

STATE OF SOUTH DAKOTA



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June 5, 2013

Honorable Bob Goodlatte
Chairman

Honorable Trent Franks
Chairman, Subcommittee on the Constitution and Civil Justice

House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

RE: Your letter of May 7, 2013

Dear Representatives Goodlatte and Franks,

Following are the answers to the questions you posed in your letter of May 7, 2013, regarding the State of South Dakota's laws involving abortions and prosecutions related to abortions.

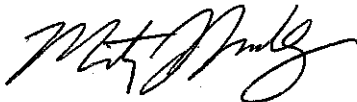
1. Prosecutors are likely to charge the deliberate killing of newborns, including those newborns who were delivered alive in the process of abortion, under South Dakota Codified Law (SDCL) Chapter 22-16.

This office is aware of two (2) prosecutions for the crime of murdering a newborn, by the mother, after giving birth at home; South Dakota. State v. Lori Schultz and Paul Lundberg and State v. Tera Gilger.

2. According to SDCL 34-23A-16.1¹, a person born alive during the course of an abortion is guaranteed medical treatment and other necessary health care. This law has not changed prosecutorial practices in this state.
3. South Dakota statutes do not distinguish between culpability in the death of an infant or human being in later stages of development.
4. I am not aware of any South Dakota criminal cases involving a woman who has died or suffered serious complications as a result of an abortion.
5. According to SDCL 34-23A-5, neither the statute nor the chapter criminalize or provide for any criminal sanctions upon a violation of the particular statute. Therefore, South Dakota has not had any cases pertaining to the prosecution for abortions that have been performed after the statutory limit and no legal considerations have prevented any such prosecutions from proceeding.

I appreciate this opportunity to address some of the concerns of the House of Representatives Committee on the Judiciary. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Marty Jackley
Attorney General

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¹ All persons born alive, whether in the course of an abortion procedure or not, shall have the same rights to medical treatment and other necessary health care". SDCL § 34-23A-16.1.