

Cherica Adams 1999
8 months pregnant
Mother died but baby survived



Misty Lynn Carter 2009
6 weeks pregnant



Ebony Robinson 2007
8 months pregnant



Lucy Johnson 2008
15 weeks pregnant



Maria Lauterbach 2007
8 months pregnant



Leanna Newman 2007
8 months pregnant



Jennifer Nielsen 2007
8 months pregnant



Megan Touma 2008
7 months pregnant



Tiffany Wright 2009
8 months pregnant



Michelle Young 2006
8 months pregnant

Unborn Victims:

How to Achieve Justice for All in North Carolina

written by:
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LANCE CPL. MARIA LAUTERBACH, WHO WAS SEVEN MONTHS PREGNANT AND STATIONED AT CAMP LEJEUNE, NORTH CAROLINA, DISAPPEARED IN DECEMBER 2007. HER BLUDGEONED BODY WAS LATER FOUND IN THE BACKYARD BARBEQUE PIT OF MARINE CPL. CESAR LAUREAN. WHILE LAUREAN WAS FOUND GUILTY FOR THE MURDER OF LAUTERBACH, HE WAS NOT PROSECUTED FOR THE DEATH OF LAUTERBACH'S UNBORN CHILD, GABRIEL. IF THE MURDER HAD OCCURRED ON THE MILITARY BASE, LAUREAN COULD HAVE BEEN CHARGED WITH KILLING BOTH MOTHER AND CHILD UNDER THE FEDERAL UNBORN VICTIMS OF VIOLENCE ACT (UVVA). HOWEVER, SINCE IT OCCURRED IN THE STATE OF NORTH CAROLINA AND OFF THE BASE, THE UNBORN CHILD WAS NOT RECOGNIZED AS A SECOND VICTIM.

Thirty-five states recognize the unborn child as a second victim in an act of violence with laws known as "Unborn Victims of Violence" or "Fetal Homicide" laws. An Unborn Victims of Violence law holds that when a criminal attacks a pregnant

woman, and injures or kills both her and her unborn child, he has claimed two human victims, and the assailant may be charged with a second offense on behalf of the second victim, the unborn child. Out of the 35 states with such laws, 25 provide full coverage by recognizing the unborn child as a second victim throughout the entire period of prenatal development.¹ The remaining 10 state laws do not recognize the unborn child prior to a certain stage of gestation. North Carolina law fails to recognize the unborn child at any stage of gestation.²

Typically, these laws are relatively straightforward and amend a state's criminal code to include unborn children as victims of crimes. For example, since 2006, South Carolina law has recognized a "child in utero" who is injured or killed during an act of criminal violence as a separate victim of a separate offense. The term "child in utero" is defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."³

North Carolina's Current Law

While other states have worked to tighten their criminal codes, North Carolina law remains gravely

deficient. Currently, North Carolina’s “Injury to Pregnant Woman” statute does not recognize the unborn child as a second victim. Nevertheless, opponents of an Unborn Victims law erroneously claim that the North Carolina provision is already sufficiently protective. The statute reads: “A person who in the commission of a felony causes injury to a woman, knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed.”⁴

This law falls short for four main reasons. First, and most importantly, it does not recognize the unborn child as a second victim in any way. It merely increases the penalty for injuring a pregnant woman. Second, the law requires the State to prove that the offender knew the woman was pregnant. In a true Unborn Victims law, the well-established legal doctrine of transferred intent would apply; the State would have to prove beyond a reasonable doubt that a defendant had intent to do criminal harm towards somebody. If such criminal intent towards one victim (most often, the mother) is proved, then the defendant also can be held responsible for the harm done to the unborn baby, or to any others. Proving “intent to do criminal harm” is much more routine for prosecutors than proving what a defendant knew or did not know. Third, North Carolina’s current law is only triggered if the woman is injured. If she is killed, the law (presumably) has nothing to say. Fourth, the law requires that the pregnancy result in “miscarriage or stillbirth.” The law does not apply if the unborn child is merely injured and does not die as a result of the attack. Simply put, a plain reading of this law holds that it would not apply if the woman dies, nor would it apply if the baby lives. It ONLY applies if the woman is merely injured and the pregnancy results in miscarriage or stillbirth.

Tragedy in North Carolina

Sadly, North Carolina has experienced a grisly murder spree of pregnant women and their unborn children over the last several years. Although there are at least seven known cases⁵ in North Carolina in the last three years alone, two particularly horrific cases that were highly publicized in the media (in addition to the Lauterbach case) are the Nielsen and Robinson murders.

In June 2007, Jenna Nielsen was eight and a half months pregnant with her unborn son, Ethen, when they were both murdered in Raleigh, NC. To date, no killer has been apprehended, and the family continues to seek public assistance in helping to solve the case.

Twenty-one year-old Ebony Robinson was eight and a half months pregnant in December 2007, when she and her unborn baby were shot and murdered in Hillsborough, NC. While Ebony’s killer was convicted for her death, the state could not pursue a separate charge for the death of

her unborn son, Elijah. “We don’t know if Elijah would have been a president, a doctor, a lawyer or a teacher, because he was not given that chance,” said Effie Steele, Robinson’s mother, at a 2009 press conference addressing lawmakers in Raleigh. “I felt betrayed his murderer was not charged with double homicide,” she added. “He should have been punished with two life sentences, instead of just one.”⁶

Justice For All Coalition

Several families of the murder victims have formed a grassroots coalition called “Justice For All,” traveling the state and urging lawmakers to pass an Unborn Victims of Violence law. In 2009, three families of murder victims traveled to Raleigh to speak on behalf of HB 890, the most recent Unborn Victims of Violence bill introduced in the General Assembly. In the legislative press room, Michele Dye, mother of Lucy Johnson, Kevin Blaine, father of Jenna Nielsen, and Effie Steele, mother of Ebony Robinson, pleaded with lawmakers to simply afford the bill a hearing, public debate, and an up or down vote. Despite the tearful pleas of these grieving families, the Unborn Victims of Violence bill was not even allowed a hearing at the General Assembly.

Reject Single-Victim Bills

Wisely, Congress has seen fit to recognize and protect the unborn child from acts of violence. On April 1, 2004, the UVVA (also known as “Laci and Conner’s Law”) was signed into law by President George W. Bush. The two-victim law is triggered during the commission of 68 violent federal crimes (including interstate stalking, kidnapping, bombings, offenses related to major drug trafficking, and attacks on federal employees), and allows federal authorities to charge the assailant with a second offense on behalf of the second victim, the unborn child. The exact charge depends on which federal law is involved, the degree of harm done to the child, and other factors. In addition, these laws cover federal geographical jurisdictions, such as federal lands and tribal lands, and the military justice system.

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Sharon Rocha, mother of Laci and grandmother to Conner, testified in Congress on behalf of the federal UVVA in the midst of fierce opposition from pro-abortion groups such as Planned Parenthood, NARAL, and the ACLU. Senator Dianne Feinstein (D-CA) and Congresswoman Zoe Lofgren (D-CA), who were allied with these groups, offered “single-victim substitute” proposals. These bills would have codified the doctrine that a crime against a pregnant woman has only a single victim, while also creating a new federal crime of “interruption to the normal course of the pregnancy.” Supporters of the UVVA strongly opposed this “single-victim” doctrine, arguing that when an unborn child loses his or her life in a criminal attack, the parents and society mourn the death of a separate individual, rather than as an additional injury to the mother. Both chambers rejected the single-victim substitute amendments. Single victim bills have similarly been offered in North Carolina in the past, and must also be rejected because they do not recognize the unborn child as a second victim of a separate offense.

A False Argument

Opponents to Unborn Victims laws have attempted to create a media smokescreen by trying to frame the debate as a threat to a woman’s right to choose. But such claims are patently false. First, the legislation contains explicit language excluding medical abortions for which a woman has provided informed consent. Second, these cases do not involve the question of abortion. If anything, it could be argued that the lack of protection for

these unborn victims *undermines* a woman’s right to choose. These women, prior to being killed, had already chosen life for their babies but they were denied the right to carry out that choice through an horrific act of violence.

Moreover, it is well established that Unborn Victims laws do not conflict with the Supreme Court’s pro-abortion decrees (*Roe v. Wade*, etc.). The state laws noted herein have had no effect on the practice of legal abortion. Criminal defendants have brought many legal challenges to state Unborn Victims laws, based on *Roe* and other constitutional arguments, but all such challenges have been rejected by state and federal courts. To cite just one example, the Minnesota Supreme Court ruled: “*Roe v. Wade* . . . does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus.”⁷

Walter Dellinger, a former solicitor general with the Clinton administration who teaches at Duke University, says that, although he is a strong abortion advocate, he sees no major problem with the fetal-homicide laws. “I don’t think they undermine *Roe v. Wade*,” he said. “The legislatures can decide that fetuses are deserving of protection without having to make any judgment that the entity being protected has freestanding constitutional rights. I just think that proposals like this ought to be considered on their own merit.”⁸

A Mystery in North Carolina

It is somewhat of a mystery why the Unborn Victims of Violence bill has never received a hearing in North Carolina, especially in light of the murders that continue to occur and the public outcry for legislation. Moreover, 82 percent of North Carolinians support a fetal homicide law, according to an April 2008 poll of likely voters conducted by the Civitas Institute.⁹ The legislation has—in a strange twist of irony—met resistance by the very organizations that exist to protect women and children. Even though there has been no public hearing or debate on an Unborn Victims bill in this state, the North Carolina Coalition Against Domestic Violence has publicly opposed it, citing concerns that women themselves could be prosecuted under such a law.¹⁰ However, a simple reading of the bill shows that it exempts pregnant women from prosecution. Domestic violence organizations should not only support this legislation—they should be leading the coalition.

Regardless of the reasons why this legislation has never received a fair vote, the real tragedy is that, until it does, violent crimes against unborn children will continue to go unanswered in North Carolina, and the families of the victims will not see justice for their daughters and grandbabies. “This bill is neither pro-choice nor pro-life,” said Michele Dye, mother of Lucy Johnson. “There were two murders on July 16. Her murderer should be held accountable for both.”¹¹ ❖

Dorothy Yeung, J.D., is vice president of North Carolina Right to Life and chair of Triangle Right to Life. For a footnoted version of this article, please visit ncfamily.org.

1. (Full Coverage States) Alabama, Alaska, Arizona, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin.
2. (Partial Coverage States) Arkansas, California, Florida, Indiana, Maryland, Massachusetts, Nevada, Rhode Island, Tennessee, Washington.
3. "Death or injury of child in utero due to commission of violent crime." South Carolina Laws Annotated, Sec. 16-3-1083 (C).
4. "Injury to pregnant woman" North Carolina General Statutes § 14-18.2 (b).
5. Tiffany Wright – (2009) Charlotte, NC / 8 months pregnant; Misty Lynn Carter – (2009) Buncombe County, NC / 6 weeks pregnant; Megan Touma – (2008) Fayetteville, NC / 7 months pregnant; Lucy Johnson – (2008) Gastonia, NC / 15 weeks pregnant.
6. Wednesday, May 6, 2009. North Carolina General Assembly/ Legislative Press Room.
7. State v. Merrill, 450 N.W.2d 318 (Minn. 1990). For a summary of these court decisions, see: http://www.nrlc.org/Unborn_victims/statechallenges.html
8. "The "Unborn Victims of Violence Act" and Roe v. Wade—Read What These Supporters of Legal Abortion Say about "fetal Homicide" Laws." National Right to Life. 2 Feb. 2004. Web. 20 Nov. 2010. <http://www.nrlc.org/unborn_victims/roesupporters-speakuvva.html>.
9. John W. Pope Civitas Institute Poll Results, April 2008 DecisionMaker Poll. <http://www.jwpcivitasinstitute.org/media/poll-results/april-2008-decisionmaker-poll>
10. NCCADV Position Statements/ Fetal Murder Legislation. http://www.nccadv.org/legislative_action.htm
11. Wednesday, May 6, 2009. North Carolina General Assembly/ Legislative Press Room.