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# PRE-BORN VICTIMS OF CRIME LAW

Model Legislation & Policy Guide



**We *Need* a Law**

*because all human beings  
have human rights*

# INTRODUCTION

In 2006, Manjit Panghali, along with her pre-born child, was killed and then set on fire by her husband. She was identifiable only by dental records. Her husband was charged with only one count of murder.

In 2008, Tashina General was strangled by her boyfriend while pregnant with a son she had named Tucker. The killer was charged with one count of murder and served less than 10 years in prison.

In 2014, Cassandra Kaake was murdered when she was 7 months pregnant with a girl she had already named Molly. Cassandra's killer was charged with one count of murder.

In 2017, Arianna Goberdhan was 9 months pregnant when she was murdered by her husband in Pickering, Ontario. Her pre-born daughter, whom she had named Asaara, was also killed in the attack. Her husband was charged with one count of murder.

Each of these men knew the woman they were attacking was pregnant. They didn't care. And neither does our justice system.

**Canada is failing its pregnant women.** Women who choose motherhood should be honored and respected in that choice. Allowing these offenders to get away, quite literally, with murder does nothing to empower women or protect real choice.

It is well established that the risk of violence against women increases when they are pregnant, yet consequences for their attackers do not increase at all. Right now, pre-born children are not recognized as persons for the purpose of the law, so their death or injury as victims of crime cannot be legally counted.

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# PRE-BORN VICTIMS OF CRIME LAW

Whereas Parliament wishes to denounce violence against pregnant women by explicitly including pregnancy as an aggravating circumstance in sentencing;

Whereas Canada has no criminal law recognizing a pre-born child as a victim when he or she is harmed or killed in utero as a result of a criminal attack;

**The Criminal Code is amended by adding the following after Paragraph 718.2(a) subparagraph (ii.1):**

(ii.2) evidence that the offender, in committing the offence, abused a person whom the offender knew to be pregnant;

(ii.3) evidence that the offence had a significant impact on a pregnant victim and her pre-born child.

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## **Talking Points**

The Government of Canada recognizes pregnancy as a risk factor for abuse, which they note is harmful for both the mother and child.<sup>1</sup>

The vulnerable state of both mother and child as victims of an offence ought to be considered in sentencing.

Canada has no abortion law. This legal void is so extreme that we don't even protect pre-born children when a woman chooses to carry her child to term. Addressing this through sentencing is appropriate in denouncing crimes against pregnant women and their pre-born children.

It is fully within Parliament's role, affirmed by the Supreme Court of Canada, to legislate legal protection for pre-born children.<sup>2</sup> This legislation fits within that role.

Lawmakers have voted against similar legislation in the past because of the conversation around abortion. This has allowed pro-choice politics to overshadow a proper examination of sentencing when it comes to crimes against pregnant women. Pre-born victims of crime legislation, however, will not change the legal status of abortion.

A woman's choice to carry her child should be honored when sentencing criminals. Justice requires that an attacker who knowingly attacks a pregnant woman be sentenced accordingly, in recognition of the unique vulnerability of a pregnant woman and her pre-born child.

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<sup>1</sup> <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/publications/woman-abuse-overview-paper.html>

<sup>2</sup> "The precise point in the development of the foetus at which the state's interest in its protection becomes "compelling" I leave to the informed judgment of the legislature which is in a position to receive guidance on the subject from all the relevant disciplines." Justice Bertha Wilson in *R. v. Morgentaler*, [1988] 1 SCR 30 at page 183.