

By the Committees on Judiciary, Criminal Justice and Senator Sanderson

308-1875-01

1                                   A bill to be entitled  
2           An act relating to homicide of an unborn quick  
3           child; amending s. 316.193, F.S.; including the  
4           death of an unborn quick child under DUI  
5           manslaughter; amending s. 782.071, F.S.; making  
6           the killing of an unborn quick child rather  
7           than the killing of a viable fetus a "vehicular  
8           homicide"; deleting a provision describing the  
9           viability of a fetus; amending s. 782.09, F.S.;  
10          providing that killing an unborn quick child by  
11          injury to the mother which would be murder in  
12          any degree if it resulted in the death of the  
13          mother is murder in the same degree; providing  
14          penalties; providing that the unlawful killing  
15          of an unborn quick child by injury to the  
16          mother which would be manslaughter if it  
17          resulted in the death of the mother is  
18          manslaughter; providing penalties; providing  
19          that the death of the mother does not bar  
20          prosecution under specified circumstances;  
21          providing that the section does not authorize  
22          prosecution of a person in connection with a  
23          termination of pregnancy; providing a claim for  
24          civil damages; amending ss. 921.0022, 960.03,  
25          F.S., relating to the Criminal Punishment Code  
26          offense severity ranking chart and the  
27          definition of "crime" with respect to the  
28          Florida Crimes Compensation Act; conforming  
29          provisions to changes made by the act;  
30          providing an effective date.  
31

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

2

3 Section 1. Subsection (3) of section 316.193, Florida  
4 Statutes, is amended to read:

5 316.193 Driving under the influence; penalties.--

6 (3) Any person:

7 (a) Who is in violation of subsection (1);

8 (b) Who operates a vehicle; and

9 (c) Who, by reason of such operation, causes:

10 1. Damage to the property or person of another commits  
11 a misdemeanor of the first degree, punishable as provided in  
12 s. 775.082 or s. 775.083.

13 2. Serious bodily injury to another, as defined in s.  
14 316.1933, commits a felony of the third degree, punishable as  
15 provided in s. 775.082, s. 775.083, or s. 775.084.

16 3. The death of any human being or unborn quick child  
17 commits DUI manslaughter, and commits:

18 a. A felony of the second degree, punishable as  
19 provided in s. 775.082, s. 775.083, or s. 775.084.

20 b. A felony of the first degree, punishable as  
21 provided in s. 775.082, s. 775.083, or s. 775.084, if:

22 (I) At the time of the crash, the person knew, or  
23 should have known, that the crash occurred; and

24 (II) The person failed to give information and render  
25 aid as required by s. 316.062.

26 Section 2. Section 782.071, Florida Statutes, is  
27 amended to read:

28 782.071 Vehicular homicide.--"Vehicular homicide" is  
29 the killing of a human being, or the killing of an unborn  
30 quick child ~~a viable fetus~~ by any injury to the mother, caused  
31 by the operation of a motor vehicle by another in a reckless

1 manner likely to cause the death of, or great bodily harm to,  
2 another. Vehicular homicide is:

3 (1) A felony of the second degree, punishable as  
4 provided in s. 775.082, s. 775.083, or s. 775.084.

5 (2) A felony of the first degree, punishable as  
6 provided in s. 775.082, s. 775.083, or s. 775.084, if:

7 (a) At the time of the accident, the person knew, or  
8 should have known, that the accident occurred; and

9 (b) The person failed to give information and render  
10 aid as required by s. 316.062.

11

12 This subsection does not require that the person knew that the  
13 accident resulted in injury or death.

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

17 ~~(3)~~<sup>(4)</sup> A right of action for civil damages shall exist  
18 under s. 768.19, under all circumstances, for all deaths  
19 described in this section.

20 Section 3. Section 782.09, Florida Statutes, is  
21 amended to read:

22 782.09 Killing of unborn child by injury to mother.--

23 (1) The unlawful ~~willful~~ killing of an unborn quick  
24 child, by any injury to the mother of such child which would  
25 be murder if it resulted in the death of such mother, shall be  
26 deemed murder in the same degree as that which would have been  
27 committed against the mother. A person who unlawfully kills an  
28 unborn quick child by any injury to the mother:

29 (a) Which would be murder in the first degree  
30 constituting a capital felony if it resulted in the mother's  
31

1 death commits murder in the first degree constituting a  
2 capital felony, punishable as provided in s. 775.082.

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

7 (c) Which would be murder in the third degree if it  
8 resulted in the mother's death commits murder in the third  
9 degree, ~~manslaughter~~, a felony of the second degree,  
10 punishable as provided in s. 775.082, s. 775.083, or s.  
11 775.084.

12 (2) The unlawful killing of an unborn quick child, by  
13 any injury to the mother of such child which would be  
14 manslaughter if it resulted in the death of such mother, shall  
15 be deemed manslaughter. A person who unlawfully kills an  
16 unborn quick child by any injury to the mother which would be  
17 manslaughter if it resulted in the mother's death commits  
18 manslaughter, a felony of the second degree, punishable as  
19 provided in s. 775.082, s. 775.083, or s. 775.084.

20 (3) The death of the mother resulting from the same  
21 act or criminal episode which caused the death of the unborn  
22 quick child shall not bar prosecution under this section.

23 (4) This section does not authorize the prosecution of  
24 any person in connection with a termination of pregnancy  
25 pursuant to chapter 390.

26 (5) A claim for civil damages shall be allowed for the  
27 death of an unborn quick child.

28 Section 4. Paragraphs (g) and (h) of subsection (3) of  
29 section 921.0022, Florida Statutes, are amended to read:

30 921.0022 Criminal Punishment Code; offense severity  
31 ranking chart.--

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

1	462.17	3rd	Practicing naturopathy without a
2			license.
3	463.015(1)	3rd	Practicing optometry without a
4			license.
5	464.016(1)	3rd	Practicing nursing without a
6			license.
7	465.015(2)	3rd	Practicing pharmacy without a
8			license.
9	466.026(1)	3rd	Practicing dentistry or dental
10			hygiene without a license.
11	467.201	3rd	Practicing midwifery without a
12			license.
13	468.366	3rd	Delivering respiratory care
14			services without a license.
15	483.828(1)	3rd	Practicing as clinical laboratory
16			personnel without a license.
17	483.901(9)	3rd	Practicing medical physics
18			without a license.
19	484.053	3rd	Dispensing hearing aids without a
20			license.
21	494.0018(2)	1st	Conviction of any violation of
22			ss. 494.001-494.0077 in which the
23			total money and property
24			unlawfully obtained exceeded
25			\$50,000 and there were five or
26			more victims.
27	560.123(8)(b)1.	3rd	Failure to report currency or
28			payment instruments exceeding
29			\$300 but less than \$20,000 by
30			money transmitter.
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1	560.125(5)(a)	3rd	Money transmitter business by
2			unauthorized person, currency or
3			payment instruments exceeding
4			\$300 but less than \$20,000.
5	655.50(10)(b)1.	3rd	Failure to report financial
6			transactions exceeding \$300 but
7			less than \$20,000 by financial
8			institution.
9	782.051(3)	2nd	Attempted felony murder of a
10			person by a person other than the
11			perpetrator or the perpetrator of
12			an attempted felony.
13	782.07(1)	2nd	Killing of a human being by the
14			act, procurement, or culpable
15			negligence of another
16			(manslaughter).
17	782.071	2nd	Killing of human being or <u>unborn</u>
18			<u>quick child</u> <del>viable fetus</del> by the
19			operation of a motor vehicle in a
20			reckless manner (vehicular
21			homicide).
22	782.072	2nd	Killing of a human being by the
23			operation of a vessel in a
24			reckless manner (vessel
25			homicide).
26	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
27			causing great bodily harm or
28			disfigurement.
29	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
30			weapon.
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1	784.045(1)(b)	2nd	Aggravated battery; perpetrator
2			aware victim pregnant.
3	784.048(4)	3rd	Aggravated stalking; violation of
4			injunction or court order.
5	784.07(2)(d)	1st	Aggravated battery on law
6			enforcement officer.
7	784.08(2)(a)	1st	Aggravated battery on a person 65
8			years of age or older.
9	784.081(1)	1st	Aggravated battery on specified
10			official or employee.
11	784.082(1)	1st	Aggravated battery by detained
12			person on visitor or other
13			detainee.
14	784.083(1)	1st	Aggravated battery on code
15			inspector.
16	790.07(4)	1st	Specified weapons violation
17			subsequent to previous conviction
18			of s. 790.07(1) or (2).
19	790.16(1)	1st	Discharge of a machine gun under
20			specified circumstances.
21	790.166(3)	2nd	Possessing, selling, using, or
22			attempting to use a hoax weapon
23			of mass destruction.
24	796.03	2nd	Procuring any person under 16
25			years for prostitution.
26	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
27			victim less than 12 years of age;
28			offender less than 18 years.
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1	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
2			victim 12 years of age or older
3			but less than 16 years; offender
4			18 years or older.
5	806.01(2)	2nd	Maliciously damage structure by
6			fire or explosive.
7	810.02(3)(a)	2nd	Burglary of occupied dwelling;
8			unarmed; no assault or battery.
9	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
10			unarmed; no assault or battery.
11	810.02(3)(d)	2nd	Burglary of occupied conveyance;
12			unarmed; no assault or battery.
13	812.014(2)(a)	1st	Property stolen, valued at
14			\$100,000 or more; property stolen
15			while causing other property
16			damage; 1st degree grand theft.
17	812.019(2)	1st	Stolen property; initiates,
18			organizes, plans, etc., the theft
19			of property and traffics in
20			stolen property.
21	812.131(2)(a)	2nd	Robbery by sudden snatching.
22	812.133(2)(b)	1st	Carjacking; no firearm, deadly
23			weapon, or other weapon.
24	825.102(3)(b)	2nd	Neglecting an elderly person or
25			disabled adult causing great
26			bodily harm, disability, or
27			disfigurement.
28	825.1025(2)	2nd	Lewd or lascivious battery upon
29			an elderly person or disabled
30			adult.
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1	825.103(2)(b)	2nd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at \$20,000 or more, but
4			less than \$100,000.
5	827.03(3)(b)	2nd	Neglect of a child causing great
6			bodily harm, disability, or
7			disfigurement.
8	827.04(3)	3rd	Impregnation of a child under 16
9			years of age by person 21 years
10			of age or older.
11	837.05(2)	3rd	Giving false information about
12			alleged capital felony to a law
13			enforcement officer.
14	872.06	2nd	Abuse of a dead human body.
15	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
16			cocaine (or other drug prohibited
17			under s. 893.03(1)(a), (1)(b),
18			(1)(d), (2)(a), (2)(b), or
19			(2)(c)4.) within 1,000 feet of a
20			child care facility or school.
21	893.13(1)(e)1.	1st	Sell, manufacture, or deliver
22			cocaine or other drug prohibited
23			under s. 893.03(1)(a), (1)(b),
24			(1)(d), (2)(a), (2)(b), or
25			(2)(c)4., within 1,000 feet of
26			property used for religious
27			services or a specified business
28			site.
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1	893.13(4)(a)	1st	Deliver to minor cocaine (or
2			other s. 893.03(1)(a), (1)(b),
3			(1)(d), (2)(a), (2)(b), or
4			(2)(c)4. drugs).
5	893.135(1)(a)1.	1st	Trafficking in cannabis, more
6			than 50 lbs., less than 2,000
7			lbs.
8	893.135		
9	(1)(b)1.a.	1st	Trafficking in cocaine, more than
10			28 grams, less than 200 grams.
11	893.135		
12	(1)(c)1.a.	1st	Trafficking in illegal drugs,
13			more than 4 grams, less than 14
14			grams.
15	893.135		
16	(1)(d)1.	1st	Trafficking in phencyclidine,
17			more than 28 grams, less than 200
18			grams.
19	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
20			than 200 grams, less than 5
21			kilograms.
22	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
23			than 14 grams, less than 28
24			grams.
25	893.135		
26	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
27			grams or more, less than 14
28			grams.
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1	893.135		
2	(1)(h)1.a.	1st	Trafficking in
3			gamma-hydroxybutyric acid (GHB),
4			1 kilogram or more, less than 5
5			kilograms.
6	893.135		
7	(1)(i)1.a.	1st	Trafficking in 1,4-Butanediol, 1
8			kilogram or more, less than 5
9			kilograms.
10	893.135		
11	(1)(j)2.a.	1st	Trafficking in Phenethylamines,
12			10 grams or more, less than 200
13			grams.
14	896.101(5)(a)	3rd	Money laundering, financial
15			transactions exceeding \$300 but
16			less than \$20,000.
17	896.104(4)(a)1.	3rd	Structuring transactions to evade
18			reporting or registration
19			requirements, financial
20			transactions exceeding \$300 but
21			less than \$20,000.
22			(h) LEVEL 8
23	316.193		
24	(3)(c)3.a.	2nd	DUI manslaughter.
25	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
26	560.123(8)(b)2.	2nd	Failure to report currency or
27			payment instruments totaling or
28			exceeding \$20,000, but less than
29			\$100,000 by money transmitter.
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1	560.125(5)(b)	2nd	Money transmitter business by
2			unauthorized person, currency or
3			payment instruments totaling or
4			exceeding \$20,000, but less than
5			\$100,000.
6	655.50(10)(b)2.	2nd	Failure to report financial
7			transactions totaling or
8			exceeding \$20,000, but less than
9			\$100,000 by financial
10			institutions.
11	777.03(2)(a)	1st	Accessory after the fact, capital
12			felony.
13	782.04(4)	2nd	Killing of human without design
14			when engaged in act or attempt of
15			any felony other than arson,
16			sexual battery, robbery,
17			burglary, kidnapping, aircraft
18			piracy, or unlawfully discharging
19			bomb.
20	782.051(2)	1st	Attempted felony murder while
21			perpetrating or attempting to
22			perpetrate a felony not
23			enumerated in s. 782.04(3).
24	782.071(1)(b) <del>(2)</del>	1st	Committing vehicular homicide and
25			failing to render aid or give
26			information.
27	782.072(2)	1st	Committing vessel homicide and
28			failing to render aid or give
29			information.
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1	790.161(3)	1st	Discharging a destructive device
2			which results in bodily harm or
3			property damage.
4	794.011(5)	2nd	Sexual battery, victim 12 years
5			or over, offender does not use
6			physical force likely to cause
7			serious injury.
8	800.04(4)	2nd	Lewd or lascivious battery.
9	806.01(1)	1st	Maliciously damage dwelling or
10			structure by fire or explosive,
11			believing person in structure.
12	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
13	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
14			or dangerous weapon.
15	810.02(2)(c)	1st	Burglary of a dwelling or
16			structure causing structural
17			damage or \$1,000 or more property
18			damage.
19	812.13(2)(b)	1st	Robbery with a weapon.
20	812.135(2)	1st	Home-invasion robbery.
21	825.102(2)	2nd	Aggravated abuse of an elderly
22			person or disabled adult.
23	825.103(2)(a)	1st	Exploiting an elderly person or
24			disabled adult and property is
25			valued at \$100,000 or more.
26	837.02(2)	2nd	Perjury in official proceedings
27			relating to prosecution of a
28			capital felony.
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1	837.021(2)	2nd	Making contradictory statements
2			in official proceedings relating
3			to prosecution of a capital
4			felony.
5	860.121(2)(c)	1st	Shooting at or throwing any
6			object in path of railroad
7			vehicle resulting in great bodily
8			harm.
9	860.16	1st	Aircraft piracy.
10	893.13(1)(b)	1st	Sell or deliver in excess of 10
11			grams of any substance specified
12			in s. 893.03(1)(a) or (b).
13	893.13(2)(b)	1st	Purchase in excess of 10 grams of
14			any substance specified in s.
15			893.03(1)(a) or (b).
16	893.13(6)(c)	1st	Possess in excess of 10 grams of
17			any substance specified in s.
18			893.03(1)(a) or (b).
19	893.135(1)(a)2.	1st	Trafficking in cannabis, more
20			than 2,000 lbs., less than 10,000
21			lbs.
22	893.135		
23	(1)(b)1.b.	1st	Trafficking in cocaine, more than
24			200 grams, less than 400 grams.
25	893.135		
26	(1)(c)1.b.	1st	Trafficking in illegal drugs,
27			more than 14 grams, less than 28
28			grams.
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1	893.135		
2	(1)(d)1.b.	1st	Trafficking in phencyclidine,
3			more than 200 grams, less than
4			400 grams.
5	893.135		
6	(1)(e)1.b.	1st	Trafficking in methaqualone, more
7			than 5 kilograms, less than 25
8			kilograms.
9	893.135		
10	(1)(f)1.b.	1st	Trafficking in amphetamine, more
11			than 28 grams, less than 200
12			grams.
13	893.135		
14	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
15			grams or more, less than 28
16			grams.
17	893.135		
18	(1)(h)1.b.	1st	Trafficking in
19			gamma-hydroxybutyric acid (GHB),
20			5 kilograms or more, less than 10
21			kilograms.
22	893.135		
23	(1)(i)1.b.	1st	Trafficking in 1,4-Butanediol, 5
24			kilograms or more, less than 10
25			kilograms.
26	893.135		
27	(1)(j)2.b.	1st	Trafficking in Phenethylamines,
28			200 grams or more, less than 400
29			grams.
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1 895.03(1) 1st Use or invest proceeds derived  
2 from pattern of racketeering  
3 activity.  
4 895.03(2) 1st Acquire or maintain through  
5 racketeering activity any  
6 interest in or control of any  
7 enterprise or real property.  
8 895.03(3) 1st Conduct or participate in any  
9 enterprise through pattern of  
10 racketeering activity.  
11 896.101(5)(b) 2nd Money laundering, financial  
12 transactions totaling or  
13 exceeding \$20,000, but less than  
14 \$100,000.  
15 896.104(4)(a)2. 2nd Structuring transactions to evade  
16 reporting or registration  
17 requirements, financial  
18 transactions totaling or  
19 exceeding \$20,000 but less than  
20 \$100,000.

21 Section 5. Paragraph (b) of subsection (3) of section  
22 960.03, Florida Statutes, is amended to read:

23 960.03 Definitions; ss. 960.01-960.28.--As used in ss.  
24 960.01-960.28, unless the context otherwise requires, the  
25 term:

26 (3) "Crime" means:

27 (b) A violation of s. 316.193, s. 316.027(1), s.  
28 327.35(1), s. 782.071(1)(b)~~s. 782.071(2)~~, or s. 860.13(1)(a)  
29 which results in physical injury or death; however, no other  
30 act involving the operation of a motor vehicle, boat, or  
31 aircraft which results in injury or death shall constitute a

1 crime for the purpose of this chapter unless the injury or  
2 death was intentionally inflicted through the use of such  
3 vehicle, boat, or aircraft or unless such vehicle, boat, or  
4 aircraft is an implement of a crime to which this act applies.

5 Section 6. This act shall take effect October 1, 2001,  
6 and shall apply to offenses committed on or after that date.

7  
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
9 COMMITTEE SUBSTITUTE FOR  
10 CS/SB 1038

11 Expands the scope of the bill to revise the offense of driving  
12 under the influence to include the death of an unborn quick  
13 child as constituting DUI manslaughter pursuant to s.  
14 316.193(3), F.S.

15 Removes the provision from s. 782.071, F.S., relating to  
16 vehicular homicide, that expressly prohibited the prosecution  
17 of any person for conduct relating to an abortion.

18 Revises the bill's provisions in s. 782.09, F.S., relating to  
19 the killing of an unborn child by injury to the mother, to  
20 state that the prosecution of any person in connection with a  
21 termination of pregnancy pursuant to chapter 390 is not  
22 authorized by this section. Also, a claim for civil damages  
23 for the death of an unborn quick child is expressly allowed.  
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