



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty** – This bill defines the term “unborn child” as a “member of the species homo sapiens, at any stage of development, who is carried in the womb,” and revises terminology in various criminal statutes to refer to an “unborn child” rather than an “unborn quick child.”

#### B. EFFECT OF PROPOSED CHANGES:

##### *Federal Law:*

In 2004, the Unborn Victims of Violence Act (UVVA) was enacted. The UVVA amends title 18 of the U.S. Code and the Uniform Code of Military Justice<sup>1</sup> to add new sections for the “protection of unborn children.” Under the act, any person who injures or kills a “child in utero” during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. In addition, an offense does not require proof that the person engaging in the misconduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero. The phrase “child in utero” is defined by the act to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

##### *State Law:*

At least thirty-five states have statutes that criminalize the killing of a fetus or “unborn child.”<sup>2</sup> These statutes vary with respect to the point at which criminal liability will attach; that is, the states identify different gestational stages at which the killing of an embryo or fetus will result in criminal liability.<sup>3</sup> Florida Statutes currently criminalize the killing of an “unborn quick child.” Specifically, s. 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. This section of statute does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to ch. 390, F.S.<sup>4</sup> Currently, the term “unborn quick child” is defined in accordance with the definition of “viable fetus” set forth in s. 782.071, F.S., which provides that a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

Florida defines vehicular homicide as “the killing of a human being, or the killing of a *viable fetus* by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.”<sup>5</sup> The vehicular homicide statute specifies that a right of action for civil damages exists under s. 768.19, F.S., for all deaths described in the statute.

In order to prove a DUI manslaughter case, the state must establish the following elements:

- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of any human being or unborn *quick* child.<sup>6</sup>

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<sup>1</sup> The Uniform Code of Military Justice is codified in chapter 47 U.S.C. 10.

<sup>2</sup> [http://www.nrlc.org/Unborn\\_Victims/Statehomicidelaws092302.html](http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html)

<sup>3</sup> *Id.*

<sup>4</sup> s. 782.09(4), F.S.

<sup>5</sup> s. 782.071, F.S.

<sup>6</sup> The term “unborn quick child” is defined as a “viable fetus” which is defined as a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.” See s. 782.071, F.S.

- At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 or higher.<sup>7</sup>

*Effect of the Bill:*

HB 513 amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill mirrors federal law by defining the term "unborn child" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." HB 513 also amends this statute to specify that the offense does not require proof that the defendant knew or should have known that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the unborn child.

HB 513 amends the vehicular homicide statute by replacing the term "viable fetus" with "unborn child," and specifies that that statute should not be construed to create or expand any civil cause of action for negligence based on statute or common law. The bill amends the DUI manslaughter statutes by replacing the term "unborn quick child" with "unborn child."

HB 513 also amends ss. 435.03 and 435.04, F.S., relating to employment screening standards, and s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to conform terminology.

C. SECTION DIRECTORY:

**Section 1.** Cites the act as the "Florida Unborn Victims of Violence Act."

**Section 2.** Amends s. 782.071, F.S., relating to vehicular homicide.

**Section 3.** Amends s. 782.09, F.S., relating to killing an unborn quick child by injury to mother.

**Section 4.** Amends s. 316.193, F.S., relating to driving under the influence; penalties.

**Section 5.** Amends s. 435.03, F.S., relating to Level 1 screening standards.

**Section 6.** Amends s. 435.04, F.S., relating to Level 2 screening standards.

**Section 7.** Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

**Section 8.** This bill takes effect October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>7</sup> s. 316.193, F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On February 26, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

While there is little Florida caselaw on point, an examination of cases from other states reveals that courts have upheld fetal homicide statutes. See e.g., *People v. Davis*, 872 P.2d 591 (Cal. 1994) (upholding the California legislature's addition of the phrase "or a fetus" to the state murder law); *Smith v. Newsome*, 815 F.2d 1386 (11<sup>th</sup> Cir. 1987) (holding that the argument that that an unborn child is not a "person" within the meaning of the Fourteenth Amendment is immaterial as to whether a state can prohibit the destruction of a fetus); *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion); *Terence Chadwick Lawrence v. The State of Texas* (No. PD 0236-07), issued November 21, 2007, (holding that the abortion-related rulings of the United States Supreme Court have no application to a statute that prohibits a third party from causing the death of a woman's unborn child against her will); See also, *U.S. ex rel. Ford v. Ahitow*, 888 F.Supp. 909 (C.D. Ill. 1995) and *State v. Merrill*, 450 N.W. 2d 318 (Minn. 1990).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES