

By Senator Sanderson

31-314-02

See HB 119

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; amending s. 921.0022,  
 24          F.S., relating to the Criminal Punishment Code  
 25          offense severity ranking chart and the  
 26          definition of "crime" with respect to the  
 27          Florida Crimes Compensation Act; conforming  
 28          provisions to changes made by the act;  
 29          providing an effective date.

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

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

3 316.193 Driving under the influence; penalties.--

4 (3) Any person:

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

6 (b) Who operates a vehicle; and

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

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

11 2. Serious bodily injury to another, as defined in s.  
12 316.1933, commits a felony of the third degree, punishable as  
13 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

24 Section 2. Section 782.071, Florida Statutes, is  
25 amended to read:

26 782.071 Vehicular homicide.--"Vehicular homicide" is  
27 the killing of a human being, or the killing of an unborn  
28 quick child ~~a viable fetus~~ by any injury to the mother, caused  
29 by the operation of a motor vehicle by another in a reckless  
30 manner likely to cause the death of, or great bodily harm to,  
31 another.

1 (1) Vehicular homicide is:

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

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

6 1. At the time of the accident, the person knew, or  
7 should have known, that the accident occurred; and

8 2. The person failed to give information and render  
9 aid as required by s. 316.062.

10

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

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

16 (2)~~(3)~~ A right of action for civil damages shall exist  
17 under s. 768.19, under all circumstances, for all deaths  
18 described in this section.

19 (3)~~(4)~~ In addition to any other punishment, the court  
20 may order the person to serve 120 community service hours in a  
21 trauma center or hospital that regularly receives victims of  
22 vehicle accidents, under the supervision of a registered  
23 nurse, an emergency room physician, or an emergency medical  
24 technician pursuant to a voluntary community service program  
25 operated by the trauma center or hospital.

26 Section 3. Section 782.09, Florida Statutes, is  
27 amended to read:

28 782.09 Killing of unborn quick child by injury to  
29 mother.--

30 (1) The unlawful ~~willful~~ killing of an unborn quick  
31 child, by any injury to the mother of such child which would

1 be murder if it resulted in the death of such mother, shall be  
2 deemed murder in the same degree as that which would have been  
3 committed against the mother. A person who unlawfully kills an  
4 unborn quick child by any injury to the mother:

5 (a) Which would be murder in the first degree  
6 constituting a capital felony if it resulted in the mother's  
7 death commits murder in the first degree constituting a  
8 capital felony, punishable as provided in s. 775.082.

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

13 (c) Which would be murder in the third degree if it  
14 resulted in the mother's death commits murder in the third  
15 degree, ~~manslaughter~~, a felony of the second degree,  
16 punishable as provided in s. 775.082, s. 775.083, or s.  
17 775.084.

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

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

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

1 Section 4. Paragraph (g) of subsection (3) of section  
2 921.0022, Florida Statutes, is amended to read:

3 921.0022 Criminal Punishment Code; offense severity  
4 ranking chart.--

5 (3) OFFENSE SEVERITY RANKING CHART

6	7 Florida	8 Felony	
9	10 Statute	11 Degree	12 Description
13			(g) LEVEL 7
14	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
15	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
16	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
17	409.920(2)	3rd	Medicaid provider fraud.
18	456.065(2)	3rd	Practicing a health care profession without a license.
19	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
20	458.327(1)	3rd	Practicing medicine without a license.
21	459.013(1)	3rd	Practicing osteopathic medicine without a license.

1	460.411(1)	3rd	Practicing chiropractic medicine
2			without a license.
3	461.012(1)	3rd	Practicing podiatric medicine
4			without a license.
5	462.17	3rd	Practicing naturopathy without a
6			license.
7	463.015(1)	3rd	Practicing optometry without a
8			license.
9	464.016(1)	3rd	Practicing nursing without a
10			license.
11	465.015(2)	3rd	Practicing pharmacy without a
12			license.
13	466.026(1)	3rd	Practicing dentistry or dental
14			hygiene without a license.
15	467.201	3rd	Practicing midwifery without a
16			license.
17	468.366	3rd	Delivering respiratory care
18			services without a license.
19	483.828(1)	3rd	Practicing as clinical laboratory
20			personnel without a license.
21	483.901(9)	3rd	Practicing medical physics
22			without a license.
23	484.013(1)(c)	3rd	Preparing or dispensing optical
24			devices without a prescription.
25	484.053	3rd	Dispensing hearing aids without a
26			license.
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1	494.0018(2)	1st	Conviction of any violation of
2			ss. 494.001-494.0077 in which the
3			total money and property
4			unlawfully obtained exceeded
5			\$50,000 and there were five or
6			more victims.
7	560.123(8)(b)1.	3rd	Failure to report currency or
8			payment instruments exceeding
9			\$300 but less than \$20,000 by
10			money transmitter.
11	560.125(5)(a)	3rd	Money transmitter business by
12			unauthorized person, currency or
13			payment instruments exceeding
14			\$300 but less than \$20,000.
15	655.50(10)(b)1.	3rd	Failure to report financial
16			transactions exceeding \$300 but
17			less than \$20,000 by financial
18			institution.
19	782.051(3)	2nd	Attempted felony murder of a
20			person by a person other than the
21			perpetrator or the perpetrator of
22			an attempted felony.
23	782.07(1)	2nd	Killing of a human being by the
24			act, procurement, or culpable
25			negligence of another
26			(manslaughter).
27	782.071 <u>(1)</u>	2nd	Killing of human being or <u>unborn</u>
28			<u>quick child</u> <del>viable fetus</del> by the
29			operation of a motor vehicle in a
30			reckless manner (vehicular
31			homicide).

1	782.072	2nd	Killing of a human being by the
2			operation of a vessel in a
3			reckless manner (vessel
4			homicide).
5	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
6			causing great bodily harm or
7			disfigurement.
8	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
9			weapon.
10	784.045(1)(b)	2nd	Aggravated battery; perpetrator
11			aware victim pregnant.
12	784.048(4)	3rd	Aggravated stalking; violation of
13			injunction or court order.
14	784.07(2)(d)	1st	Aggravated battery on law
15			enforcement officer.
16	784.074(1)(a)	1st	Aggravated battery on sexually
17			violent predators facility staff.
18	784.08(2)(a)	1st	Aggravated battery on a person 65
19			years of age or older.
20	784.081(1)	1st	Aggravated battery on specified
21			official or employee.
22	784.082(1)	1st	Aggravated battery by detained
23			person on visitor or other
24			detainee.
25	784.083(1)	1st	Aggravated battery on code
26			inspector.
27	790.07(4)	1st	Specified weapons violation
28			subsequent to previous conviction
29			of s. 790.07(1) or (2).
30	790.16(1)	1st	Discharge of a machine gun under
31			specified circumstances.



1	790.166(3)	2nd	Possessing, selling, using, or
2			attempting to use a hoax weapon
3			of mass destruction.
4	796.03	2nd	Procuring any person under 16
5			years for prostitution.
6	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
7			victim less than 12 years of age;
8			offender less than 18 years.
9	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
10			victim 12 years of age or older
11			but less than 16 years; offender
12			18 years or older.
13	806.01(2)	2nd	Maliciously damage structure by
14			fire or explosive.
15	810.02(3)(a)	2nd	Burglary of occupied dwelling;
16			unarmed; no assault or battery.
17	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
18			unarmed; no assault or battery.
19	810.02(3)(d)	2nd	Burglary of occupied conveyance;
20			unarmed; no assault or battery.
21	812.014(2)(a)	1st	Property stolen, valued at
22			\$100,000 or more; cargo stolen
23			valued at \$50,000, or more;
24			property stolen while causing
25			other property damage; 1st degree
26			grand theft.
27	812.014(2)(b)2.	2nd	Property stolen, emergency
28			medical equipment; 2nd degree
29			grand theft.
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1	812.019(2)	1st	Stolen property; initiates,
2			organizes, plans, etc., the theft
3			of property and traffics in
4			stolen property.
5	812.131(2)(a)	2nd	Robbery by sudden snatching.
6	812.133(2)(b)	1st	Carjacking; no firearm, deadly
7			weapon, or other weapon.
8	817.234(11)(c)	1st	Insurance fraud; property value
9			\$100,000 or more.
10	825.102(3)(b)	2nd	Neglecting an elderly person or
11			disabled adult causing great
12			bodily harm, disability, or
13			disfigurement.
14	825.1025(2)	2nd	Lewd or lascivious battery upon
15			an elderly person or disabled
16			adult.
17	825.103(2)(b)	2nd	Exploiting an elderly person or
18			disabled adult and property is
19			valued at \$20,000 or more, but
20			less than \$100,000.
21	827.03(3)(b)	2nd	Neglect of a child causing great
22			bodily harm, disability, or
23			disfigurement.
24	827.04(3)	3rd	Impregnation of a child under 16
25			years of age by person 21 years
26			of age or older.
27	837.05(2)	3rd	Giving false information about
28			alleged capital felony to a law
29			enforcement officer.
30	872.06	2nd	Abuse of a dead human body.
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1	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
2			cocaine (or other drug prohibited
3			under s. 893.03(1)(a), (1)(b),
4			(1)(d), (2)(a), (2)(b), or
5			(2)(c)4.) within 1,000 feet of a
6			child care facility or school.
7	893.13(1)(e)1.	1st	Sell, manufacture, or deliver
8			cocaine or other drug prohibited
9			under s. 893.03(1)(a), (1)(b),
10			(1)(d), (2)(a), (2)(b), or
11			(2)(c)4., within 1,000 feet of
12			property used for religious
13			services or a specified business
14			site.
15	893.13(4)(a)	1st	Deliver to minor cocaine (or
16			other s. 893.03(1)(a), (1)(b),
17			(1)(d), (2)(a), (2)(b), or
18			(2)(c)4. drugs).
19	893.135(1)(a)1.	1st	Trafficking in cannabis, more
20			than 25 lbs., less than 2,000
21			lbs.
22	893.135		
23	(1)(b)1.a.	1st	Trafficking in cocaine, more than
24			28 grams, less than 200 grams.
25	893.135		
26	(1)(c)1.a.	1st	Trafficking in illegal drugs,
27			more than 4 grams, less than 14
28			grams.
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1	893.135		
2	(1)(d)1.	1st	Trafficking in phencyclidine,
3			more than 28 grams, less than 200
4			grams.
5	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
6			than 200 grams, less than 5
7			kilograms.
8	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
9			than 14 grams, less than 28
10			grams.
11	893.135		
12	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
13			grams or more, less than 14
14			grams.
15	893.135		
16	(1)(h)1.a.	1st	Trafficking in
17			gamma-hydroxybutyric acid (GHB),
18			1 kilogram or more, less than 5
19			kilograms.
20	893.135		
21	(1)(i)1.a.	1st	Trafficking in 1,4-Butanediol, 1
22			kilogram or more, less than 5
23			kilograms.
24	893.135		
25	(1)(j)2.a.	1st	Trafficking in Phenethylamines,
26			10 grams or more, less than 200
27			grams.
28	896.101(5)(a)	3rd	Money laundering, financial
29			transactions exceeding \$300 but
30			less than \$20,000.
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1 896.104(4)(a)1. 3rd Structuring transactions to evade  
2 reporting or registration  
3 requirements, financial  
4 transactions exceeding \$300 but  
5 less than \$20,000.

6 Section 5. This act shall take effect October 1, 2002,  
7 and shall apply to offenses committed on or after that date.

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HOUSE SUMMARY

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12 Includes the death of an unborn quick child under DUI  
13 manslaughter. Provides that killing an unborn quick child  
14 by injury to the mother which would be murder in any  
15 degree if it resulted in the death of the mother is  
16 murder in the same degree and provides penalties, that  
17 the unlawful killing of an unborn quick child by injury  
18 to the mother which would be manslaughter if it resulted  
19 in the death of the mother is manslaughter and provides  
20 penalties, and that the death of the mother resulting  
21 from the same act or criminal episode which caused the  
22 death of the unborn quick child does not bar prosecution.  
23 Specifies nonauthorization to prosecute a person in  
24 connection with a termination of pregnancy. See bill for  
25 details.

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