grievously felt.

Original: House Clerk
Cc: Committee Bill File

HB 1664 does not impact a woman's right to choose or Roe v Wade. The bill explicitly protects this right and protection for the mother and her abortionist in section V(a). This bill is not an abortion bill nor is it unconstitutional.

What this bill does is recognize the death of an unborn child in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide. 35 other states have enacted such protection.

This bill, "Dominick's law", is in response to a recent NH Supreme Court Decision: Dominick's mother, driving a taxi in Manchester, was struck by a drunk driver driving in excess of 85 miles an hour. Her female passenger was killed and Dominick's mother - almost 8 month's pregnant - was rushed to the hospital. Dominick was in fetal distress and was delivered by C-section and put on life support. He lived for two weeks and died ~~2 weeks later~~ when taken off life support. A birth and death certificate ~~were~~ were issued.

The drunk driver was charged with 2 counts of vehicular manslaughter and was found guilty. The driver challenged the sentence in court and the NH Supreme Court set aside his conviction on Dominick's death citing NH's existing definition of born alive and the fact we did not have the protection of a fetal homicide law.

over

The N.H. Supreme Court stated in their decision "We recognize, as have many other courts, that the born alive doctrine may be an outdated anachronism often producing anomalous results". They continued "Should the legislature find the result in this case as unfortunate as we do, it should follow the lead of many other states and revisit the homicide statutes as they pertain to a fetus".

This is not the first time this bill has been filed and in the past the arguments against it was that it was unconstitutional. Dominick's case clearly shows our own Supreme Court does not think fetal homicide laws are unconstitutional. Not a single state fetal homicide law has been struck down. It is time to honor the loss of an unborn child and the loss the child's mother and father so grievously feel.

David Welch for the minority.

COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: HB 1644-FN

TITLE: including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

DATE: 2/2/10 CONSENT CALENDAR: YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

COMMITTEE VOTE: 14-5

RESPECTFULLY SUBMITTED,

Rep. _____
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rev. 02/01/07 - Yellow