

Appendix A

Born Alive Infants Protection Act of Illinois

Recent Illinois criminal case demonstrating inadequacy of current definition of “born-alive infants”

There is a recent case demonstrating that current Illinois state law regarding “born-alive infants” is inadequate and archaic.

Palatine, Illinois, resident Elizabeth Ehlert was twice convicted of murdering her newborn daughter in 1990 at delivery, alone in her bedroom. But in 2002, an Illinois appeals court determined, “[T]he single, short cry the witness [boyfriend] thought he heard, if it occurred, may have occurred before complete separation from the mother, and therefore it is not sufficient to prove live birth. Because the evidence cannot support a finding beyond a reasonable doubt of live birth, we must reverse the conviction.”

According to *Legal Affairs* magazine, reporting on the Ehlert case in its September/October 2004 issue [http://www.legalaffairs.org/issues/September-October-2004/story_slater_sepoct04.html]:

Illinois common law holds that a baby is not a person until it has established a life independent of its mother. The separation doctrine... according to the Illinois Supreme Court, holds that “a fetus must be totally expelled from the mother and show a clear sign of independent vitality” before it can be considered to have been born.

Added the *Daily Herald* on September 17, 2003:

Attorneys for Cook Co. State’s Attorney Richard Devine...said given current forensic and medical technology, the 183-year-old law no longer makes sense and should be overturned.

“What you have here is the horrific scenario in which a mother who doesn’t want her baby delivers the baby, the baby is out and still connected by the cord, and under the complete separation doctrine... she can kill that baby,” said Peter D. Fischer, an assistant Cook Co. state’s attorney. “She can stab it, she can strangle it, do anything and it’s not murder. This killing of a full-term, 6-pound, 19-inch long baby is nothing, and we believe that rule cannot stand in the modern age.”

