

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 137 Offenses Against Unborn Children

SPONSOR(S): Criminal Justice Subcommittee; Ahern; Trujillo and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 5 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, 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. 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."

The bill amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill defines the term "unborn child" as "the unborn offspring of a human being at any stage of gestation from fertilization until birth." The bill conforms terminology in the vehicular homicide and DUI manslaughter statutes to refer to "unborn child."

The bill also amends s. 782.09, F.S., to specify that the offense does not require the death of the mother or that the person engaging in the conduct:

- Had knowledge or should have had knowledge that the mother was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

On December 14, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

This bill takes effect October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Federal Law

In 2004, the Unborn Victims of Violence Act (act) was enacted to add new sections for the “protection of unborn children.”¹ Under the act, any person who commits certain specified offenses and thereby causes the death of, or bodily injury to, a child who is in utero during the commission of the offense is guilty of a separate offense. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. However, in no instance may be the death penalty be imposed. The act does not require proof that the person engaging in the offense 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 act defines the phrase “child in utero” to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The act also specifies that nothing in the act shall be construed to permit the prosecution:

- Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
- Of any person for any medical treatment of the pregnant woman or her unborn child; or
- Of any woman with respect to her unborn child.

State Law

At least thirty-six states have statutes that criminalize the killing of a fetus or “unborn child.”² 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.³ Currently, three Florida statutes criminalize the killing of a “viable fetus” or an “unborn quick child.”

Vehicular Homicide

Section 782.071, F.S., 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.”⁴ The vehicular homicide statute specifies that a right of action for civil damages exists under s. 768.19, F.S.,⁵ for all deaths described in the statute. The statute provides that a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

Killing of Unborn Quick Child by Injury to the Mother

Section 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.⁶ Currently, the term “unborn quick child” is defined in accordance with the definition of “viable fetus” set forth in the vehicular homicide statute.

¹ Public Law 108-212, 18 U.S.C. 1841.

² State Homicide Laws that Recognize Unborn Victims (http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html)(last visited on January 23, 2012).

³ *Id.*

⁴ Section 782.071, F.S.

⁵ Section 768.19, F.S., provides that when the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

⁶ 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. Section 782.09(4), F.S.

DUI Manslaughter

Section 316.193(3), F.S., provides, in part, that 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.⁷
- 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.

The statute defines the term "unborn quick child" in accordance with the definition of "viable fetus" set forth in the vehicular homicide statute.

Effect of the Bill

The bill cites the act as the "Florida Unborn Victims of Violence Act."

Vehicular Homicide

The bill amends s. 782.071, F.S., by replacing the term "viable fetus" with "unborn child," and defining the term as "the unborn offspring of a human being at any stage of gestation from fertilization until birth." The bill specifies that the statute does not create, expand, or authorize any civil cause of action for negligence or wrongful death in the fetus that is not born alive, except as provided by the vehicular homicide statute.

Killing of Unborn Quick Child by Injury to the Mother

The bill amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child" and defines the term in accordance with the vehicular homicide statute. The offense does not require the death of the mother or that the person engaging in the conduct:

- Had knowledge or should have had knowledge that the mother was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

The bill also adds a provision specifying that s. 782.09, F.S., does not authorize the prosecution of:

- Any person for conduct relating to a termination of pregnancy pursuant to ch. 390, F.S., for which consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law; or
- Any person for any medical treatment of the pregnant woman or her unborn child.

Additionally, a new subsection is created, which provides that s. 782.09, F.S., does not create, expand, or authorize any civil cause of action for negligence or wrongful death based on statute or common law for any fetus that is not born alive.

DUI manslaughter

The bill also amends s. 316.193, F.S., by replacing the term "unborn quick child" with "unborn child" and defining the term in accordance with the vehicular homicide statute.

The bill makes conforming changes to s 435.04, F.S., relating to employment screening standards, and s. 921.0022, F.S, the offense severity ranking chart.

B. 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 of unborn quick child by injury to mother.

⁷ 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.

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

Section 5. Amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 6. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 7. This bill takes effect October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

On December 14, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Amends the vehicular homicide statute (s. 782.071, F.S.), to specify that its provisions do not create, expand, or authorize any civil cause of action for negligence or wrongful death in the fetus that is not born alive, except as provided therein.
- Specifies that s. 782.09, F.S., does not authorize the prosecution of:
 - Any person for conduct relating to a termination of pregnancy pursuant to ch. 390, F.S., for which consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law; or
 - Any person for any medical treatment of the pregnant woman or her unborn child.
- Provides that s. 782.09, F.S., does not create, expand, or authorize any civil cause of action for negligence or wrongful death based on statute or common law in the fetus that is not born alive, except as provided by the vehicular homicide statute.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.