

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 234

INTRODUCER: Criminal Justice Committee and Senator Posey

SUBJECT: Unborn Victims of Violence

DATE: April 23, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

**I. Summary:**

The bill removes any requirement of proof that a defendant who is charged with the killing of an unborn quick child by injury to the mother knew or should have known the victim/mother was pregnant, or that the defendant have the specific intent to kill or harm the unborn quick child.

This bill substantially amends the following section of the Florida Statutes: 782.09.

**II. Present Situation:**

This area of the law was expanded in 2005, to elevate the killing of an unborn quick child by injury to the mother from a second degree felony manslaughter, regardless of the act committed by the perpetrator, to varying levels of offenses commensurate with the act committed upon the mother. The offense is punishable at the same level as if the mother had died.

In other words, if a person kills an unborn quick child by an act which would constitute first degree murder if the act were committed against the mother and she died, the offender could be charged with first degree murder for the death of the unborn quick child. The same is true in cases of second and third degree murder, manslaughter, vehicular homicide, and DUI manslaughter. The current law specifies that the death of the mother resulting from the same act or criminal episode which caused the death of the unborn quick child shall not bar prosecution for the death of the unborn quick child.

Specifically, the Vehicular Homicide statute (s. 782.071, F.S.) refers to the killing of a “viable fetus.” The other applicable statutes (s. 782.09 and s. 316.193, F.S) use the term “unborn quick child” and refer to the definition of viable fetus found in s. 782.071(2), F.S. The definition states:

“a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

“Viable fetus” is a commonly used concept in the abortion case law. For example, in *In re T.W.*, 551 So. 2d 1186 (Fla. 1989), the court stated that “the potentiality of life in the fetus becomes compelling at the point in time when the fetus becomes viable.” Further, the court defined viability:

Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures. Under current standards, this point generally occurs upon completion of the second trimester....(no medical evidence exists indicating that technological improvements will move viability forward beyond twenty-three to twenty-four weeks gestation within the foreseeable future due to the anatomic threshold of fetal development).

*Id.* at 1194. (citation omitted).

### **III. Effect of Proposed Changes:**

The bill removes any requirement of proof that a defendant who is charged with the killing of an unborn quick child by injury to the mother knew or should have known the victim/mother was pregnant, or that the defendant have the specific intent to kill or harm the unborn quick child.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that any impact upon the need for prison beds resulting from this bill would likely be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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