

By Senator Fasano

11-00599A-11

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1 A bill to be entitled
2 An act relating to offenses against unborn children;
3 providing a short title; amending s. 782.071, F.S.;
4 defining the term "unborn child" for purposes of
5 vehicular homicide; revising terminology to refer to
6 "unborn child" rather than "viable fetus"; providing
7 legislative intent; amending s. 782.09, F.S.; revising
8 terminology; providing that certain offenses relating
9 to the killing of an unborn child by injury to the
10 mother do not require specified knowledge or intent;
11 amending ss. 316.193, 435.04, and 921.0022, F.S.;
12 conforming terminology; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. This act may be cited as the "Florida Unborn
17 Victims of Violence Act."

18 Section 2. Section 782.071, Florida Statutes, is amended to
19 read:

20 782.071 Vehicular homicide.—"Vehicular homicide" is the
21 killing of a human being, or the killing of an unborn child ~~a~~
22 ~~viable fetus~~ by any injury to the mother, caused by the
23 operation of a motor vehicle by another in a reckless manner
24 likely to cause the death of, or great bodily harm to, another.

25 (1) Vehicular homicide is:

26 (a) A felony of the second degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.084.

28 (b) A felony of the first degree, punishable as provided in
29 s. 775.082, s. 775.083, or s. 775.084, if:

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30 1. At the time of the accident, the person knew, or should
31 have known, that the accident occurred; and

32 2. The person failed to give information and render aid as
33 required by s. 316.062.

34
35 This paragraph does not require that the person knew that the
36 accident resulted in injury or death.

37 (2) For purposes of this section, the term "unborn child"
38 means a member of the species homo sapiens, at any stage of
39 development, who is carried in the womb ~~a fetus is viable when~~
40 ~~it becomes capable of meaningful life outside the womb through~~
41 ~~standard medical measures.~~

42 (3) A right of action for civil damages shall exist under
43 s. 768.19, under all circumstances, for all deaths described in
44 this section. However, this section does not create or expand
45 any civil cause of action for negligence based on statute or
46 common law.

47 (4) In addition to any other punishment, the court may
48 order the person to serve 120 community service hours in a
49 trauma center or hospital that regularly receives victims of
50 vehicle accidents, under the supervision of a registered nurse,
51 an emergency room physician, or an emergency medical technician
52 pursuant to a voluntary community service program operated by
53 the trauma center or hospital.

54 Section 3. Section 782.09, Florida Statutes, is amended to
55 read:

56 782.09 Killing of unborn ~~quick~~ child by injury to mother.—

57 (1) The unlawful killing of an unborn ~~quick~~ child, by any
58 injury to the mother of such child which would be murder if it

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59 resulted in the death of such mother, shall be deemed murder in
60 the same degree as that which would have been committed against
61 the mother. Any person, other than the mother, who unlawfully
62 kills an unborn ~~quick~~ child by any injury to the mother:

63 (a) Which would be murder in the first degree constituting
64 a capital felony if it resulted in the mother's death commits
65 murder in the first degree constituting a capital felony,
66 punishable as provided in s. 775.082.

67 (b) Which would be murder in the second degree if it
68 resulted in the mother's death commits murder in the second
69 degree, a felony of the first degree, punishable as provided in
70 s. 775.082, s. 775.083, or s. 775.084.

71 (c) Which would be murder in the third degree if it
72 resulted in the mother's death commits murder in the third
73 degree, a felony of the second degree, punishable as provided in
74 s. 775.082, s. 775.083, or s. 775.084.

75 (2) The unlawful killing of an unborn ~~quick~~ child by any
76 injury to the mother of such child which would be manslaughter
77 if it resulted in the death of such mother shall be deemed
78 manslaughter. A person who unlawfully kills an unborn ~~quick~~
79 child by any injury to the mother which would be manslaughter if
80 it resulted in the mother's death commits manslaughter, a felony
81 of the second degree, punishable as provided in s. 775.082, s.
82 775.083, or s. 775.084.

83 (3) The death of the mother resulting from the same act or
84 criminal episode that caused the death of the unborn ~~quick~~ child
85 does not bar prosecution under this section.

86 (4) This section does not authorize the prosecution of any
87 person in connection with a termination of pregnancy pursuant to

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88 chapter 390.

89 (5) For purposes of this section, the definition of the
90 term "unborn ~~quick~~ child" shall be determined in accordance with
91 the definition of an unborn child ~~viable fetus~~ as set forth in
92 s. 782.071.

93 (6) An offense under this section does not require that the
94 person engaging in the conduct:

95 (a) Had knowledge or should have had knowledge that the
96 victim of the underlying offense was pregnant; or

97 (b) Intended to cause the death of, or bodily injury to,
98 the unborn child.

99 Section 4. Subsection (3) of section 316.193, Florida
100 Statutes, is amended to read:

101 316.193 Driving under the influence; penalties.—

102 (3) Any person:

103 (a) Who is in violation of subsection (1);

104 (b) Who operates a vehicle; and

105 (c) Who, by reason of such operation, causes or contributes
106 to causing:

107 1. Damage to the property or person of another commits a
108 misdemeanor of the first degree, punishable as provided in s.
109 775.082 or s. 775.083.

110 2. Serious bodily injury to another, as defined in s.
111 316.1933, commits a felony of the third degree, punishable as
112 provided in s. 775.082, s. 775.083, or s. 775.084.

113 3. The death of any human being or unborn ~~quick~~ child
114 commits DUI manslaughter, and commits:

115 a. A felony of the second degree, punishable as provided in
116 s. 775.082, s. 775.083, or s. 775.084.

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117 b. A felony of the first degree, punishable as provided in
118 s. 775.082, s. 775.083, or s. 775.084, if:

119 (I) At the time of the crash, the person knew, or should
120 have known, that the crash occurred; and

121 (II) The person failed to give information and render aid
122 as required by s. 316.062.

123

124 For purposes of this subsection, the definition of the term
125 "unborn ~~quick~~ child" shall be determined in accordance with the
126 definition of an unborn child ~~viable fetus~~ as set forth in s.
127 782.071. A person who is convicted of DUI manslaughter shall be
128 sentenced to a mandatory minimum term of imprisonment of 4
129 years.

130 Section 5. Paragraph (g) of subsection (2) of section
131 435.04, Florida Statutes, is amended to read:

132 435.04 Level 2 screening standards.—

133 (2) The security background investigations under this
134 section must ensure that no persons subject to the provisions of
135 this section have been arrested for and are awaiting final
136 disposition of, have been found guilty of, regardless of
137 adjudication, or entered a plea of nolo contendere or guilty to,
138 or have been adjudicated delinquent and the record has not been
139 sealed or expunged for, any offense prohibited under any of the
140 following provisions of state law or similar law of another
141 jurisdiction:

142 (g) Section 782.09, relating to killing of an unborn ~~quick~~
143 child by injury to the mother.

144 Section 6. Paragraph (g) of subsection (3) of section
145 921.0022, Florida Statutes, is amended to read:

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146 921.0022 Criminal Punishment Code; offense severity ranking
 147 chart.-

148 (3) OFFENSE SEVERITY RANKING CHART

149 (g) LEVEL 7

150

Florida	Felony	
Statute	Degree	Description

151

316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
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152

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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154

327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
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155

402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.
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157	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
158	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
159	456.065 (2)	3rd	Practicing a health care profession without a license.
160	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
161	458.327 (1)	3rd	Practicing medicine without a license.
162	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
163	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
164	461.012 (1)	3rd	Practicing podiatric medicine without a license.
165	462.17	3rd	Practicing naturopathy without a license.
166	463.015 (1)	3rd	Practicing optometry without a license.

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167	464.016(1)	3rd	Practicing nursing without a license.
168	465.015(2)	3rd	Practicing pharmacy without a license.
169	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
170	467.201	3rd	Practicing midwifery without a license.
171	468.366	3rd	Delivering respiratory care services without a license.
172	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
173	483.901(9)	3rd	Practicing medical physics without a license.
174	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
175	484.053	3rd	Dispensing hearing aids without a license.
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

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560.123 (8) (b) 1. 3rd Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

177

560.125 (5) (a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

178

655.50 (10) (b) 1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

179

775.21 (10) (a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

180

775.21 (10) (b) 3rd Sexual predator working where children regularly congregate.

181

775.21 (10) (g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

182

782.051 (3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

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- 782.07(1) 2nd Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
- 782.071 2nd Killing of a human being or unborn child ~~viable fetus~~ by the operation of a motor vehicle in a reckless manner (vehicular homicide).
- 782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
- 784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.
- 784.045(1)(a)2. 2nd Aggravated battery; using deadly weapon.
- 784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.
- 784.048(4) 3rd Aggravated stalking; violation of injunction or court order.
- 784.048(7) 3rd Aggravated stalking; violation of court order.

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784.07(2)(d) 1st Aggravated battery on law enforcement officer.

192

784.074(1)(a) 1st Aggravated battery on sexually violent predators facility staff.

193

784.08(2)(a) 1st Aggravated battery on a person 65 years of age or older.

194

784.081(1) 1st Aggravated battery on specified official or employee.

195

784.082(1) 1st Aggravated battery by detained person on visitor or other detainee.

196

784.083(1) 1st Aggravated battery on code inspector.

197

790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

198

790.16(1) 1st Discharge of a machine gun under specified circumstances.

199

790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

200

790.165(3) 2nd Possessing, displaying, or threatening

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to use any hoax bomb while committing
or attempting to commit a felony.

201

790.166 (3) 2nd Possessing, selling, using, or
 attempting to use a hoax weapon of mass
 destruction.

202

790.166 (4) 2nd Possessing, displaying, or threatening
 to use a hoax weapon of mass
 destruction while committing or
 attempting to commit a felony.

203

790.23 1st,PBL Possession of a firearm by a person who
 qualifies for the penalty enhancements
 provided for in s. 874.04.

204

794.08 (4) 3rd Female genital mutilation; consent by a
 parent, guardian, or a person in
 custodial authority to a victim younger
 than 18 years of age.

205

796.03 2nd Procuring any person under 16 years for
 prostitution.

206

800.04 (5) (c) 1. 2nd Lewd or lascivious molestation; victim
 less than 12 years of age; offender
 less than 18 years.

207

800.04 (5) (c) 2. 2nd Lewd or lascivious molestation; victim

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12 years of age or older but less than
16 years; offender 18 years or older.

208

806.01(2) 2nd Maliciously damage structure by fire or
explosive.

209

810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed;
no assault or battery.

210

810.02(3)(b) 2nd Burglary of unoccupied dwelling;
unarmed; no assault or battery.

211

810.02(3)(d) 2nd Burglary of occupied conveyance;
unarmed; no assault or battery.

212

810.02(3)(e) 2nd Burglary of authorized emergency
vehicle.

213

812.014(2)(a)1. 1st Property stolen, valued at \$100,000 or
more or a semitrailer deployed by a law
enforcement officer; property stolen
while causing other property damage;
1st degree grand theft.

214

812.014(2)(b)2. 2nd Property stolen, cargo valued at less
than \$50,000, grand theft in 2nd
degree.

215

812.014(2)(b)3. 2nd Property stolen, emergency medical

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equipment; 2nd degree grand theft.

216

812.014 (2) (b) 4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

217

812.0145 (2) (a) 1st Theft from person 65 years of age or older; \$50,000 or more.

218

812.019 (2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

219

812.131 (2) (a) 2nd Robbery by sudden snatching.

220

812.133 (2) (b) 1st Carjacking; no firearm, deadly weapon, or other weapon.

221

817.234 (8) (a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.

222

817.234 (9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

223

817.234 (11) (c) 1st Insurance fraud; property value \$100,000 or more.

224

817.2341 1st Making false entries of material fact

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(2) (b) & or false statements regarding property
 (3) (b) values relating to the solvency of an
 insuring entity which are a significant
 cause of the insolvency of that entity.

225

825.102 (3) (b) 2nd Neglecting an elderly person or
 disabled adult causing great bodily
 harm, disability, or disfigurement.

226

825.103 (2) (b) 2nd Exploiting an elderly person or
 disabled adult and property is valued
 at \$20,000 or more, but less than
 \$100,000.

227

827.03 (3) (b) 2nd Neglect of a child causing great bodily
 harm, disability, or disfigurement.

228

827.04 (3) 3rd Impregnation of a child under 16 years
 of age by person 21 years of age or
 older.

229

837.05 (2) 3rd Giving false information about alleged
 capital felony to a law enforcement
 officer.

230

838.015 2nd Bribery.

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838.016 2nd Unlawful compensation or reward for
 official behavior.

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- 838.021 (3) (a) 2nd Unlawful harm to a public servant.
- 838.22 2nd Bid tampering.
- 847.0135 (3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.
- 847.0135 (4) 2nd Traveling to meet a minor to commit an unlawful sex act.
- 872.06 2nd Abuse of a dead human body.
- 874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
- 893.13 (1) (c) 1. 1st Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
- 893.13 (1) (e) 1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s.

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893.03(1)(a), (1)(b), (1)(d), (2)(a),
 (2)(b), or (2)(c)4., within 1,000 feet
 of property used for religious services
 or a specified business site.

240

893.13(4)(a) 1st Deliver to minor cocaine (or other s.
 893.03(1)(a), (1)(b), (1)(d), (2)(a),
 (2)(b), or (2)(c)4. drugs).

241

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
 lbs., less than 2,000 lbs.

242

893.135 1st Trafficking in cocaine, more than 28
 (1)(b)1.a. grams, less than 200 grams.

243

893.135 1st Trafficking in illegal drugs, more than
 (1)(c)1.a. 4 grams, less than 14 grams.

244

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
 28 grams, less than 200 grams.

245

893.135(1)(e)1. 1st Trafficking in methaqualone, more than
 200 grams, less than 5 kilograms.

246

893.135(1)(f)1. 1st Trafficking in amphetamine, more than
 14 grams, less than 28 grams.

247

893.135 1st Trafficking in flunitrazepam, 4 grams
 (1)(g)1.a. or more, less than 14 grams.

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- 893.135 (1) (h) 1.a. 1st Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
- 893.135 (1) (j) 1.a. 1st Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
- 893.135 (1) (k) 2.a. 1st Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
- 893.1351 (2) 2nd Possession of place for trafficking in or manufacturing of controlled substance.
- 896.101 (5) (a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.
- 896.104 (4) (a) 1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
- 943.0435 (4) (c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.

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256	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
257	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
258	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
259	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
260	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
261	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
262	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
263	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

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985.4815(10) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

265

985.4815(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

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985.4815(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

267

Section 7. This act shall take effect October 1, 2011.