

STORAGE NAME: h1269.cp
DATE: April 2, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1269
RELATING TO: Vehicular Homicide
SPONSOR(S): Representative Healey
STATUTE(S) AFFECTED: 782.071
COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

Currently, Section 782.071, F.S. (vehicular homicide), punishes the killing of a human being by the operation of a motor vehicle in a reckless manner likely to cause the death of or great bodily harm to, another. This offense is a third-degree felony with an offense severity ranking of level seven. If the perpetrator knowingly fails to give information and render aid, then vehicular homicide becomes a second-degree felony and a level eight offense. Currently a person may not be prosecuted for vehicular homicide of an unborn child. See State v. McCall, 458 So. 2d 875 (Fla. 2d DCA 1984).

This bill adds “an unborn quick child” to the announced category of “human beings” who will qualify as victims. It does not change the elements of proof or the penalties imposed.

To the extent that this new offense will result in new arrests, prosecutions and convictions, the bill may have a fiscal impact on state and local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 782.071, F.S., proscribes:

- 1) The killing of a human being,
- 2) caused by the operation of a motor vehicle by the defendant,
- 3) in a reckless manner likely to cause death or great bodily harm.

The offense is punished as a third-degree felony with an offense severity ranking of Level Seven, unless the perpetrator fails to give information or render aid. In this circumstance, the offense is punished as a second-degree felony with an offense severity ranking of level eight.

A similar statute, Section 782.07, (manslaughter) proscribes the killing of a human being through criminal negligence. This statute does not protect an unborn child; however, because an unborn child does not satisfy the definition of "human being" under current law. See State v. McCall, 458 So. 2d 875 (Fla. 2d DCA 1984). This offense is punishable as a second-degree felony (up to 15-year in prison & \$10,000 fine).

Another similar statute, Section 782.09 proscribes the willful killing of "an unborn" quick child (defined below), by any injury to the mother which would be murder if it resulted in her death. This law is inapplicable to the objective of the vehicular homicide statute, however, since it punishes "willful" conduct, only, and not criminal negligence. This offense is punishable as a second-degree felony (up to 15-year in prison & \$10,000 fine).

B. EFFECT OF PROPOSED CHANGES:

This bill does not define "an unborn quick child" as a person or human being; rather, it simply adds "an unborn quick child" to the announced category of "human beings" who already qualify as victims. It does not change the elements of proof or the penalties imposed.

The Florida Supreme Court court has adopted the common-law definition of "quick" as meaning, "Pregnant with a child the movement of which is felt." See Stokes v. Liberty Mutual Insurance, 213 So. 2d 695 (Fla. 1968). If this definition applies, prosecutions could proceed, only, where the fetus was sufficiently developed to be felt moving within the womb, but without regard to whether the fetus is viable (capable of living outside the womb).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

not applicable.

D. SECTION-BY-SECTION RESEARCH:

See, Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

To the extent that additional people are arrested and charged with the vehicular homicide of an unborn child, there may be a fiscal impact to state and local governments. The Criminal Justice Estimating Conference (CJEC) will review this bill on April 7, 1997.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This same language ("an unborn quick child") has withstood constitutional challenges for vagueness and substantive due process in federal court. See Smith v. Newsome, 815 F. 2d 1386 (11th Cir. 1987). A statute using identical language ("an unborn quick child") already exists (Section 782.09, F.S.) and has, yet, to face a constitutional challenge in the appellate courts.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Jamie Spivey

J. Willis Renuart

STORAGE NAME: h1269.cp
DATE: April 2, 1997
PAGE 8