

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 707 w/CS Unborn Quick Child/Homicide

**SPONSOR(S):** Planas

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2072

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice</u>	<u>5 Y, 3 N</u>	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	<u>10 Y, 6 N</u>	<u>Kramer</u>	<u>De La Paz</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

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. The committee substitute amends this to include the killing of an unborn quick child rather than a viable fetus.

This committee substitute also amends the DUI manslaughter statute to include the killing of an unborn quick child.

Currently, the willful killing of an unborn quick child by any injury to the mother that would be murder if it resulted in the death of the mother is considered manslaughter. This 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 an offender kills an unborn quick child by committing an act that would constitute first degree murder if the mother were to die, the offender could be charged with first degree murder for the death of the unborn quick child.

The committee substitute also defines the term "unborn quick child" for the purposes of the three offenses listed above to mean "the unborn child of a pregnant woman which has developed to the point of maturity at which its movements can be felt in its mother, or at which the unborn child becomes capable of meaningful life outside the womb through standard medical procedures."

The committee substitute takes effect October 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0707b.ps.doc

**DATE:** April 10, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

##### **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, § 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.<sup>1</sup> The offense is a second degree felony. 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.

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, § 782.071(2), F.S. The statute further provides that a right of action for civil damages shall exist under § 768.19, F.S., the Wrongful Death Act under all circumstances, for all deaths described in the vehicular homicide statute, § 782.071(4), F.S.

*Changes made by HB 707 including definition of “unborn quick child”:* The committee substitute amends the vehicular homicide statute to change the definition of vehicular homicide to include the killing of a “unborn quick child” rather than a “viable fetus.” It also removes the definition of “viable fetus” described above.

The committee substitute also defines the term “unborn quick child” to mean “the unborn child of a pregnant woman which has developed to the point of maturity at which its movements can be felt in its mother, or at which the unborn child becomes capable of meaningful life outside the womb through standard medical procedures.”

##### **DUI Manslaughter**

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

1. The defendant operated a vehicle.

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<sup>1</sup> *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)

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 or higher.

The offense is a second degree felony. 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.

*Changes made by HB 707:* The committee substitute amends the DUI manslaughter statute to include the death of an unborn quick child as defined above.

### **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," § 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".

*Changes made by HB 707:* The committee substitute amends § 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 if the act resulted in the death of 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.<sup>2</sup> Likewise, a person who kills an unborn quick child by any injury to the mother that would be manslaughter if it resulted in the mother's death, commits manslaughter. The committee substitute defines the term unborn quick child in the same manner as described in the vehicular homicide statute.

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

Additionally, the committee substitute provides that prosecution of any person in connection with a termination of pregnancy pursuant to chapter 390 is not authorized by this section.

### **C. SECTION DIRECTORY:**

Section 1: Amending s. 316.193, F.S.; includes death of unborn quick child in DUI manslaughter.

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<sup>2</sup> Second degree murder is a first degree felony which is punishable by life imprisonment, § 782.04(2) and (3), F.S. Third degree murder is a second degree which is punishable by up to 15 years imprisonment, § 782.04(4), F.S. Manslaughter is a second degree felony that is punishable by up to 15 years imprisonment, § 782.07(1), F.S.

Section 2: Amending s. 782.071, F.S.; makes killing of a unborn quick child a vehicular homicide.

Section 3: Amending s. 782.09, F.S.; relating to killing of unborn quick child; corresponds level of offense for killing unborn quick child to level of offense if act resulted in death of mother.

Section 4: Amending s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code.

Section 5: Providing effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference determined that this bill is likely to have an insignificant prison bed impact on the Department of Corrections.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The committee substitute appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

### **B. RULE-MAKING AUTHORITY:**

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Subcommittee on Criminal Justice adopted an amendment which clarified that the definition of “unborn quick child” set forth in the bill is to be applied to each of the offenses amended by the bill – the offenses of DUI manslaughter, vehicular homicide and killing of an unborn quick child by injury to the mother. The Committee on Public Safety & Crime Prevention made the bill a committee substitute.