



No. 58

March 22, 2004

H.R. 1997 – Unborn Victims of Violence Act

Calendar No. 458

The House passed H.R. 1997 on February 26, 2004 by a vote of 254-163, and the bill was placed on the Senate Calendar on March 11. (The House Judiciary Committee issued a report on February 11, 2004 – H. Rept. 108-420.)

Noteworthy

- A unanimous consent agreement was reached on March 12 to proceed to H.R. 1997 at any time. The Majority Leader has indicated that the Senate may turn to the bill this week.
- The U.C. provides for 30 minutes of general debate on the bill, four hours (equally divided) on a Feinstein amendment, and two hours (equally divided) on a Murray amendment. No other amendments will be in order and, after the votes on the amendments, the Senate will proceed immediately to a vote on final passage.
- If the Senate rejects the permitted amendments, the bill will go directly to the President for his signature. The President supports prompt enactment of H.R. 1997 and opposes amendments, such as the so-called “one victim” substitute (e.g., the Feinstein amendment).

Highlights

- Under current federal law, an individual who commits a federal crime of violence and kills or injures an unborn child cannot be prosecuted separately for those violent acts against the unborn child. This is because federal criminal law does not recognize the unborn child as a crime victim.
- H.R. 1997 closes that gap. Under this bill, if an unborn child is injured or killed during the commission of an already-defined federal crime of violence, then the assailant could be charged with a separate offense on behalf of the unborn child.

- H.R. 1997 does not apply to: any abortion to which a woman has consented; any act of the mother herself; or any form of medical treatment.
- H.R. 1997 does not supersede state unborn victim laws, nor would it impose such a state law in a state that has not enacted one.
- The House passed similar legislation in 1999 and 2001.

Background

In 29 states, if a person commits a crime of violence against a pregnant woman (under state law) and kills or injures her unborn child, that person can be punished for the violence against both the mother and the unborn child. But if a person commits a *federal* crime of violence against a pregnant woman and injures or kills her unborn baby, the death or injury of the unborn child would *not* be punished as a crime.¹

H.R. 1997 extends the protections currently available in 29 states to the unborn victims of violent acts committed in violation of federal law. Thus, where a federal crime of violence has been committed and the injury or death of an unborn child results, the perpetrator will be held to account for the crime of violence against the unborn child. Note that this bill does not usurp any state laws — i.e., it will not enable prosecutors to bootstrap a *federal* criminal prosecution due to violence inflicted on an unborn baby to a *state* crime of violence against the mother. Without a federal crime of violence against the mother, and without injury or death to the unborn child, this new law will not apply. (Thus, H.R. 1997 would have no direct effect on cases such as the murder of Laci Peterson and the related death of her unborn son, Conner, which are subject to California state law.)

The separate crime created by H.R. 1997 comes into play only if a criminal commits one of 68 crimes of violence enumerated in the U.S. Code. For example, relevant federal crimes include existing laws against drug-related shootings (18 U.S.C. § 36); performing an act of violence at an international airport (18 U.S.C. § 37); assaulting a federal officer performing official duties (18 U.S.C. § 111); killing, attempting to kill, injuring, or threatening to injure a person in retaliation for being a witness in a federal proceeding (18 U.S.C. § 1513); and assaulting a postal clerk in the performance of her duties (18 U.S.C. §2116).

H.R. 1997 has been drafted narrowly to apply only where the death or injury to the unborn baby occurs as a result of an existing federal crime. The bill expressly excludes any death or injury to an unborn baby caused by abortion, any medical treatment of the mother, or an act of the mother herself (through abusing drugs, for example).

¹ A rare exception to this rule is a case in which a federal jurisdiction, such as a military base, has chosen to adopt local law and the local or state law defines the unborn child as a separate crime victim.

Bill Provisions

Section 1 states that the Act may be cited as the “Unborn Victims of Violence Act of 2004 or ‘Laci and Conner’s Law.’”

Section 2 creates a new provision, § 1841 to Title 18 of the U.S. Code.

Subsection (a)(1) creates a separate criminal offense for the injury or killing of an in utero child while committing a federal crime of violence defined in subsection (b).

Subsection (a)(2)(A) provides that the punishment for the crime against the unborn child shall be identical to the penalty provided had the mother been injured or killed, except as provided separately in this section.

Subsection (a)(2)(B) provides that the prosecutors need not prove that the perpetrator knew the mother was pregnant or intended to cause the death or bodily injury to the unborn child.

Subsection (a)(2)(C) provides that if the perpetrator intentionally kills or attempts to kill the unborn child, the penalties applicable for murder, manslaughter, or attempted murder shall apply, as appropriate.

Subsection (a)(2)(D) provides that the death penalty shall not be imposed for any offense under this section.

Subsection (b) provides a list of 68 federal crimes of violence relevant to the substantive crime created in subsection (a)(1).

Subsection (c) provides that subsection (a) does not permit prosecution for conduct relating to abortion “for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency,” for conduct relating to any medical treatment of the mother or her unborn child, or for any conduct of the mother “with respect to her unborn child.”

Subsection (d) defines “child in utero” as a “member of the species homo sapiens, at any stage of development, who is carried in the womb,” and defines “unborn child” as a child in utero.

Section 3 creates new provisions in the Uniform Code of Military Justice (UCMJ) that largely parallel section 2 above, but applies these principles to crimes of violence listed in the UCMJ.

Administration Position

The Administration issued a Statement of Administration Policy on February 25, 2004, declaring strong support for passage of this bill when it was before the House. The SAP also stated the Administration's opposition to amendments, such as the one that would define the bill's crimes as having only one victim – the pregnant woman. In a separate press statement, the President said, "Pregnant women who have been harmed by violence, and their families, know that there are two victims — the mother and the unborn child — and both victims should be protected by federal law. I urge the Senate to pass this bill so that I can sign it into law." (Presidential Press Statement, February 26, 2004).

Cost

No cost estimate is available at this time.

Other Views

Interest-group opponents of this bill argue that it is an attempt to undermine legalized abortion by creating legal separation between an unborn child and his or her mother. The right to abortion is, however, a function of Supreme Court decisions, not federal legislation. Nor have opponents argued that H.R. 1997 is unconstitutional.

Expected Amendments

Feinstein Amendment

Senator Feinstein will offer a substitute that would deny recognition of a child in utero as a separate victim of violence, whether that fetus or embryo were injured or killed at any point of his or her mother's pregnancy. Instead, it would create a separate offense without recognizing the existence of a separate victim, and would instead treat the crime as against the pregnant woman alone. Further, the Feinstein amendment would apply only to conduct that causes the termination or interruption of the normal course of pregnancy, and does not expressly extend any protections if the child in utero is merely injured. In general, the actual legal effect of the Feinstein amendment is unclear given its fundamental contradiction: it creates a separate crime that supposedly mirrors the crime against the woman but denies the existence of a separate criminal victim.

Murray Amendment

The (non-germane) Murray amendment is a mammoth, 158-page proposal that rewrites employment law to mandate that most employers give up to one month of unpaid leave to employees if the employees or members of their families have domestic-violence-related or sexual-violence-related problems. A number of other areas of law are affected, including the Family Medical Leave Act, employees' statutory rights to sue an employer, employees' rights to sue health plans, the Labor Department's obligation to sue employers, the unemployment compensation system, and Federal Trade Commission enforcement powers vis-à-vis the insurance industry. The proposal has never received a Senate or House committee hearing.

The amendment has three titles.

Title I is similar to S. 1801, which was introduced in October 2003 by Senator Murray and was referred to the Finance Committee. In general, this title would vest in employees who work for employers with 15 or more employees new federal statutory rights to unpaid leave and unemployment insurance, as well as the right to sue employers and health plans related to these new rights.

Subtitle A would grant to all qualified employees the right to one month per year of unpaid emergency leave for activities related to domestic violence, such as seeking medical help, legal assistance, counseling, safety planning, and "other assistance" without any "penalty from their employers." The employee need not provide advance notice that he or she will be taking that leave if "not practicable," and can prove that the leave was domestic- or sexual-violence-related through virtually any evidence or by sworn statement. Employees wishing to enforce this right can sue their employers, receiving up to 200 percent of their actual damages. The Labor Department is also required to pursue complaints as they do those based on the Fair Labor Standards Act.

Subtitle B requires all 50 states, D.C., Puerto Rico and the Virgin Islands, to pay unemployment compensation benefits to individuals separated from employment due to their own, or their parent's, son's or daughter's, experience with domestic or sexual violence, including stalking. This broad category will include individuals who leave employment out of a reasonable fear of domestic violence en route to work, a desire to relocate to avoid domestic violence against the individual or the individual's parent, son or daughter, or to obtain physical or psychological treatment. It also covers individuals who are terminated due to circumstances attributable to the domestic or sexual violence. At present, half of the states cover domestic violence victims in some form, but this federal mandate will supersede those laws and impose huge penalties on employers in states that fail to comply — their Federal Unemployment Tax will be increased from 0.8 percent to 6.2 percent. Terms of unemployment compensation—such as which workers qualify, how long benefits are paid, and what are the individual benefit levels—are decided on a state-by-state basis and are paid for by the state. This amendment will impose federal standards and higher costs on state programs.

Subtitle C prohibits an employer from failing to hire, refusing to hire, discharging, harassing, or otherwise discriminating against an individual because the individual (a) is *or is perceived to be* a victim of domestic or sexual violence, (b) attended a domestic or sexual

violence-related court proceeding in which the individual, son, daughter, or parent of the individual was the victim, or (c) requested any adjustment to work structure in response to actual or threatened domestic or sexual violence. The employer also cannot take adverse action against an individual if the workplace is disrupted by “a person whom the individual states has committed or threatened to commit domestic or sexual violence.” The employer must make reasonable accommodations to an employee, as long as those accommodations do not place an undue burden on the employer. Employees could enforce the rights guaranteed in this subtitle through civil actions in state or federal courts, including a right to punitive damages of as much as 300 percent of the actual damages. The Department of Justice is also given the authority to sue on the behalf of employees.

Subtitle D prohibits insurers from discriminating against employees on domestic violence-related grounds, and provides a private right of action for employees to sue health plans for said discrimination. The Federal Trade Commission is also empowered to examine and investigate insurers for violations of this subtitle.

Subtitle E provides employers with a 40-percent tax credit for a large number of employer expenditures, as long as the employer claims that those expenditures are related to creating safety programs, assisting employees, educating employees, or changing human resources policies to support victims. The cost of this tax credit is nowhere stated, but items such as the “hiring of new security personnel” and the installation of “new security equipment, including surveillance equipment, lighting fixtures, cardkey access systems, and identification systems” would qualify for the 40-percent tax credit, as long as such expenditures were incurred “to address domestic or sexual violence.”

Subtitle F authorizes \$500,000 for a national clearinghouse and resource center related to domestic violence, providing information to employers, labor organizations, and advocates on behalf of victims of sexual or domestic violence.

Titles II and III authorize an additional \$394 million in grants to various state and local agencies and advocacy groups in relation to domestic and sexual violence.