

STORAGE NAME: h3537a.cp  
DATE: March 20, 1998

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

**BILL #:** HB 3537

**RELATING TO:** Unlawful Killing Of An Unborn Quick Child

**SPONSOR(S):** Rep. Andrews & others

**COMPANION BILL(S):** None

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 2
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

Section 782.09 punishes the intentional killing of an unborn quick child as manslaughter if the crime would have constituted murder, had the mother died instead.

**The bill amends s. 782.09 by punishing the unlawful killing of an unborn quick child in accordance with the culpability of the killer.** That is, if a person intentionally (or by criminal negligence) kills a fetus, which conduct would constitute 1st-degree murder were the mother to die, then the killer will be charged with 1st-degree murder for the death of the fetus. Similarly, if the person's conduct would amount to 2nd or 3rd-degree murder, or manslaughter, then the killer will be charged according to his or her respective level of culpability.

**By Amendment:** The bill punishes as a 2nd-degree felony the willful killing of an unborn quick child by the mother.

The bill contains provisions which specifically declare it **inapplicable to termination of a pregnancy by a physician.**

The bill's effective date is July 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Killing Of Unborn Child By Injury To Mother**

Section 782.09, F.S., punishes the **willful** 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. The offense is punishable as manslaughter, a 2nd-degree felony.

**Definition Of Unborn Quick Child**

The Florida Supreme Court has adopted the common-law definition of "quick" as meaning, "[p]regnant with a child the movement of which is felt." See, Stokes v. Liberty Mutual Insurance, 213 So. 2d 695 (Fla. 1968).

B. EFFECT OF PROPOSED CHANGES:

**Unintentional Killing Of Child By Injury To Mother**

The bill amends s. 782.09, F.S., by punishing the **unlawful** killing of an unborn quick child by injury to the mother as whatever the committed offense would have been, had the mother died. Thus, an attempted first-degree murder of the mother will result in a first-degree murder conviction, should the mother's unborn quick child be killed, instead. An attempted second-degree murder of the mother will result in a second-degree murder, nonetheless, should the mother's unborn quick child be killed, instead, and so on. Of course, the penalties also apply if the intent to kill is directed at the fetus, as well.

**Multiple Convictions Permissible**

The bill specifically provides that there is a violation of this offense regardless of whether the mother dies with the child.

**Amendment Traveling With the Bill**

**By Amendment**, the bill punishes the willful killing of an unborn quick child by the mother as a 2nd-degree felony.

**Does Not Affect Law On Abortion**

The bill contains provisions which specifically declare it **inapplicable to termination of pregnancy by a physician.**

**Effective Date**

The bill's effective date is July 1 of the year in which enacted.

**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?

N/A

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

N/A

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

N/A

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?

No.

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?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 782.09, F.S.

E. SECTION-BY-SECTION RESEARCH:

**Section 1:** Amends s. 782.09, F.S., by enhancing the penalty to the same degree as that which would have been committed against the mother, had she died.

**Section 2:** Providing an effective date.

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:

The statute does not create a new crime, but merely enhances the penalty in certain situations. Given that the underlying offense, intentional killing of an unborn quick child, is rarely prosecuted, it is likely that the bill would have no fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill concerns a criminal statute, it is exempt from Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

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

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

**This Bill Does Not Affect Existing Abortion Law**

The bill contains provisions which specifically declare it **inapplicable to termination of a pregnancy by a physician**. It is already illegal, a third-degree felony, for doctors to perform abortions on viable (capable of living outside the womb) fetuses. See, s. 390.0111(9), F.S. Under current law, however, it is not illegal if the mother performs the abortion, herself. This is so because the common law views the mother as a victim in **any** abortion. See, Florida v. Ashley, 22 Fla. L. Weekly S682 (Fla. October 30, 1997). The bill makes it a 2nd-degree felony, **not murder**, if the mother performs her own abortion of an unborn quick child during the third trimester, or at any other stage of gestation in which the fetus could be defined as "quick."

**Criminal Intent**

The current law is unclear as to whether intent to kill the mother or intent to kill the quick child is required to prove a violation of the statute. The first sentence (as the statute now exists), "The willful killing of a quick child ...," indicates that the intent to kill must be directed at the child. However, the phrase, "by injury to the mother ... which would be murder if it resulted in the death of the mother," indicates that the intent to kill must be directed at the mother. The Fourth District Court of Appeals has suggested that the statute requires intent to kill the mother. See, Love v. State, 450 So. 2d 1191 (Fla. 4th DCA 1984). The bill changes the word "willful killing" to "unlawful killing." Thus, an intent to kill the fetus by an act such as hitting a pregnant woman with a club in the abdomen which results in death of the unborn quick child is not likely to be considered murder, if the person only intended to kill the quick child and not the mother.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed the Crime and Punishment Committee on March 19, 1998. One amendment was adopted which punishes the willful killing of an unborn quick child by the mother. That amendment is reflected in the contents of this research statement.



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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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