

By Senator Fasano

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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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327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
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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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equipment; 2nd degree grand theft.

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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.

231

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.

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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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264

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

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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.

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