

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, 435.03, 435.04, and 921.0022,
12 F.S.; conforming terminology; providing an effective
13 date.

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15 Be It Enacted by the Legislature of the State of Florida:

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

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

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

26 (1) Vehicular homicide is:

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

29 (b) A felony of the first degree, punishable as provided in

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30 s. 775.082, s. 775.083, or s. 775.084, if:

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

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

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

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

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

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

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

57 782.09 Killing of unborn ~~quick~~ child by injury to mother.-

58 (1) The unlawful killing of an unborn ~~quick~~ child, by any

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

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

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

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

76 (2) The unlawful killing of an unborn ~~quick~~ child by any
77 injury to the mother of such child which would be manslaughter
78 if it resulted in the death of such mother shall be deemed
79 manslaughter. A person who unlawfully kills an unborn ~~quick~~
80 child by any injury to the mother which would be manslaughter if
81 it resulted in the mother's death commits manslaughter, a felony
82 of the second degree, punishable as provided in s. 775.082, s.
83 775.083, or s. 775.084.

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

87 (4) This section does not authorize the prosecution of any

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88 person in connection with a termination of pregnancy pursuant to
89 chapter 390.

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

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

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

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

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

102 316.193 Driving under the influence; penalties.-

103 (3) Any person:

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

105 (b) Who operates a vehicle; and

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

108 1. Damage to the property or person of another commits a
109 misdemeanor of the first degree, punishable as provided in s.
110 775.082 or s. 775.083.

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

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

116 a. A felony of the second degree, punishable as provided in

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117 s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

131 Section 5. Paragraph (g) of subsection (2) of section
132 435.03, Florida Statutes, is amended to read:

133 435.03 Level 1 screening standards.—

134 (2) Any person for whom employment screening is required by
135 statute must not have been found guilty of, regardless of
136 adjudication, or entered a plea of nolo contendere or guilty to,
137 any offense prohibited under any of the following provisions of
138 the Florida Statutes or under any similar statute of another
139 jurisdiction:

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

142 Section 6. Paragraph (g) of subsection (2) of section
143 435.04, Florida Statutes, is amended to read:

144 435.04 Level 2 screening standards.—

145 (2) The security background investigations under this

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146 section must ensure that no persons subject to the provisions of
 147 this section have been found guilty of, regardless of
 148 adjudication, or entered a plea of nolo contendere or guilty to,
 149 any offense prohibited under any of the following provisions of
 150 the Florida Statutes or under any similar statute of another
 151 jurisdiction:

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

154 Section 7. Paragraph (g) of subsection (3) of section
 155 921.0022, Florida Statutes, is amended to read:

156 921.0022 Criminal Punishment Code; offense severity ranking
 157 chart.—

158 (3) OFFENSE SEVERITY RANKING CHART

159 (g) LEVEL 7

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.

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164	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
165	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
166	409.920(2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
167	409.920(2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
168	456.065(2)	3rd	Practicing a health care profession without a license.
169	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
170	458.327(1)	3rd	Practicing medicine without a license.
171	459.013(1)	3rd	Practicing osteopathic medicine without a license.
172	460.411(1)	3rd	Practicing chiropractic medicine without a license.

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173	461.012 (1)	3rd	Practicing podiatric medicine without a license.
174	462.17	3rd	Practicing naturopathy without a license.
175	463.015 (1)	3rd	Practicing optometry without a license.
176	464.016 (1)	3rd	Practicing nursing without a license.
177	465.015 (2)	3rd	Practicing pharmacy without a license.
178	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
179	467.201	3rd	Practicing midwifery without a license.
180	468.366	3rd	Delivering respiratory care services without a license.
181	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
182	483.901 (9)	3rd	Practicing medical physics without a license.
183	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.

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484.053 3rd Dispensing hearing aids without a license.

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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.

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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.

188

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

189

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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191	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
192	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
193	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
194	782.071	2nd	Killing of a human being or <u>unborn child</u> viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
195	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
196	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
197	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.

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784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
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.
790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07 (1) or (2).
790.16 (1)	1st	Discharge of a machine gun under

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specified circumstances.

790.165 (2)

2nd

Manufacture, sell, possess, or deliver
hoax bomb.

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790.165 (3)

2nd

Possessing, displaying, or threatening
to use any hoax bomb while committing or
attempting to commit a felony.

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790.166 (3)

2nd

Possessing, selling, using, or
attempting to use a hoax weapon of mass
destruction.

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790.166 (4)

2nd

Possessing, displaying, or threatening
to use a hoax weapon of mass destruction
while committing or attempting to commit
a felony.

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790.23

1st, PBL

Possession of a firearm by a person who
qualifies for the penalty enhancements
provided for in s. 874.04.

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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.

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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.
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.
806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
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.
- 812.014 (2) (b) 3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.
- 812.014 (2) (b) 4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.
- 812.0145 (2) (a) 1st Theft from person 65 years of age or older; \$50,000 or more.
- 812.019 (2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
- 812.131 (2) (a) 2nd Robbery by sudden snatching.
- 812.133 (2) (b) 1st Carjacking; no firearm, deadly weapon, or other weapon.
- 817.234 (8) (a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.
- 817.234 (9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

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

817.2341(2)(b) 1st Making false entries of material fact or & (3)(b) false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

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

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.

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

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

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

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240	838.015	2nd	Bribery.
241	838.016	2nd	Unlawful compensation or reward for official behavior.
242	838.021(3)(a)	2nd	Unlawful harm to a public servant.
243	838.22	2nd	Bid tampering.
244	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
245	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
246	872.06	2nd	Abuse of a dead human body.
247	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

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community center.

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.

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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).

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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.

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893.135(1)(c)1.a. 1st

Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

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893.135(1)(d)1. 1st

Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

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893.135(1)(e)1. 1st

Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

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893.135(1)(f)1. 1st

Trafficking in amphetamine, more than 14

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grams, less than 28 grams.

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893.135(1)(g)1.a. 1st Trafficking in flunitrazepam, 4 grams 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.

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

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

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893.1351(2) 2nd Possession of place for trafficking in or manufacturing of controlled substance.

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896.101(5)(a) 3rd Money laundering, financial transactions exceeding \$300 but less 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

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

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

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944.607(13) 3rd Sexual offender; failure to report and

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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.

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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 8. This act shall take effect October 1, 2010.