

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 759 Offenses Against Unborn Children

**SPONSOR(S):** Ahern and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 4 N	Keegan	Cunningham
2) Judiciary Committee	12 Y, 4 N	Keegan	Havlicak

### SUMMARY ANALYSIS

In Florida, killing an “unborn quick child” is only considered a separate offense when specifically designated by statute. There are currently three statutes that make it a crime to cause the death of an “unborn quick child” – vehicular homicide, DUI manslaughter, and killing of an unborn quick child by injury to the mother. The term “unborn quick child” is currently defined to mean a fetus that is “capable of meaningful life outside the womb.”

The bill replaces the term “unborn quick child” that is currently used in the vehicular homicide, DUI manslaughter, and killing of an unborn quick child by injury to the mother statutes, with the term “unborn child.” The bill defines “unborn child” as, “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

The bill also creates a new rule of statutory construction specifying that if a person commits any crime that causes the death of, or bodily injury to, an unborn child, such person commits a separate offense, unless otherwise provided for in the criminal statute that was violated. The punishment for the separate offense is the same as the punishment that applies to the criminal statute that was violated, had the death or injury occurred to the mother.

The separate offense does not require proof that the person committing the criminal offense:

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

The bill specifies that the above-described provision cannot be used to prosecute a woman with respect to her unborn child. Additionally, a person may not be prosecuted pursuant to the above-described provision:

- 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; or
- For any medical treatment of the pregnant woman or her unborn child.

On February 27, 2013, the Criminal Justice Impact Conference determined that this bill will have an indeterminate prison bed impact on the Department of Corrections.

This bill takes effect October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Federal Law**

Currently, federal law provides criminal penalties for causing death or bodily harm to an unborn child. In 2004, the Unborn Victims of Violence Act (Act) was enacted by Congress to provide increased protection to unborn children by modifying the language of 18 U.S.C. s. 1841.<sup>1</sup> Under the Act, any person who commits specified offenses causing death or bodily injury to a child who is in utero during the commission of the offense commits an offense separate from any act committed against the unborn child's mother.<sup>2</sup> Punishment for the offense is the same as if the offense had been committed against the pregnant woman.<sup>3</sup> However, in no instance may the death penalty be imposed.<sup>4</sup> 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 death or bodily injury to the child in utero.<sup>5</sup>

The Act defines the term "child in utero" to mean "a member of the species homo sapiens, at any stage of development, who is carried in the womb."<sup>6</sup> The Act specifies that the offense does not require that the person engaged in the conduct had knowledge or should have had knowledge that the mother was pregnant, or intended to cause death or bodily injury to the unborn child.<sup>7</sup> The Act creates an exception to prosecution for abortions performed under authorized consent, or for medical treatment of the woman or her unborn child, or for any actions by the woman with respect to her unborn child.<sup>8</sup>

##### **State Law**

At least thirty-six states have statutes that criminalize the killing of a fetus or "unborn child."<sup>9</sup> These state laws vary with respect to the gestational stage at which criminal liability will attach.<sup>10</sup>

In Florida, the killing of a viable fetus or unborn quick child is only considered a separate and independent offense when specifically designated by statute. There are currently three statutes that make it a crime to cause the death of a "viable fetus" or "unborn quick child." Unlike federal law, both of these terms are defined to mean a fetus that is capable of meaningful life outside the womb.

##### 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."<sup>11</sup> The statute specifies that a fetus is viable when it "becomes capable of meaningful life outside the womb through standard medical measures."<sup>12</sup>

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<sup>1</sup> Unborn Victims of Violence Act of 2004, Pub. L. No. 108-212, 118 Stat. 568 (2004).

<sup>2</sup> 18 U.S.C. s. 1841(a)(1).

<sup>3</sup> 18 U.S.C. s. 1841(a)(2)(A).

<sup>4</sup> 18 U.S.C. s. 1841(a)(2)(D).

<sup>5</sup> 18 U.S.C. s. 1841(a)(2)(B).

<sup>6</sup> 18 U.S.C. s. 1841(d).

<sup>7</sup> 18 U.S.C. s. 1841(a)(2)(B).

<sup>8</sup> 18 U.S.C. s. 1841(c).

<sup>9</sup> Nat'l Right to Life Comm., *State Homicide Laws That Recognize Unborn Victims*, NATIONAL RIGHT TO LIFE (July 5, 2012), [http://www.nrlc.org/Unborn\\_Victims/Statehomicidelaws092302.html](http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html) (last visited March 5, 2013).

<sup>10</sup> *Id.*

<sup>11</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. Section 782.071(3), F.S.

<sup>12</sup> Section 782.071(2), F.S.

### Killing of an Unborn Quick Child by Injury to the Mother

Section 782.09, F.S., provides that the killing of an unborn quick child is murder if the killing was the result of an injury to the unborn child's mother which would have been murder if it resulted in the mother's death.<sup>13</sup> The term "unborn quick child," as used in s. 782.09, F.S., is defined in accordance with the definition of "viable fetus" set forth in the vehicular homicide statute.<sup>14</sup>

### 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.<sup>15</sup>
- 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 term "unborn quick child," is defined in accordance with the definition of "viable fetus" set forth in the vehicular homicide statute.<sup>16</sup>

### **Effect of the Bill**

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

The bill replaces the terms "viable fetus" and "unborn quick child" that are currently used in the vehicular homicide, killing of an unborn quick child by injury to the mother, and DUI manslaughter statutes, with the term "unborn child." The bill defines "unborn child" in accordance with federal law as, "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

The bill also amends s. 775.021, F.S., to create a new rule of statutory construction specifying that if a person commits any crime that causes the death of, or bodily injury to, an unborn child, such person commits a separate offense, unless otherwise provided for in the criminal statute that was violated. The punishment for the separate offense is the same as the punishment that applies to the criminal statute that was violated, had the death or injury occurred to the mother. However, in no instance can the death penalty be imposed for the separate offense.

The bill specifies that the separate offense does not require proof that the person committing the criminal offense:

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

The bill also specifies that the above-described provision cannot be used to prosecute a woman with respect to her unborn child. Additionally, a person may not be prosecuted pursuant to the above-described provision:

- 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; or
- For any medical treatment of the pregnant woman or her unborn child.

The bill makes conforming changes to s 435.04(2), F.S., relating to employment screening standards, and s. 921.0022, F.S, the offense severity ranking chart.

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<sup>13</sup> Murder of an unborn quick child is deemed murder in the same degree as that which would have been committed against the mother. Section 782.09(1), F.S.

<sup>14</sup> Section 782.071(2), F.S.

<sup>15</sup> Pursuant to s. 316.193(3)(c), F.S., the term "unborn quick child" shares the same definition as "viable fetus," defined under s. 782.071(2), F.S., as a viable fetus "when it becomes capable of meaningful life outside the womb through standard medical measures."

<sup>16</sup> Section 316.193(3)(c), F.S.

**B. SECTION DIRECTORY:**

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

Section 2. Amends s. 775.021, F.S., relating to rules of construction.

Section 3. Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 4. Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5. Amends s. 782.071, F.S., relating to vehicular homicide.

Section 6. Amends s. 782.09, F.S., relating to killing of unborn quick child by injury to mother.

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

Section 8. Provides an effective date of October 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

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

2. Expenditures:

On February 27, 2013, the Criminal Justice Impact Conference determined that this bill will have an indeterminate prison bed impact on the Department of Corrections.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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

2. Expenditures:

This 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**

None.