

By Senator Stargel

15-01082B-13

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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. 775.021, F.S.;
4 providing a rule of construction that a person who
5 engages in conduct that violates any provision of the
6 Florida Criminal Code or of a criminal offense defined
7 by another statute and causes the death of, or bodily
8 injury to, an unborn child commits a separate offense
9 if such an offense is not otherwise specifically
10 provided for; providing for criminal penalties for
11 such an offense; specifying that certain types of
12 knowledge or intent are not necessary for such an
13 offense; providing exceptions; providing a definition;
14 amending ss. 316.193, 435.04, 782.071, 782.09, and
15 921.0022, F.S.; defining and substituting the term
16 "unborn child" for similar terms used in provisions
17 relating to driving under the influence, employment
18 background screening standards, vehicular homicide,
19 the killing of an unborn quick child by injury to the
20 child's mother; and the offense severity ranking chart
21 of the Criminal Punishment Code, respectively;
22 conforming terminology; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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

28 Section 2. Subsection (5) is added to section 775.021,
29 Florida Statutes, to read:

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30 775.021 Rules of construction.—

31 (5) Whoever commits an act that violates any provision of
32 this code or commits a criminal offense defined by another
33 statute and thereby causes the death of, or bodily injury to, an
34 unborn child commits a separate offense if the provision or
35 statute does not otherwise specifically provide a separate
36 offense for such death or injury to an unborn child.

37 (a) Except as otherwise provided in this subsection, the
38 punishment for a separate offense under this subsection is the
39 same as the punishment provided under this code or other statute
40 for that conduct had the injury or death occurred to the mother
41 of the unborn child.

42 (b) An offense under this subsection does not require proof
43 that the person engaging in the conduct:

44 1. Had knowledge or should have had knowledge that the
45 victim of the underlying offense was pregnant; or

46 2. Intended to cause the death of, or bodily injury to, the
47 unborn child.

48 (c) Notwithstanding any other provision of law, the death
49 penalty may not be imposed for an offense under this subsection.

50 (d) This subsection does not permit the prosecution:

51 1. Of any person for conduct relating to an abortion for
52 which the consent of the pregnant woman, or a person authorized
53 by law to act on her behalf, has been obtained or for which such
54 consent is implied by law;

55 2. Of any person for any medical treatment of the pregnant
56 woman or her unborn child; or

57 3. Of any woman with respect to her unborn child.

58 (e) As used in this subsection, the term "unborn child"

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59 means a member of the species homo sapiens, at any stage of
 60 development, who is carried in the womb.

61 Section 3. Paragraph (c) of subsection (3) of section
 62 316.193, Florida Statutes, is amended to read:

63 316.193 Driving under the influence; penalties.—

64 (3) Any person:

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

67 1. Damage to the property or person of another commits a
 68 misdemeanor of the first degree, punishable as provided in s.
 69 775.082 or s. 775.083.

70 2. Serious bodily injury to another, as defined in s.
 71 316.1933, commits a felony of the third degree, punishable as
 72 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

83

84 For purposes of this subsection, the ~~definition of the~~ term
 85 “unborn ~~quick~~ child” has the same meaning as provided in s.
 86 775.021(5) ~~shall be determined in accordance with the definition~~
 87 ~~of viable fetus as set forth in s. 782.071.~~ A person who is

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88 convicted of DUI manslaughter shall be sentenced to a mandatory
89 minimum term of imprisonment of 4 years.

90 Section 4. Paragraph (g) of subsection (2) of section
91 435.04, Florida Statutes, is amended to read:

92 435.04 Level 2 screening standards.—

93 (2) The security background investigations under this
94 section must ensure that no persons subject to the provisions of
95 this section have been arrested for and are awaiting final
96 disposition of, have been found guilty of, regardless of
97 adjudication, or entered a plea of nolo contendere or guilty to,
98 or have been adjudicated delinquent and the record has not been
99 sealed or expunged for, any offense prohibited under any of the
100 following provisions of state law or similar law of another
101 jurisdiction:

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

104 Section 5. Section 782.071, Florida Statutes, is amended to
105 read:

106 782.071 Vehicular homicide.—“Vehicular homicide” is the
107 killing of a human being, or the killing of an unborn child a
108 ~~viable fetus~~ by any injury to the mother, caused by the
109 operation of a motor vehicle by another in a reckless manner
110 likely to cause the death of, or great bodily harm to, another.

111 (1) Vehicular homicide is:

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

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

116 1. At the time of the accident, the person knew, or should

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117 have known, that the accident occurred; and

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

120
121 This paragraph does not require that the person knew that the
122 accident resulted in injury or death.

123 (2) For purposes of this section, the term "unborn child"
124 has the same meaning as provided in s. 775.021(5) ~~a fetus is~~
125 ~~viable when it becomes capable of meaningful life outside the~~
126 ~~womb through standard medical measures.~~

127 (3) A right of action for civil damages shall exist under
128 s. 768.19, under all circumstances, for all deaths described in
129 this section.

130 (4) In addition to any other punishment, the court may
131 order the person to serve 120 community service hours in a
132 trauma center or hospital that regularly receives victims of
133 vehicle accidents, under the supervision of a registered nurse,
134 an emergency room physician, or an emergency medical technician
135 pursuant to a voluntary community service program operated by
136 the trauma center or hospital.

137 Section 6. Section 782.09, Florida Statutes, is amended to
138 read:

139 782.09 Killing of unborn ~~quick~~ child by injury to mother.-

140 (1) The unlawful killing of an unborn ~~quick~~ child, by any
141 injury to the mother of such child which would be murder if it
142 resulted in the death of such mother, shall be deemed murder in
143 the same degree as that which would have been committed against
144 the mother. Any person, other than the mother, who unlawfully
145 kills an unborn ~~quick~~ child by any injury to the mother:

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146 (a) Which would be murder in the first degree constituting
147 a capital felony if it resulted in the mother's death commits
148 murder in the first degree constituting a capital felony,
149 punishable as provided in s. 775.082.

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

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

158 (2) The unlawful killing of an unborn ~~quick~~ child by any
159 injury to the mother of such child which would be manslaughter
160 if it resulted in the death of such mother shall be deemed
161 manslaughter. A person who unlawfully kills an unborn ~~quick~~
162 child by any injury to the mother which would be manslaughter if
163 it resulted in the mother's death commits manslaughter, a felony
164 of the second degree, punishable as provided in s. 775.082, s.
165 775.083, or s. 775.084.

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

169 (4) This section does not authorize the prosecution of any
170 person in connection with a termination of pregnancy pursuant to
171 chapter 390.

172 (5) For purposes of this section, the ~~definition of the~~
173 term "unborn ~~quick~~ child" has the same meaning as provided in s.
174 775.021(5) ~~shall be determined in accordance with the definition~~

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175 ~~of viable fetus as set forth in s. 782.071.~~

176 Section 7. Paragraph (g) of subsection (3) of section
 177 921.0022, Florida Statutes, is amended to read:

178 921.0022 Criminal Punishment Code; offense severity ranking
 179 chart.—

180 (3) OFFENSE SEVERITY RANKING CHART

181 (g) LEVEL 7

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Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great

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bodily harm, permanent disfiguration,
 permanent disability, or death.

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409.920 3rd Medicaid provider fraud; \$10,000 or
 (2) (b) 1.a. less.

189

409.920 2nd Medicaid provider fraud; more than
 (2) (b) 1.b. \$10,000, but less than \$50,000.

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456.065 (2) 3rd Practicing a health care profession
 without a license.

191

456.065 (2) 2nd Practicing a health care profession
 without a license which results in
 serious bodily injury.

192

458.327 (1) 3rd Practicing medicine without a license.

193

459.013 (1) 3rd Practicing osteopathic medicine without
 a license.

194

460.411 (1) 3rd Practicing chiropractic medicine
 without a license.

195

461.012 (1) 3rd Practicing podiatric medicine without a
 license.

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462.17 3rd Practicing naturopathy without a
 license.

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197	463.015 (1)	3rd	Practicing optometry without a license.
198	464.016 (1)	3rd	Practicing nursing without a license.
199	465.015 (2)	3rd	Practicing pharmacy without a license.
200	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
201	467.201	3rd	Practicing midwifery without a license.
202	468.366	3rd	Delivering respiratory care services without a license.
203	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
204	483.901 (9)	3rd	Practicing medical physics without a license.
205	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
206	484.053	3rd	Dispensing hearing aids without a license.
207	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total

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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.

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

210

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

211

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

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

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

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215 782.051(3) 2nd Attempted felony murder of a person by
a person other than the perpetrator or
the perpetrator of an attempted felony.

216 782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

217 782.071 2nd Killing of a human being or unborn
child ~~viable fetus~~ by the operation of
a motor vehicle in a reckless manner
(vehicular homicide).

218 782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

219 784.045(1)(a)1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

220 784.045(1)(a)2. 2nd Aggravated battery; using deadly
weapon.

221 784.045(1)(b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

784.048(4) 3rd Aggravated stalking; violation of
injunction or court order.

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784.048 (7)	3rd	Aggravated stalking; violation of court order.
784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
784.081 (1)	1st	Aggravated battery on specified official or employee.
784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083 (1)	1st	Aggravated battery on code inspector.
787.06 (3) (a)	1st	Human trafficking using coercion for labor and services.
787.06 (3) (e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

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232 790.07(4) 1st Specified weapons violation subsequent
to previous conviction of s. 790.07(1)
or (2).

233 790.16(1) 1st Discharge of a machine gun under
specified circumstances.

234 790.165(2) 2nd Manufacture, sell, possess, or deliver
hoax bomb.

235 790.165(3) 2nd Possessing, displaying, or threatening
to use any hoax bomb while committing
or attempting to commit a felony.

236 790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon of mass
destruction.

237 790.166(4) 2nd Possessing, displaying, or threatening
to use a hoax weapon of mass
destruction while committing or
attempting to commit a felony.

238 790.23 1st,PBL Possession of a firearm by a person who
qualifies for the penalty enhancements
provided for in s. 874.04.

794.08(4) 3rd Female genital mutilation; consent by a
parent, guardian, or a person in

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custodial authority to a victim younger than 18 years of age.

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

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

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800.04(5)(c)2. 2nd Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

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

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

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

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

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

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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.

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

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812.014(2)(b)3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.

251

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

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

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

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

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

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256	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
257	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
258	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
259	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
260	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
261	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.
262	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
	827.04 (3)	3rd	Impregnation of a child under 16 years

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of age by person 21 years of age or older.

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

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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.

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838.22 2nd Bid tampering.

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847.0135(3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.

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847.0135(4) 2nd Traveling to meet a minor to commit an unlawful sex act.

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872.06 2nd Abuse of a dead human body.

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874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

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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.
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893.13(1)(e)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 property used for religious services or a specified business site.
- 275
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).
- 276
893.135(1)(a)1.
1st
Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
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893.135(1)(b)1.a.
1st
Trafficking in cocaine, more than 28 grams, less than 200 grams.
- 278
893.135(1)(c)1.a.
1st
Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

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279 893.135 (1) (d) 1. 1st Trafficking in phencyclidine, more than
28 grams, less than 200 grams.

280 893.135 (1) (e) 1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

281 893.135 (1) (f) 1. 1st Trafficking in amphetamine, more than
14 grams, less than 28 grams.

282 893.135 (1) (g) 1.a. 1st Trafficking in flunitrazepam, 4 grams
or more, less than 14 grams.

283 893.135 (1) (h) 1.a. 1st Trafficking in gamma-hydroxybutyric
acid (GHB), 1 kilogram or more, less
than 5 kilograms.

284 893.135 (1) (j) 1.a. 1st Trafficking in 1,4-Butanediol, 1
kilogram or more, less than 5
kilograms.

285 893.135 (1) (k) 2.a. 1st Trafficking in Phenethylamines, 10
grams or more, less than 200 grams.

286 893.1351 (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

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than \$20,000.

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896.104 (4) (a) 1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

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943.0435 (4) (c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.

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943.0435 (8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

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943.0435 (9) (a) 3rd Sexual offender; failure to comply with reporting requirements.

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943.0435 (13) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

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943.0435 (14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

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944.607 (9) 3rd Sexual offender; failure to comply with reporting requirements.

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295 944.607(10)(a) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

296 944.607(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

297 944.607(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

298 985.4815(10) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

299 985.4815(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

300 985.4815(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

301 Section 8. This act shall take effect October 1, 2013.