

Office of the Attorney General



ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER
CORDELL HULL AND JOHN SEVIER STATE
OFFICE BUILDINGS

MAILING ADDRESS
P.O. BOX 20207
NASHVILLE, TN 37202

BILL YOUNG
SOLICITOR GENERAL
TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

LUCY HONEY HAYNES
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON
CHIEF POLICY DEPUTY

May 31, 2013

Hon. Bob Goodlatte
Chairman, Committee on the Judiciary
Hon. Trent Franks
Chairman, Subcommittee on Constitution
and Civil Justice
Congress of the United States
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515-3951

Attn: Mr. John Coleman

Dear Chairman Goodlatte and Chairman Franks:

The attached document prepared by my office is in response to questions in your letter of May 7, 2013.

Yours very truly,

A handwritten signature in black ink, appearing to read "R. E. Cooper, Jr.", written over a faint, larger version of the signature.

Robert E. Cooper, Jr.
Attorney General and Reporter

Attachment

Office of the Tennessee Attorney General
Responses to Committee on the Judiciary of the Congress of the United States House of
Representatives Letter of May 7, 2013

1. In 2002 Congress enacted the Born Alive Infants Protection Act which provides that all federal protections for persons apply to every infant born alive. Do prosecutors in your state treat the deliberate killing of newborns, including those newborns who were delivered alive in the process of abortions, as a criminal offense? If so, have there been any prosecutions in your state for this crime. If the answer to the previous question is yes, please provide a log of cases, excluding any personally identifying information.

Criminal prosecutions in Tennessee are handled by the District Attorneys General in the thirty-one judicial districts throughout the State. This Office does not have jurisdiction to prosecute these offenses, nor does it maintain statistics on the numbers and types of prosecutions brought in the various judicial districts. Tennessee's criminal statutes provide prosecutors with charging options in determining how to prosecute a defendant who kills a newborn. Tennessee's homicide statutes apply with equal force whether the victim is a newborn or an adult. Accordingly, when a newborn is killed, the prosecutor may charge based on the appropriate level of homicide to fit the circumstances of the offense. Another charging option deals specifically with infants who are born alive during the course of an attempted abortion. Tenn. Code Ann. § 39-15-206(a) specifically provides that the right to medical treatment for an infant prematurely born during the course of an abortion is the same as the right of an infant of similar medical condition who is prematurely born spontaneously. Failure to provide this required level of care is a Class E felony. Tenn. Code Ann. § 39-15-206(b). This is an additional offense that could be charged in situations where a person procures the death of a newborn following a failed abortion.

2. Has the legislature in your state enacted laws, in addition to general laws against homicide or requiring ordinary medical treatment, specifically to protect newborns delivered alive in the process of abortions?

As a part of the Sentencing Reform Act of 1989, the Legislature enacted Tenn. Code Ann. § 39-15-206(a), which provides that the right to medical treatment for an infant prematurely born during the course of an abortion is the same as the right of an infant of similar medical condition who is prematurely born spontaneously. Failure to provide this required level of care is a Class E felony. Tenn. Code Ann. § 39-15-206(b). Where it can be determined, through amniocentesis or medical observation, that the fetus is severely malformed, the use of extraneous life support measures is not required. Tenn. Code Ann. § 39-15-206(a).

If so, how, if at all, have these laws changed prosecutorial practices?

The existence of Tenn. Code Ann. § 39-15-206 provides an additional offense that a prosecutor might charge when an individual procures the death of a live-born infant. Once the child has been born, the State is free to seek the appropriate level of homicide charge for the child's death. *See State v. Collins*, 986 S.W.2d 13 (Tenn. Crim. App. 1998) (holding that evidence was sufficient to support second-degree murder conviction where a college student gave birth to but let her newborn infant drown in toilet; conviction reversed on other grounds). As to prosecutorial practices, criminal prosecutions in Tennessee are handled by the District Attorneys General in the thirty-one judicial districts throughout the State. This Office does not maintain statistics on the numbers and types of prosecutions brought in the various judicial districts.

3. The Grand Jury expressed concern about Pennsylvania's laws applying a statute of limitation to infanticide by neglect that it does not apply to murder. Does your state have different statutes of limitation for culpability in the death of an infant and culpability in the death of human beings in later stages of development?

As explained above, once a child has been born, whatever action that is taken against the child may be prosecuted the same as if that same action had been taken against an adult.

For offenses punished by death or life imprisonment, there is no statute of limitations for prosecution. Tenn. Code Ann. § 40-2-101(a). For other levels of homicide or assault, the statute of limitations is governed by the class of offense for which the perpetrator is charged. For example, if the prosecutor were to pursue first-degree murder charges against a doctor who delivered a live child but took the child's life, there would be no time limitation on the prosecution because first-degree murder in Tennessee is punishable either by death, life without parole, or life. If the circumstances were such that the prosecutor chose only to charge a doctor with failing to provide aid to a newborn infant, because that offense (Tenn. Code Ann. § 39-15-206) is a class E felony, the statute of limitation would be two years. Tenn. Code Ann. § 40-2-101(b)(4).

4. Have you or your predecessors prosecuted any criminal cases in which a woman has died or suffered serious complications as a result of an abortion? If so, Please provide a log of such cases, excluding any personally identifying information.

Criminal prosecutions in Tennessee are handled by the District Attorneys General in the thirty-one judicial districts throughout the State. This Office does not have jurisdiction to prosecute these offenses, nor does it maintain statistics on the numbers and types of prosecutions brought in the various judicial districts.

5. This Gosnell case has also raised concerns about the effectiveness of state laws that limit, or purport to limit, abortions in late pregnancy. If your state has such a limit, have abortions performed after the statutory limit been prosecuted in your state? If so, please provide a log of such cases, excluding any personally identifying information. If not, are there legal considerations that have prevented such prosecutions from proceeding?

Criminal prosecutions in Tennessee are handled by the District Attorneys General in the thirty-one judicial districts throughout the State. This Office does not have jurisdiction to prosecute these offenses, nor does it maintain statistics on the numbers and types of prosecutions brought in the various judicial districts. The Office would not be able to opine on legal or other considerations that may influence the exercise of prosecutorial discretion by District Attorneys in individual cases.

In addition to the information requested above, please provide copies of any official written procedures or guidance that relate to the gathering of information on, or the prosecution of, newborn homicides.

This Office has not published official written procedures or guidance of this nature because it does not have jurisdiction to prosecute these offenses and does not maintain statistics on the numbers and types of prosecutions brought by District Attorneys General in the state's thirty-one judicial districts.