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H.779

Introduced by Representatives Williams of Granby, Arrison of Weathersfield,
Branagan of Georgia, Brownell of Pownal, Canfield of Fair
Haven, Clifford of Rutland City, Demar of Enosburgh,
Donahue of Northfield, Goslant of Northfield, Graham of
Williamstown, Hango of Berkshire, Labor of Morgan,
LaBounty of Lyndon, Maguire of Rutland City, Morrissey of
Bennington, Page of Newport City, Parsons of Newbury,
Peterson of Clarendon, Sammis of Castleton, Shaw of Pittsford,
and Smith of Derby

Referred to Committee on

Date:

Subject: Crimes; homicide; DUI; grossly negligent operation of a motor
vehicle; fetus as victim

Statement of purpose of bill as introduced: This bill proposes to establish that
a fetus be treated as a victim under State homicide law and for purposes of
DUI with death resulting and grossly negligent operation of a motor vehicle
with death resulting.

An act relating to crimes against an unborn child

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 13 V.S.A. § 2312 is added to read:

3 § 2312. FETUS; TREATMENT AS VICTIM

4 (a) Except as provided in subsection (b) of this section, a prosecution may
5 be maintained for a violation of section 2301 (murder) or 2304 (manslaughter)
6 of this chapter when the victim of the homicide is a fetus.

7 (b) This section shall not apply to acts performed during an abortion or
8 pursuant to usual and customary standards of medical practice during
9 diagnostic testing or therapeutic treatment or to acts committed by a pregnant
10 woman toward her own fetus.

11 (c) This section shall not be construed to confer, deny, expand, or contract
12 the legal status or legal rights of a fetus.

13 Sec. 2. 23 V.S.A. § 1091(b) is amended to read:

14 (b) Grossly negligent operation.

15 (1) A person who operates a motor vehicle on a public highway in a
16 grossly negligent manner shall be guilty of grossly negligent operation.

17 (2) The standard for a conviction for grossly negligent operation in
18 violation of this subsection shall be gross negligence, examining whether the
19 person engaged in conduct that involved a gross deviation from the care that a
20 reasonable person would have exercised in that situation.

1 (3) A person who violates this subsection shall be imprisoned not more
2 than two years or fined not more than \$5,000.00, or both. If the person has
3 previously been convicted of a violation of this section, the person shall be
4 imprisoned not more than four years or fined not more than \$10,000.00, or
5 both. If serious bodily injury to or death of any person other than the operator
6 results, the operator shall be imprisoned for not more than 15 years or fined not
7 more than \$15,000.00, or both. If serious bodily injury or death results to more
8 than one person other than the operator, the operator may be convicted of a
9 separate violation of this subdivision for each decedent or person injured.

10 (4)(A) A prosecution may be maintained for grossly negligent operation
11 of a motor vehicle with death resulting in violation of this subsection (b) when
12 the victim of the violation is a fetus.

13 (B) This subdivision (4) shall not be construed to confer, deny,
14 expand, or contract the legal status or legal rights of a fetus.

15 Sec. 3. 23 V.S.A. § 1210(f) is amended to read:

16 (f) Death resulting.

17 (1) If the death of any person results from a violation of section 1201 of
18 this title, the person convicted of the violation shall be fined not more than
19 \$10,000.00 or imprisoned not less than one year nor more than 15 years, or
20 both. The provisions of this subsection do not limit or restrict prosecutions for
21 manslaughter.

1 (2) If the death of more than one person results from a violation of
2 section 1201 of this title, the operator may be convicted of a separate violation
3 of this subdivision for each decedent.

4 (3)(A) If the death of any person results from a violation of section 1201
5 of this title and the person convicted of the violation previously has been
6 convicted two or more times of a violation of that section, a sentence ordered
7 pursuant to this subsection (f) shall, except as provided in subdivision (B) of
8 this subdivision (3), include at least a five-year term of imprisonment. The
9 five-year minimum term of imprisonment required by this subdivision shall be
10 served and may not be suspended, deferred, or served as a supervised sentence.
11 The defendant shall not be eligible for probation, parole, furlough, or any other
12 type of early release until the expiration of the five-year term of imprisonment.

13 (B) Notwithstanding subdivision (A) of this subdivision (3), if the
14 death of any person results from a violation of section 1201 of this title and the
15 person convicted of the violation previously has been convicted two or more
16 times of a violation of that section, the court may impose a sentence that does
17 not include a term of imprisonment or that includes a term of imprisonment of
18 less than five years if the court makes written findings on the record that such a
19 sentence will serve the interests of justice and public safety.

20 (4)(A) A prosecution may be maintained for operating a motor vehicle
21 under the influence of alcohol or drugs with death resulting in violation of this

1 section and section 1201 of this title when the victim of the violation is a fetus.

2 (B) This subsection (f) shall not be construed to confer, deny,

3 expand, or contract the legal status or legal rights of a fetus.

4 Sec. 4. EFFECTIVE DATE

5 This act shall take effect upon passage.