

By Senator Fasano

11-00097A-12

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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 relating to vehicular homicide; defining the term
5 "unborn child" for specified purposes; revising
6 terminology to refer to "unborn child" rather than
7 "viable fetus"; providing legislative intent; amending
8 s. 782.09, F.S.; revising terminology; providing that
9 certain offenses relating to the killing of an unborn
10 child by injury to the mother do not require specified
11 knowledge or intent or death of the mother; amending
12 ss. 316.193, 435.04, and 921.0022, F.S.; conforming
13 terminology; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
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.

35
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 the unborn offspring of a human being at any stage of
40 gestation from fertilization until birth ~~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 does not create or expand
46 any civil cause of action for negligence based on statute or
47 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 is ~~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:

95 (a) That the person engaging in the conduct:

96 1. Had knowledge or should have had knowledge that the
 97 mother was pregnant; or

98 2. Intended to cause the death of, or bodily injury to, the
 99 unborn child.

100 (b) The death of the mother.

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

103 316.193 Driving under the influence; penalties.—

104 (3) Any person:

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

106 (b) Who operates a vehicle; and

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

109 1. Damage to the property or person of another commits a
 110 misdemeanor of the first degree, punishable as provided in s.
 111 775.082 or s. 775.083.

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

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

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117 a. A felony of the second degree, punishable as provided in
118 s. 775.082, s. 775.083, or s. 775.084.

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

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

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

125

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

132 Section 5. Paragraph (g) of subsection (2) of section
133 435.04, Florida Statutes, is amended to read:

134 435.04 Level 2 screening standards.—

135 (2) The security background investigations under this
136 section must ensure that no persons subject to the provisions of
137 this section have been arrested for and are awaiting final
138 disposition of, have been found guilty of, regardless of
139 adjudication, or entered a plea of nolo contendere or guilty to,
140 or have been adjudicated delinquent and the record has not been
141 sealed or expunged for, any offense prohibited under any of the
142 following provisions of state law or similar law of another
143 jurisdiction:

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

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146 Section 6. Paragraph (g) of subsection (3) of section
 147 921.0022, Florida Statutes, is amended to read:

148 921.0022 Criminal Punishment Code; offense severity ranking
 149 chart.—

150 (3) OFFENSE SEVERITY RANKING CHART

151 (g) LEVEL 7

152

| 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. |
| 327.35(3)(c)2. | 3rd | Vessel BUI resulting in serious bodily injury. |
| 402.319(2) | 2nd | Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, |

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permanent disability, or death.

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409.920 3rd Medicaid provider fraud; \$10,000 or
(2) (b) 1.a. less.

159

409.920 2nd Medicaid provider fraud; more than
(2) (b) 1.b. \$10,000, but less than \$50,000.

160

456.065 (2) 3rd Practicing a health care profession
without a license.

161

456.065 (2) 2nd Practicing a health care profession
without a license which results in
serious bodily injury.

162

458.327 (1) 3rd Practicing medicine without a license.

163

459.013 (1) 3rd Practicing osteopathic medicine without
a license.

164

460.411 (1) 3rd Practicing chiropractic medicine
without a license.

165

461.012 (1) 3rd Practicing podiatric medicine without a
license.

166

462.17 3rd Practicing naturopathy without a
license.

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| 168 | 463.015 (1) | 3rd | Practicing optometry without a license. |
| 169 | 464.016 (1) | 3rd | Practicing nursing without a license. |
| 170 | 465.015 (2) | 3rd | Practicing pharmacy without a license. |
| 171 | 466.026 (1) | 3rd | Practicing dentistry or dental hygiene without a license. |
| 172 | 467.201 | 3rd | Practicing midwifery without a license. |
| 173 | 468.366 | 3rd | Delivering respiratory care services without a license. |
| 174 | 483.828 (1) | 3rd | Practicing as clinical laboratory personnel without a license. |
| 175 | 483.901 (9) | 3rd | Practicing medical physics without a license. |
| 176 | 484.013 (1) (c) | 3rd | Preparing or dispensing optical devices without a prescription. |
| 177 | 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 |

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exceeded \$50,000 and there were five or more victims.

178

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.

179

560.125 (5) (a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

180

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

181

775.21 (10) (a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

182

775.21 (10) (b) 3rd Sexual predator working where children regularly congregate.

183

775.21 (10) (g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

184

782.051 (3) 2nd Attempted felony murder of a person by

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a person other than the perpetrator or
the perpetrator of an attempted felony.

185

782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

186

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).

187

782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

188

784.045(1)(a)1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

189

784.045(1)(a)2. 2nd Aggravated battery; using deadly
weapon.

190

784.045(1)(b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

191

784.048(4) 3rd Aggravated stalking; violation of
injunction or court order.

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| 193 | 784.048 (7) | 3rd | Aggravated stalking; violation of court order. |
| 194 | 784.07 (2) (d) | 1st | Aggravated battery on law enforcement officer. |
| 195 | 784.074 (1) (a) | 1st | Aggravated battery on sexually violent predators facility staff. |
| 196 | 784.08 (2) (a) | 1st | Aggravated battery on a person 65 years of age or older. |
| 197 | 784.081 (1) | 1st | Aggravated battery on specified official or employee. |
| 198 | 784.082 (1) | 1st | Aggravated battery by detained person on visitor or other detainee. |
| 199 | 784.083 (1) | 1st | Aggravated battery on code inspector. |
| 200 | 790.07 (4) | 1st | Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2). |
| 201 | 790.16 (1) | 1st | Discharge of a machine gun under specified circumstances. |
| | 790.165 (2) | 2nd | Manufacture, sell, possess, or deliver hoax bomb. |

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202

790.165 (3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

203

790.166 (3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

204

790.166 (4) 2nd Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

205

790.23 1st,PBL Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

206

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.

207

796.03 2nd Procuring any person under 16 years for prostitution.

208

800.04 (5) (c) 1. 2nd Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

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209

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.

210

806.01 (2) 2nd Maliciously damage structure by fire or
explosive.

211

810.02 (3) (a) 2nd Burglary of occupied dwelling; unarmed;
no assault or battery.

212

810.02 (3) (b) 2nd Burglary of unoccupied dwelling;
unarmed; no assault or battery.

213

810.02 (3) (d) 2nd Burglary of occupied conveyance;
unarmed; no assault or battery.

214

810.02 (3) (e) 2nd Burglary of authorized emergency
vehicle.

215

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.

216

812.014 (2) (b) 2. 2nd Property stolen, cargo valued at less
than \$50,000, grand theft in 2nd
degree.

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812.014 (2) (b) 3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.

218

812.014 (2) (b) 4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

219

812.0145 (2) (a) 1st Theft from person 65 years of age or older; \$50,000 or more.

220

812.019 (2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

221

812.131 (2) (a) 2nd Robbery by sudden snatching.

222

812.133 (2) (b) 1st Carjacking; no firearm, deadly weapon, or other weapon.

223

817.234 (8) (a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.

224

817.234 (9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

225

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

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| 817.2341 (2) (b) & (3) (b) | 1st | Making false entries of material fact or 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. |
| 838.015 | 2nd | Bribery. |

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| 234 | 838.016 | 2nd | Unlawful compensation or reward for official behavior. |
| 235 | 838.021(3)(a) | 2nd | Unlawful harm to a public servant. |
| 236 | 838.22 | 2nd | Bid tampering. |
| 237 | 847.0135(3) | 3rd | Solicitation of a child, via a computer service, to commit an unlawful sex act. |
| 238 | 847.0135(4) | 2nd | Traveling to meet a minor to commit an unlawful sex act. |
| 239 | 872.06 | 2nd | Abuse of a dead human body. |
| 240 | 874.10 | 1st,PBL | Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity. |
| 241 | 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. |

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- 242
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.
- 243
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).
- 244
893.135(1)(a)1.
1st
Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
- 245
893.135
(1)(b)1.a.
1st
Trafficking in cocaine, more than 28 grams, less than 200 grams.
- 246
893.135
(1)(c)1.a.
1st
Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
- 247
893.135(1)(d)1.
1st
Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
- 248
893.135(1)(e)1.
1st
Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
- 249
893.135(1)(f)1.
1st
Trafficking in amphetamine, more than 14 grams, less than 28 grams.

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250 893.135 1st Trafficking in flunitrazepam, 4 grams
(1) (g) 1.a. or more, less than 14 grams.

251 893.135 1st Trafficking in gamma-hydroxybutyric
(1) (h) 1.a. acid (GHB), 1 kilogram or more, less
than 5 kilograms.

252 893.135 1st Trafficking in 1,4-Butanediol, 1
(1) (j) 1.a. kilogram or more, less than 5
kilograms.

253 893.135 1st Trafficking in Phenethylamines, 10
(1) (k) 2.a. grams or more, less than 200 grams.

254 893.1351 (2) 2nd Possession of place for trafficking in
or manufacturing of controlled
substance.

255 896.101 (5) (a) 3rd Money laundering, financial
transactions exceeding \$300 but less
than \$20,000.

256 896.104 (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

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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.

258

943.0435(9)(a) 3rd Sexual offender; failure to comply with reporting requirements.

259

943.0435(13) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

260

943.0435(14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

261

944.607(9) 3rd Sexual offender; failure to comply with reporting requirements.

262

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

263

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

264

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

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address verification.

265

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

266

985.4815(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

267

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, 2012.