



Legislative Bulletin.....February 26, 2004

Contents:

H.R. 1997 — Unborn Victims of Violence Act of 2004 /“Laci and Conner's Law”

H.R. 3783—Surface Transportation Extension Act of 2004 (as expected to be amended by the Senate)

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Year to Date Prior to Today's Bills: 6

Total Cost of Discretionary Authorizations: 0

*Year to Date Prior to Today's Bills: \$10.291 billion over five years**

Total Amount of Revenue Reductions: 0

Year to Date Prior to Today's Bills: \$304 million over five years

Total Change in Mandatory Spending: 0

*Year to Date Prior to Today's Bills: -\$258 million over five years**

Total New State & Local Government Mandates: 0

Year to Date Prior to Today's Bills: 2

Total New Private Sector Mandates: 0

Year to Date Prior to Today's Bills: 5

*Not including the costs contained in H.R. 3783, the Surface Transportation Extension Act, which passed the House on 2/11/04. A cost estimate remains unavailable.

**H.R. 1997 — Unborn Victims of Violence Act of 2004
“Laci and Conner's Law” (Hart)**

Order of Business: The bill is scheduled for consideration on Thursday, February 26, 2004, under a modified closed rule, with a manager’s amendment that includes two technical changes and with a substitute amendment to be offered by Rep. Zoe Lofgren (D-CA). A motion to recommit will also be in order.

Summary: Under H.R. 1997, criminals who commit an already defined federal crime of violence against a pregnant mother can be charged with a second offense on behalf of the second

victim, the unborn child. The bill only applies to crimes committed under federal or U.S. military jurisdiction. It does not affect state laws. Under current federal law a criminal may be prosecuted for killing an unborn child only if the child was born alive after the assault and later died as a result of the fetal injuries.

Under H.R. 1997, an individual who injures or kills an unborn child during the commission of certain federal crimes of violence will be guilty of a separate offense with punishment equaling the same punishment provided under federal law had the same injury or death resulted to the pregnant mother. An offense under H.R. 1997 does not require proof that the defendant knew, or should have known, that the victim was pregnant, or that the defendant intended to cause the death or injury of the unborn child. If the perpetrator commits the offense with the intent to kill the unborn child, the punishment for that offense is the same as the punishment provided under federal law for intentionally killing or attempting to kill a human being.

The definition of **“unborn child” as it is used in the bill is:**

“a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

Nothing in the bill shall be construed to permit the prosecution:

- “of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
- “of any person for any medical treatment of the pregnant woman or her unborn child; or
- “of any woman with respect to her unborn child.”

The bill specifically states that the death penalty may *not* be imposed on those convicted under this new law.

Lofgren Substitute “One Victim” Amendment:

This amendment was offered by Rep. Lofgren in the Judiciary Committee and defeated on a rollcall vote of 11-19. The text of the substitute may be temporarily accessed at: http://www.house.gov/rules/LOFGRE_052.pdf

Rep. Lofgren will offer a substitute amendment that would increase federal penalties for causing “an interruption to the normal course of the pregnancy resulting in prenatal injury (including termination of the pregnancy)” while committing a federal crime against a pregnant woman. The penalties would be a fine and/or imprisonment for not more than 20 years or up to life in prison.

The amendment is referred to by its opponents as the “one-victim” substitute because it is only the pregnant mother who is recognized under the Lofgren substitute as a victim.

The following is an excerpt from a July 7, 2003, letter from Sharon Rocha (mother of pregnant murder victim Laci Peterson, grandmother of unborn victim Connor Peterson) to Senator John Kerry:

“... I urge you to oppose the single-victim bill. That bill would not recognize that there are two victims in cases like my family's. In fact, it would enshrine in law the offensive concept that such crimes have only a single victim -- the pregnant woman.

“Please understand how adoption of such a single-victim proposal would be a painful blow to those, like me, who are left to grieve after a two-victim crime, because Congress would be saying that Conner and other innocent victims like him are not really victims -- indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun.

“And what about mothers who survive criminal attacks but lose their babies? I don't understand how any senator can vote to force prosecutors to tell such a grieving mother that she didn't really lose a baby -- when she knows to the depths of her soul that she did.

“The single-victim bill seems to be based on the idea that the only thing that matters is how severe a sentence can be imposed -- but that is wrong. It is important that the punishment be severe, definitely. But it is also important that the true nature of the crime be recognized. This is a question not only of severity, but of justice. The single-victim proposal would be a step away from justice, not toward it. If this single-victim bill were the law in California, there would be no second homicide charge for the murder of Conner. But there were two bodies that washed up in San Francisco Bay, and the law should recognize that reality.”

http://www.nrlc.org/Unborn_victims/RochatoKerry.html

Note: National Right to Life (NRLC) has informed Members it is scoring the Lofgren substitute saying:

“[NRLC] strong[ly] opposes the Lofgren Substitute Amendment. A vote in favor of the Lofgren Substitute will be accurately reported in the NRLC scorecard of key votes for the 108th Congress as a vote to codify the doctrine that an attack on a pregnant woman has only a single victim -- even when the mother survives and the baby dies.”

Possible Motion to Recommit (possibly offered by Rep. Tammy Baldwin (D-WI)):

This amendment was offered by Rep. Tammy Baldwin in the Judiciary Committee and defeated on a rollcall vote of 11-20. It is possible it could be the text of the democrat motion to recommit:

“(d) Nothing in this section shall be construed as undermining a woman's right to choose an abortion as guaranteed by the United States Constitution or limiting in any way the rights and freedoms of pregnant women.”

It should be noted that the bill already specifically exempts abortion and any mother who may procure an abortion of her unborn child. It was also argued that prominent *Roe v. Wade* abortion supporters say that this bill, as written, does not undermine *Roe* (see: http://www.nrlc.org/Unborn_victims/RoesupportersspeakUVVA.html)

National Right to Life (NRLC) has informed Members it intends to score a motion to recommit saying:

”NRLC also opposes any motion to recommit the bill, and would expect to include in the NRLC scorecard any roll call on a motion to recommit. This includes any motion to endorse the doctrine that a right to abortion is "guaranteed by the United States Constitution." The question of what the Constitution has to say about abortion is important, but it is a question quite extraneous to the bill. The Unborn Victims of Violence explicitly excludes abortion, and federal and state courts have consistently ruled that fetal homicide laws do not conflict with Supreme Court rulings on abortion. Any Member's vote for such a diversionary motion-amendment would be accurately reported by NRLC as a vote for unqualified endorsement of all U.S. Supreme Court rulings on abortion, including the court's 5-4 ruling in *Stenberg v. Carhart*, which struck down the bans on partial-birth abortion that had been adopted by the majority of states.” *Source: e-mail dated February 23, 2004, from NRLC*

Legislative History:

107th Congress: The Unborn Victims of Violence (H.R. 503) passed the House on April 26, 2001, 252-172-1. <http://clerk.house.gov/evs/2001/roll089.xml>

A Lofgren substitute amendment, similar to her current amendment, failed the same day 196-229. <http://clerk.house.gov/evs/2001/roll088.xml>

106th Congress: The Unborn Victims of Violence (H.R. 2436) passed the House on September 30, 1999, 254-172. <http://clerk.house.gov/evs/1999/roll465.xml>

A Lofgren substitute amendment, similar to her current amendment, failed the same day 201-224. <http://clerk.house.gov/evs/1999/roll464.xml>

On July 25, 2000, the House passed the Innocent Child Protection Act (H.R. 4888), on a vote of 417-0, a bill that contained the same definition of “child in utero” and that embodied the same basic legal principle. That bill said that no state or federal authority may “carry out a sentence of death on a woman while she carries a child in utero. . . . ‘child in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The principle embodied in the Innocent Child Protection Act was that carrying out an execution on a pregnant mother would take two human lives, including one convicted of no crime.
<http://clerk.house.gov/evs/2000/roll431.xml>

Committee Action: The bill was introduced on May 7, 2003, and jointly referred to the Committee on Judiciary and the Committee on Armed Forces. The Judiciary Committee considered the bill and ordered it to be reported to the full House on January 21, 2004, with an amendment, by a recorded vote 20 to 13. The Armed Services Committee did not consider the bill but discharged it on February 11, 2004.

Cost to Taxpayers: CBO estimates that implementing H.R. 1997 would not result in any significant cost to the federal government. Any increase in costs for federal law enforcement, court proceedings, or prison operations would not be significant, because of the small number of cases likely to be involved. Any criminal fines collected from those prosecuted and convicted under H.R. 1997 will be deposited in the federal Crime Victims Fund.

Additional Information:

With last week's passage in Kentucky, 29 states now have laws regarding unborn homicide victims. For a full list go to:

http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html

Tracy Marciniak's testimony last summer before the House Judiciary Constitution Subcommittee about how her husband beat her in the abdomen to kill her unborn child and how he was not charged with murder because the law did not recognize Zachariah as a murder victim:

http://www.nrlc.org/Unborn_victims/MarciniakTestimony.htm

A June 16, 2003, letter from Sharon Rocha (mother of Laci Peterson, grandmother of Conner Peterson) to the UVVA key sponsors including discussion of the "single-victim" counterproposal: http://www.nrlc.org/Unborn_victims/sharonrochalettertokeysponsors.html

Shiwona Pace's statement about how her ex-boyfriend hired three men to beat her up successfully killing Heaven, her unborn child, one day before her due date:

http://www.nrlc.org/Unborn_victims/ShiwonaPaceStandard.pdf

Statements by surviving victims against the "single-victim" Lofgren amendment:

http://www.nrlc.org/Unborn_victims/survivingvictims.html

Constitutional challenges to these laws have been mounted in at least 13 instances — all of which have failed in both federal and state courts:

http://www.nrlc.org/Unborn_victims/statechallenges.html

Some unborn victim cases from federal and military jurisdictions, which cannot be properly addressed under current law: http://www.nrlc.org/Unborn_Victims/UVVAfederalcases.html

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates a new federal crime for the injury or death of an unborn child that results from certain offenses committed against the mother. Violators would be subject to imprisonment and fines, as specified under the federal laws amended by H.R. 1997.

Administration Position: The Administration has released the following Statement of Administration Policy, dated February 25, 2004:

"The Administration strongly supports protection for unborn children and therefore strongly supports prompt enactment of H.R. 1997. The legislation would make it a separate Federal offense to cause death or bodily injury to a child in utero if that offense was committed in the course of committing any one of 68 Federal offenses. The bill also would make substantially identical amendments to the Uniform Code of Military Justice. The Administration would strongly oppose any amendment to H.R. 1997, such as the so-called "One-Victim" substitute, which would define the bill's crimes as having only one victim -- the pregnant woman.

"H.R. 1997 is almost identical to legislation passed by the House with bipartisan support during the 106th and 107th Congresses."

<http://www.whitehouse.gov/omb/legislative/sap/108-2/hr1997sap-h.pdf>

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 1997 contains no intergovernmental or private-sector mandates as defined in

the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

Constitutional Authority: The Judiciary Committee in Report #108-420 finds authority under article I, section 8 of the Constitution (Powers of Congress), but fails to cite a specific clause.

Outside Organizations:

Supporting H.R. 1997 include:

National Right to Life <http://www.nrlc.org/Unborn_victims/index.html>

Concerned Women for America <<http://www.cwfa.org/articles/4013/CWA/life/>>

Family Research Council <<http://www.frc.org/get.cfm?i=AL04A04>>

Susan B. Anthony List <http://www.sba-list.org/>

U.S. Conference of Catholic Bishops

<http://www.usccb.org/prolife/issues/abortion/victims/congress021904.htm>

Opposing H.R. 1997:

National Organization for Women

<http://www.capwiz.com/now/mail/oneclick_compose/?alertid=5185521>

NARAL Pro-Choice America <http://www.prochoiceamerica.org/takeaction/oppose_uvva.cfm>

Planned Parenthood <http://www.plannedparenthood.org/about/pr/030708_unborn_victims.html>

The National Family Planning and Reproductive Health Association

<<http://nfprra.org/pac/wac/index.asp?step=2&item=2782>>

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**H.R. 3783—Surface Transportation Extension
Act of 2004 (Young of Alaska)
(as expected to be amended by the Senate)**

Order of Business: The bill is scheduled to be considered on Thursday, February 26th, subject to a same-day rule (allowing the rule to take up the amended bill to be considered on the same day it is reported from the Rules Committee) and then the rule to take up the amended bill itself.

Summary (Presumed Senate changes in red-bold): H.R. 3783 would extend for ~~four~~ **two** additional months (through ~~June~~ **April** 30, 2004) highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund, pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century (112 Stat. 116). Funding levels would be proportionally tied to the appropriations in the Transportation, Treasury, and Independent Agencies Appropriations Act for FY2004.

Background: On September 24, 2003, the House passed (by voice vote) a temporary extension of surface transportation programs until February 29, 2004. The President signed the extension into law (Public Law 108-88) on September 30, 2003. To see the RSC Legislative Bulletin on this previous extension, visit this webpage: <http://johnshadegg.house.gov/rsc/LB92403.pdf>

On February 11, 2004, the House passed a four-month extension by a vote of 421-0. On February 26th, the Senate is expected to amend the House-passed bill to provide a two month rather than a four month extension and send the bill back to the House.

Committee Action: H.R. 3783 was referred to the Transportation & Infrastructure Committee, the Resources Committee, the Science Committee, and the Ways & Means Committee on February 10, 2004. No committee considered the legislation.

Administration Position: The Administration supports a permanent reauthorization of TEA-21 at a funding level of \$256 billion over six years and has threatened to veto a more expensive bill: <http://www.whitehouse.gov/omb/legislative/sap/108-2/s1072sap-s.pdf>

Cost to Taxpayers: A CBO cost estimate for H.R. 3783 is not yet available. CBO estimated that the last **five**-month extension (H.R. 3087) would authorize appropriations of \$610 million in the current fiscal year and would increase contract authority (a mandatory form of budget authority) by \$9.256 billion in the current fiscal year and by \$28.804 billion over the FY2004-FY2008 period.

Does the Bill Create New Federal Programs or Rules?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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