

May 24, 2013

Chairman Goodlatte and Chairman Franks
Committee of the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Re: Committee's Questions on Protections for Infants Born Alive

Chairman Goodlatte and Chairman Franks,

Thank you for your inquiry regarding laws that protect infants who are born alive even after an attempted abortion. My staff has researched this area of Montana law and reviewed the prosecution record and found the following answers to your questions:

1. Montana has a specific statute related to instances of infant who are born alive even after an attempted abortion. There have been no known recorded prosecutions under this statute since its passage. The statute can be found in 50-20-108, Montana Code Annotated:

Protection of premature infants born alive. (1) A person commits an offense, as defined in [45-5-102](#) through [45-5-104](#), if the person purposely, knowingly, or negligently causes the death of a premature infant born alive, if the infant is viable. (2) Whenever a premature infant that is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

- (a) the termination of the pregnancy is necessary to preserve the life of the mother;
- or
- (b) the mother and the mother's spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) A person may not use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the premature infant born alive.

(4) A violation of subsection (3) is a felony.

2. Yes, see the answer to question one. It is unknown whether this has changed prosecutorial practices since there have been no known reported cases that fall under the statute.

3. 50-20-108, MCA references [45-5-102](#) through [45-5-104](#), which are the criminal homicide statutes in Montana. Therefore, the statute of limitations in the prosecution of the murder of an infant born alive would be no different under Montana law than the murder of an older human being.
4. No.
5. 50-20-109, MCA prohibits abortion of a viable fetus with exceptions in place for the life and health of the mother. There are no known reported cases of a prosecution for a violation of this part of the code.

I hope these answers have been useful as you do your important work of protecting innocent life. If I can be of any further assistance to you, please do not hesitate to contact me.

Sincerely,

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