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DATE: April 4, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 497

RELATING TO: Vehicular Homicide

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative(s) Andrews

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 1
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 8 NAYS 3
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Vehicular homicide is currently defined as the killing of a human being or a viable fetus by any injury to the mother caused by the operation of a motor vehicle by another in a reckless manner likely to cause death or great bodily harm. CS/HB 497 redefines the term "viable fetus" as a fetus "after the 20th week of gestation".

The committee substitute also amends the DUI homicide statute to include the killing of a viable fetus. The term "viable fetus" is defined in conformity with the newly created definition in the vehicular homicide statute.

Currently, the willful killing of an unborn quick child by any injury to the mother which would be murder if it resulted in the death of the mother is manslaughter. The committee substitute amends this section by punishing the unlawful killing of an unborn quick child by injury to the mother in the same manner as if the mother was killed. For example, if a person kills a fetus by committing an act which would constitute first degree murder if the mother were to die, the killer could be charged with first degree murder for the death of the fetus.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Vehicular Homicide

Vehicular homicide is the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another. s. 782.071, F.S. The degree of culpability required to prove reckless driving is less than culpable negligence, which is the standard for manslaughter, but more than a mere failure to use ordinary care. McCreary v. State, 371 So.2d 1024 (Fla.1979); Michel v. State, 752 So.2d 6, 12 (Fla. 5th DCA 2000)(holding that evidence supported vehicular homicide conviction where defendants had been ordered off the interstate for failing to have the proper equipment on their truck then drove the truck on a dark stretch of highway at night, without any rear warning lights, at a speed of between 22 and 24 m.p.h. and with metals rails hanging out of the back of the truck, which had no bumper) The offense is a second degree felony which is ranked as a Level 7 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. s. 921.0022(3)(g), F.S. If at the time of the accident, the person knew or should have known that the accident occurred and the person failed to give information or render aid, the offense is a first degree felony which is ranked as a Level 8 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. s. 921.0022(3)(h), F.S.

The statute also provides that for purposes of this section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures. s. 782.071(3), F.S. According to the Florida Supreme Court "[u]nder current standards, [viability] generally occurs upon completion of the second trimester." In re T.W., 551 So.2d 1186, 1194 (Fla. 1989).

The statute further provides that a right of action for civil damages shall exist under s. 768.19, F.S., the Wrongful Death Act under all circumstances, for all deaths described in the vehicular homicide statute. s. 782.071(4), F.S.

DUI Manslaughter

In order to prove a DUI manslaughter case, the state must establish three elements:

- (1) The defendant operated a vehicle.

- (2) The defendant, by reason of such operation, caused or contributed to the cause of the death of the victim.
- (3) At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 percent or higher.

s. 316.193(3)(c)3.a., F.S.

The offense is a second degree felony which is ranked as a Level 8 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. s. 921.0022(3)(h), F.S. If at the time of the accident, the person knew or should have known that the accident occurred and the person failed to give information or render aid, the offense is a first degree felony which is ranked as a Level 9 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. s. 921.0022(3)(i), F.S.

Killing of Unborn Quick Child

Section 782.09 provides that 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, shall be deemed manslaughter" a second degree felony. Manslaughter is defined as the "killing of a human being by the act, procurement, or culpable negligence of another". s. 782.07. F.S. The term "unborn quick child is not defined in the statute and no court has defined the term for purposes of this statute. A definition of the term "quick" that was used by the Florida Supreme Court in another context is "pregnant with a child the movement of which is felt." Stokes v. Liberty Mut. Ins. Co., 213 So.2d 695, 697(Fla. 1968); Walsingham v. State, 250 So.2d 857 (Fla. 1971)(Ervin, J. specially concurring)(defining a "quick child" as "when the embryo (has) advanced to that degree of maturity where the child had a separate and independent existence, and the woman has herself felt the child alive and quick within her.") Black's Law Dictionary defines a "quick child" as "one that has developed so that it moves within the mother's womb". The offense is ranked as a Level 7 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. s. 921.0022(3)(g), F.S.

C. EFFECT OF PROPOSED CHANGES:

Vehicular Homicide

The committee substitute amends the vehicular homicide statute to change the definition of a "viable" fetus to provide that for purposes of that section, a fetus is viable after the 20th week of gestation.

DUI Manslaughter

The committee substitute amends the DUI manslaughter statute to include the death of any viable fetus. A fetus is viable for purposes of this subsection after the 20th week of gestation.

Killing of Unborn Quick Child

The committee substitute amends s. 782.09, F.S. to specify that the unlawful 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 shall not be deemed manslaughter as the current statute provides but shall be deemed murder or manslaughter in the same degree as that which would have been committed against the mother. Thus, for example, a person who unlawfully kills an unborn quick child by any

injury to the mother which would be murder in the first degree constituting a capital felony if it resulted in the mother's death, commits murder in the first degree constituting a capital felony.¹ Likewise, a person who kills an unborn quick child by any injury to the mother which would be manslaughter if it resulted in the mother's death, commits manslaughter.

The committee substitute also provides that the death of the mother resulting from the same act or criminal episode which caused the death of the unborn quick child shall not bar prosecution under this section.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 782.071, F.S. relating to vehicular homicide of a viable fetus.

Section 2: Amends s. 782.09, F.S. relating to killing of an unborn child by injury to mother to make such killing the same degree as that which would have been committed against the mother.

Section 3: Amends s. 316.193 relating to DUI manslaughter of viable fetus.

Section 4: Reenacts s. 921.0022, and 960.03, F.S.

Section 5: Providing effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹ Second degree murder is a first degree felony which is punishable by life imprisonment. s. 782.04(2) and (3), F.S. Third degree murder is a second degree felony ranked as a Level 8 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code which is punishable by up to 15 years imprisonment. s. 782.04(4), F.S. Manslaughter is a second degree felony that is ranked as a Level 7 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code and is punishable by up to 15 years imprisonment. ss. 782.07(1), F.S.,

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. However, it is expected that this bill will have an insignificant prison bed impact on the department.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Andrews offered three amendment which were adopted by the committee and the bill was made a committee substitute. The first amendment changed the "relating to" clause of the bill. The bill was filed with an apparent bill drafting error. The original relating to clause was "an act relating to vehicular homicide". However, while the first section of the original bill relates to vehicular homicide, the second section relates to killing of an unborn child by injury to the mother.

The second amendment amended the DUI homicide statute to include the death of a viable fetus so that the statute will parallel the vehicular homicide statute. The amendment also provides that a fetus is viable after the 20th week of gestation.

The bill provided that vehicular homicide is the killing of a human being, or the killing of any viable fetus by any injury to the mother of such child which would be vehicular homicide if it resulted in the death of such mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to another. The third amendment removes the underlined language from the bill.

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VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

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Prepared by:

Staff Director:

Don Rubottom

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