

By the Committee on Criminal Justice and Senator Sanderson

307-1776-01

1 A bill to be entitled
2 An act relating to homicide of an unborn child;
3 amending s. 782.071, F.S.; revising the offense
4 of "vehicular homicide" to include the killing
5 of an unborn quick child by any injury to the
6 mother which would be vehicular homicide if it
7 resulted in the death of the mother; providing
8 a right of action for civil damages; providing
9 a definition; providing penalties; providing
10 that the act does not authorize the prosecution
11 of a person for conduct relating to a lawful
12 abortion or for medical treatment; amending s.
13 782.09, F.S.; providing that killing an unborn
14 quick child by injury to the mother which would
15 be murder in any degree if it resulted in the
16 death of the mother is murder in the same
17 degree; providing penalties; providing that the
18 unlawful killing of an unborn quick child by
19 injury to the mother which would be
20 manslaughter if it resulted in the death of the
21 mother is manslaughter; providing penalties;
22 providing that the death of the mother does not
23 bar prosecution under specified circumstances;
24 providing that the act does not authorize the
25 prosecution of a person for conduct relating to
26 a lawful abortion or for medical treatment;
27 amending ss. 921.0022, 960.03, F.S., relating
28 to the Criminal Punishment Code offense
29 severity ranking chart and the definition of
30 "crime" with respect to the Florida Crimes
31 Compensation Act; conforming provisions to

1 changes made by the act; providing an effective
2 date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 782.071, Florida Statutes, is
7 amended to read:

8 782.071 Vehicular homicide.--

9 (1) "Vehicular homicide" is the killing of a human
10 being, or the killing of an unborn quick child ~~a viable fetus~~
11 by any injury to the mother of such child which would be
12 vehicular homicide if it resulted in the death of such mother,
13 caused by the operation of a motor vehicle by another in a
14 reckless manner likely to cause the death of, or great bodily
15 harm to, another. Vehicular homicide is:

16 (a)~~(1)~~ A felony of the second degree, punishable as
17 provided in s. 775.082, s. 775.083, or s. 775.084.

18 (b)~~(2)~~ A felony of the first degree, punishable as
19 provided in s. 775.082, s. 775.083, or s. 775.084, if:

20 1.~~(a)~~ At the time of the accident, the person knew, or
21 should have known, that the accident occurred; and

22 2.~~(b)~~ The person failed to give information and render
23 aid as required by s. 316.062.

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25 This paragraph ~~subsection~~ does not require that the person
26 knew that the accident resulted in injury or death.

27 ~~(3) For purposes of this section, a fetus is viable~~
28 ~~when it becomes capable of meaningful life outside the womb~~
29 ~~through standard medical measures.~~

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1 (2)(4) A right of action for civil damages shall exist
2 under s. 768.19, under all circumstances, for all deaths
3 described in this section.

4 (3) This section does not authorize the prosecution of
5 any person for:

6 (a) Conduct relating to an abortion for which the
7 consent of a pregnant woman, or a person authorized by law to
8 act on her behalf, has been obtained or for which such consent
9 is implied by law.

10 (b) Any medical treatment of a pregnant woman or her
11 unborn child.

12 Section 2. Section 782.09, Florida Statutes, is
13 amended to read:

14 782.09 Killing of unborn child by injury to mother.--

15 (1) The unlawful ~~willful~~ killing of an unborn quick
16 child, by any injury to the mother of such child which would
17 be murder if it resulted in the death of such mother, shall be
18 deemed murder in the same degree as that which would have been
19 committed against the mother. A person who unlawfully kills an
20 unborn quick child by any injury to the mother:

21 (a) Which would be murder in the first degree
22 constituting a capital felony if it resulted in the mother's
23 death commits murder in the first degree constituting a
24 capital felony, punishable as provided in s. 775.082.

25 (b) Which would be murder in the second degree if it
26 resulted in the mother's death commits murder in the second
27 degree, a felony of the first degree, punishable as provided
28 in s. 775.082, s. 775.083, or s. 775.084.

29 (c) Which would be murder in the third degree if it
30 resulted in the mother's death commits murder in the third
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1 ~~degree manslaughter~~, a felony of the second degree, punishable
2 as provided in s. 775.082, s. 775.083, or s. 775.084.

3 (2) The unlawful killing of an unborn quick child, by
4 any injury to the mother of such child which would be
5 manslaughter if it resulted in the death of such mother, shall
6 be deemed manslaughter. A person who unlawfully kills an
7 unborn quick child by any injury to the mother which would be
8 manslaughter if it resulted in the mother's death commits
9 manslaughter, a felony of the second degree, punishable as
10 provided in s. 775.082, s. 775.083, or s. 775.084.

11 (3) The death of the mother resulting from the same
12 act or criminal episode which caused the death of the unborn
13 quick child shall not bar prosecution under this section.
14 However, this section does not authorize the prosecution of
15 any person for:

16 (a) Conduct relating to an abortion for which the
17 consent of a pregnant woman, or a person authorized by law to
18 act on her behalf, has been obtained or for which such consent
19 is implied by law.

20 (b) Any medical treatment of a pregnant woman or her
21 unborn child.

22 Section 3. Paragraphs (g) and (h) of subsection (3) of
23 section 921.0022, Florida Statutes, are amended to read:

24 921.0022 Criminal Punishment Code; offense severity
25 ranking chart.--

26 (3) OFFENSE SEVERITY RANKING CHART

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28 Florida Felony
29 Statute Degree Description
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1			(g) LEVEL 7
2	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
3			injury.
4	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
5			bodily injury.
6	402.319(2)	2nd	Misrepresentation and negligence
7			or intentional act resulting in
8			great bodily harm, permanent
9			disfiguration, permanent
10			disability, or death.
11	409.920(2)	3rd	Medicaid provider fraud.
12	456.065(2)	3rd	Practicing a health care
13			profession without a license.
14	456.065(2)	2nd	Practicing a health care
15			profession without a license
16			which results in serious bodily
17			injury.
18	458.327(1)	3rd	Practicing medicine without a
19			license.
20	459.013(1)	3rd	Practicing osteopathic medicine
21			without a license.
22	460.411(1)	3rd	Practicing chiropractic medicine
23			without a license.
24	461.012(1)	3rd	Practicing podiatric medicine
25			without a license.
26	462.17	3rd	Practicing naturopathy without a
27			license.
28	463.015(1)	3rd	Practicing optometry without a
29			license.
30	464.016(1)	3rd	Practicing nursing without a
31			license.

1	465.015(2)	3rd	Practicing pharmacy without a
2			license.
3	466.026(1)	3rd	Practicing dentistry or dental
4			hygiene without a license.
5	467.201	3rd	Practicing midwifery without a
6			license.
7	468.366	3rd	Delivering respiratory care
8			services without a license.
9	483.828(1)	3rd	Practicing as clinical laboratory
10			personnel without a license.
11	483.901(9)	3rd	Practicing medical physics
12			without a license.
13	484.053	3rd	Dispensing hearing aids without a
14			license.
15	494.0018(2)	1st	Conviction of any violation of
16			ss. 494.001-494.0077 in which the
17			total money and property
18			unlawfully obtained exceeded
19			\$50,000 and there were five or
20			more victims.
21	560.123(8)(b)1.	3rd	Failure to report currency or
22			payment instruments exceeding
23			\$300 but less than \$20,000 by
24			money transmitter.
25	560.125(5)(a)	3rd	Money transmitter business by
26			unauthorized person, currency or
27			payment instruments exceeding
28			\$300 but less than \$20,000.
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1	655.50(10)(b)1.	3rd	Failure to report financial
2			transactions exceeding \$300 but
3			less than \$20,000 by financial
4			institution.
5	782.051(3)	2nd	Attempted felony murder of a
6			person by a person other than the
7			perpetrator or the perpetrator of
8			an attempted felony.
9	782.07(1)	2nd	Killing of a human being by the
10			act, procurement, or culpable
11			negligence of another
12			(manslaughter).
13	782.071	2nd	Killing of human being or <u>unborn</u>
14			<u>quick child</u> viable fetus by the
15			operation of a motor vehicle in a
16			reckless manner (vehicular
17			homicide).
18	782.072	2nd	Killing of a human being by the
19			operation of a vessel in a
20			reckless manner (vessel
21			homicide).
22	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
23			causing great bodily harm or
24			disfigurement.
25	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
26			weapon.
27	784.045(1)(b)	2nd	Aggravated battery; perpetrator
28			aware victim pregnant.
29	784.048(4)	3rd	Aggravated stalking; violation of
30			injunction or court order.
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1	784.07(2)(d)	1st	Aggravated battery on law
2			enforcement officer.
3	784.08(2)(a)	1st	Aggravated battery on a person 65
4			years of age or older.
5	784.081(1)	1st	Aggravated battery on specified
6			official or employee.
7	784.082(1)	1st	Aggravated battery by detained
8			person on visitor or other
9			detainee.
10	784.083(1)	1st	Aggravated battery on code
11			inspector.
12	790.07(4)	1st	Specified weapons violation
13			subsequent to previous conviction
14			of s. 790.07(1) or (2).
15	790.16(1)	1st	Discharge of a machine gun under
16			specified circumstances.
17	790.166(3)	2nd	Possessing, selling, using, or
18			attempting to use a hoax weapon
19			of mass destruction.
20	796.03	2nd	Procuring any person under 16
21			years for prostitution.
22	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
23			victim less than 12 years of age;
24			offender less than 18 years.
25	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
26			victim 12 years of age or older
27			but less than 16 years; offender
28			18 years or older.
29	806.01(2)	2nd	Maliciously damage structure by
30			fire or explosive.
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1	810.02(3)(a)	2nd	Burglary of occupied dwelling;
2			unarmed; no assault or battery.
3	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
4			unarmed; no assault or battery.
5	810.02(3)(d)	2nd	Burglary of occupied conveyance;
6			unarmed; no assault or battery.
7	812.014(2)(a)	1st	Property stolen, valued at
8			\$100,000 or more; property stolen
9			while causing other property
10			damage; 1st degree grand theft.
11	812.019(2)	1st	Stolen property; initiates,
12			organizes, plans, etc., the theft
13			of property and traffics in
14			stolen property.
15	812.131(2)(a)	2nd	Robbery by sudden snatching.
16	812.133(2)(b)	1st	Carjacking; no firearm, deadly
17			weapon, or other weapon.
18	825.102(3)(b)	2nd	Neglecting an elderly person or
19			disabled adult causing great
20			bodily harm, disability, or
21			disfigurement.
22	825.1025(2)	2nd	Lewd or lascivious battery upon
23			an elderly person or disabled
24			adult.
25	825.103(2)(b)	2nd	Exploiting an elderly person or
26			disabled adult and property is
27			valued at \$20,000 or more, but
28			less than \$100,000.
29	827.03(3)(b)	2nd	Neglect of a child causing great
30			bodily harm, disability, or
31			disfigurement.

1	827.04(3)	3rd	Impregnation of a child under 16
2			years of age by person 21 years
3			of age or older.
4	837.05(2)	3rd	Giving false information about
5			alleged capital felony to a law
6			enforcement officer.
7	872.06	2nd	Abuse of a dead human body.
8	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
9			cocaine (or other drug prohibited
10			under s. 893.03(1)(a), (1)(b),
11			(1)(d), (2)(a), (2)(b), or
12			(2)(c)4.) within 1,000 feet of a
13			child care facility or school.
14	893.13(1)(e)1.	1st	Sell, manufacture, or deliver
15			cocaine or other drug prohibited
16			under s. 893.03(1)(a), (1)(b),
17			(1)(d), (2)(a), (2)(b), or
18			(2)(c)4., within 1,000 feet of
19			property used for religious
20			services or a specified business
21			site.
22	893.13(4)(a)	1st	Deliver to minor cocaine (or
23			other s. 893.03(1)(a), (1)(b),
24			(1)(d), (2)(a), (2)(b), or
25			(2)(c)4. drugs).
26	893.135(1)(a)1.	1st	Trafficking in cannabis, more
27			than 50 lbs., less than 2,000
28			lbs.
29	893.135		
30	(1)(b)1.a.	1st	Trafficking in cocaine, more than
31			28 grams, less than 200 grams.

1	893.135		
2	(1)(c)1.a.	1st	Trafficking in illegal drugs,
3			more than 4 grams, less than 14
4			grams.
5	893.135		
6	(1)(d)1.	1st	Trafficking in phencyclidine,
7			more than 28 grams, less than 200
8			grams.
9	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
10			than 200 grams, less than 5
11			kilograms.
12	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
13			than 14 grams, less than 28
14			grams.
15	893.135		
16	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
17			grams or more, less than 14
18			grams.
19	893.135		
20	(1)(h)1.a.	1st	Trafficking in
21			gamma-hydroxybutyric acid (GHB),
22			1 kilogram or more, less than 5
23			kilograms.
24	893.135		
25	(1)(i)1.a.	1st	Trafficking in 1,4-Butanediol, 1
26			kilogram or more, less than 5
27			kilograms.
28	893.135		
29	(1)(j)2.a.	1st	Trafficking in Phenethylamines,
30			10 grams or more, less than 200
31			grams.

1	896.101(5)(a)	3rd	Money laundering, financial
2			transactions exceeding \$300 but
3			less than \$20,000.
4	896.104(4)(a)1.	3rd	Structuring transactions to evade
5			reporting or registration
6			requirements, financial
7			transactions exceeding \$300 but
8			less than \$20,000.
9			(h) LEVEL 8
10	316.193		
11	(3)(c)3.a.	2nd	DUI manslaughter.
12	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
13	560.123(8)(b)2.	2nd	Failure to report currency or
14			payment instruments totaling or
15			exceeding \$20,000, but less than
16			\$100,000 by money transmitter.
17	560.125(5)(b)	2nd	Money transmitter business by
18			unauthorized person, currency or
19			payment instruments totaling or
20			exceeding \$20,000, but less than
21			\$100,000.
22	655.50(10)(b)2.	2nd	Failure to report financial
23			transactions totaling or
24			exceeding \$20,000, but less than
25			\$100,000 by financial
26			institutions.
27	777.03(2)(a)	1st	Accessory after the fact, capital
28			felony.
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1	782.04(4)	2nd	Killing of human without design
2			when engaged in act or attempt of
3			any felony other than arson,
4			sexual battery, robbery,
5			burglary, kidnapping, aircraft
6			piracy, or unlawfully discharging
7			bomb.
8	782.051(2)	1st	Attempted felony murder while
9			perpetrating or attempting to
10			perpetrate a felony not
11			enumerated in s. 782.04(3).
12	782.071(1)(b) (2)	1st	Committing vehicular homicide and
13			failing to render aid or give
14			information.
15	782.072(2)	1st	Committing vessel homicide and
16			failing to render aid or give
17			information.
18	790.161(3)	1st	Discharging a destructive device
19			which results in bodily harm or
20			property damage.
21	794.011(5)	2nd	Sexual battery, victim 12 years
22			or over, offender does not use
23			physical force likely to cause
24			serious injury.
25	800.04(4)	2nd	Lewd or lascivious battery.
26	806.01(1)	1st	Maliciously damage dwelling or
27			structure by fire or explosive,
28			believing person in structure.
29	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
30	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
31			or dangerous weapon.

1	810.02(2)(c)	1st	Burglary of a dwelling or
2			structure causing structural
3			damage or \$1,000 or more property
4			damage.
5	812.13(2)(b)	1st	Robbery with a weapon.
6	812.135(2)	1st	Home-invasion robbery.
7	825.102(2)	2nd	Aggravated abuse of an elderly
8			person or disabled adult.
9	825.103(2)(a)	1st	Exploiting an elderly person or
10			disabled adult and property is
11			valued at \$100,000 or more.
12	837.02(2)	2nd	Perjury in official proceedings
13			relating to prosecution of a
14			capital felony.
15	837.021(2)	2nd	Making contradictory statements
16			in official proceedings relating
17			to prosecution of a capital
18			felony.
19	860.121(2)(c)	1st	Shooting at or throwing any
20			object in path of railroad
21			vehicle resulting in great bodily
22			harm.
23	860.16	1st	Aircraft piracy.
24	893.13(1)(b)	1st	Sell or deliver in excess of 10
25			grams of any substance specified
26			in s. 893.03(1)(a) or (b).
27	893.13(2)(b)	1st	Purchase in excess of 10 grams of
28			any substance specified in s.
29			893.03(1)(a) or (b).
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1	893.13(6)(c)	1st	Possess in excess of 10 grams of
2			any substance specified in s.
3			893.03(1)(a) or (b).
4	893.135(1)(a)2.	1st	Trafficking in cannabis, more
5			than 2,000 lbs., less than 10,000
6			lbs.
7	893.135		
8	(1)(b)1.b.	1st	Trafficking in cocaine, more than
9			200 grams, less than 400 grams.
10	893.135		
11	(1)(c)1.b.	1st	Trafficking in illegal drugs,
12			more than 14 grams, less than 28
13			grams.
14	893.135		
15	(1)(d)1.b.	1st	Trafficking in phencyclidine,
16			more than 200 grams, less than
17			400 grams.
18	893.135		
19	(1)(e)1.b.	1st	Trafficking in methaqualone, more
20			than 5 kilograms, less than 25
21			kilograms.
22	893.135		
23	(1)(f)1.b.	1st	Trafficking in amphetamine, more
24			than 28 grams, less than 200
25			grams.
26	893.135		
27	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
28			grams or more, less than 28
29			grams.
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1	893.135		
2	(1)(h)1.b.	1st	Trafficking in
3			gamma-hydroxybutyric acid (GHB),
4			5 kilograms or more, less than 10
5			kilograms.
6	893.135		
7	(1)(i)1.b.	1st	Trafficking in 1,4-Butanediol, 5
8			kilograms or more, less than 10
9			kilograms.
10	893.135		
11	(1)(j)2.b.	1st	Trafficking in Phenethylamines,
12			200 grams or more, less than 400
13			grams.
14	895.03(1)	1st	Use or invest proceeds derived
15			from pattern of racketeering
16			activity.
17	895.03(2)	1st	Acquire or maintain through
18			racketeering activity any
19			interest in or control of any
20			enterprise or real property.
21	895.03(3)	1st	Conduct or participate in any
22			enterprise through pattern of
23			racketeering activity.
24	896.101(5)(b)	2nd	Money laundering, financial
25			transactions totaling or
26			exceeding \$20,000, but less than
27			\$100,000.
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1 896.104(4)(a)2. 2nd Structuring transactions to evade
2 reporting or registration
3 requirements, financial
4 transactions totaling or
5 exceeding \$20,000 but less than
6 \$100,000.

7 Section 4. Paragraph (b) of subsection (3) of section
8 960.03, Florida Statutes, is amended to read:

9 960.03 Definitions; ss. 960.01-960.28.--As used in ss.
10 960.01-960.28, unless the context otherwise requires, the
11 term:

12 (3) "Crime" means:

13 (b) A violation of s. 316.193, s. 316.027(1), s.
14 327.35(1), s. 782.071(1)(b)~~s. 782.071(2)~~, or s. 860.13(1)(a)
15 which results in physical injury or death; however, no other
16 act involving the operation of a motor vehicle, boat, or
17 aircraft which results in injury or death shall constitute a
18 crime for the purpose of this chapter unless the injury or
19 death was intentionally inflicted through the use of such
20 vehicle, boat, or aircraft or unless such vehicle, boat, or
21 aircraft is an implement of a crime to which this act applies.

22 Section 5. This act shall take effect October 1, 2001,
23 and shall apply to offenses committed on or after that date.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1038

- The CS replaces the term "a viable fetus" as used in the Vehicular Homicide statute, s. 782.071, F.S., with the term "an unborn quick child."
- The CS omits the definition of viable fetus set forth in the original bill - after the 20th week of gestation.
- The CS specifically does not authorize the prosecution of a person, under either s. 782.071 or s. 782.09, F.S., for medical treatment of a woman or her unborn child, or conduct relating to a lawful abortion.