

By Senator Cowin

20-227-04

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; conforming  
26          provisions to changes made by the act;  
27          providing an effective date.  
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29   Be It Enacted by the Legislature of the State of Florida:  
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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 or  
8 contributes to causing:

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

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

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

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

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

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

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

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

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

3 (1) Vehicular homicide is:

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

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

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

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

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

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

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

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

28 Section 3. Section 782.09, Florida Statutes, is  
29 amended to read:

30 782.09 Killing of unborn quick child by injury to  
31 mother.--

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

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

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

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

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

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

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

4           Section 4. Paragraph (g) of subsection (3) of section  
5 921.0022, Florida Statutes, is amended to read:

6           921.0022 Criminal Punishment Code; offense severity  
7 ranking chart.--

8           (3) OFFENSE SEVERITY RANKING CHART

10 Florida	Felony	
11 Statute	Degree	Description
		(g) LEVEL 7
15 316.027(1)(b)	2nd	Accident involving death, failure 16 to stop; leaving scene.
17 316.193(3)(c)2.	3rd	DUI resulting in serious bodily 18 injury.
19 327.35(3)(c)2.	3rd	Vessel BUI resulting in serious 20 bodily injury.
21 402.319(2)	2nd	Misrepresentation and negligence 22 or intentional act resulting in 23 great bodily harm, permanent 24 disfiguration, permanent 25 disability, or death.
26 409.920(2)	3rd	Medicaid provider fraud.
27 456.065(2)	3rd	Practicing a health care 28 profession without a license.

1	456.065(2)	2nd	Practicing a health care
2			profession without a license
3			which results in serious bodily
4			injury.
5	458.327(1)	3rd	Practicing medicine without a
6			license.
7	459.013(1)	3rd	Practicing osteopathic medicine
8			without a license.
9	460.411(1)	3rd	Practicing chiropractic medicine
10			without a license.
11	461.012(1)	3rd	Practicing podiatric medicine
12			without a license.
13	462.17	3rd	Practicing naturopathy without a
14			license.
15	463.015(1)	3rd	Practicing optometry without a
16			license.
17	464.016(1)	3rd	Practicing nursing without a
18			license.
19	465.015(2)	3rd	Practicing pharmacy without a
20			license.
21	466.026(1)	3rd	Practicing dentistry or dental
22			hygiene without a license.
23	467.201	3rd	Practicing midwifery without a
24			license.
25	468.366	3rd	Delivering respiratory care
26			services without a license.
27	483.828(1)	3rd	Practicing as clinical laboratory
28			personnel without a license.
29	483.901(9)	3rd	Practicing medical physics
30			without a license.
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1	484.013(1)(c)	3rd	Preparing or dispensing optical
2			devices without a prescription.
3	484.053	3rd	Dispensing hearing aids without a
4			license.
5	494.0018(2)	1st	Conviction of any violation of
6			ss. 494.001-494.0077 in which the
7			total money and property
8			unlawfully obtained exceeded
9			\$50,000 and there were five or
10			more victims.
11	560.123(8)(b)1.	3rd	Failure to report currency or
12			payment instruments exceeding
13			\$300 but less than \$20,000 by
14			money transmitter.
15	560.125(5)(a)	3rd	Money transmitter business by
16			unauthorized person, currency or
17			payment instruments exceeding
18			\$300 but less than \$20,000.
19	655.50(10)(b)1.	3rd	Failure to report financial
20			transactions exceeding \$300 but
21			less than \$20,000 by financial
22			institution.
23	782.051(3)	2nd	Attempted felony murder of a
24			person by a person other than the
25			perpetrator or the perpetrator of
26			an attempted felony.
27	782.07(1)	2nd	Killing of a human being by the
28			act, procurement, or culpable
29			negligence of another
30			(manslaughter).
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1	782.071	2nd	Killing of human being or <u>unborn</u>
2			<u>quick child</u> <del>viable fetus</del> by the
3			operation of a motor vehicle in a
4			reckless manner (vehicular
5			homicide).
6	782.072	2nd	Killing of a human being by the
7			operation of a vessel in a
8			reckless manner (vessel
9			homicide).
10	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
11			causing great bodily harm or
12			disfigurement.
13	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
14			weapon.
15	784.045(1)(b)	2nd	Aggravated battery; perpetrator
16			aware victim pregnant.
17	784.048(4)	3rd	Aggravated stalking; violation of
18			injunction or court order.
19	784.07(2)(d)	1st	Aggravated battery on law
20			enforcement officer.
21	784.074(1)(a)	1st	Aggravated battery on sexually
22			violent predators facility staff.
23	784.08(2)(a)	1st	Aggravated battery on a person 65
24			years of age or older.
25	784.081(1)	1st	Aggravated battery on specified
26			official or employee.
27	784.082(1)	1st	Aggravated battery by detained
28			person on visitor or other
29			detainee.
30	784.083(1)	1st	Aggravated battery on code
31			inspector.



1	790.07(4)	1st	Specified weapons violation
2			subsequent to previous conviction
3			of s. 790.07(1) or (2).
4	790.16(1)	1st	Discharge of a machine gun under
5			specified circumstances.
6	790.165(2)	2nd	Manufacture, sell, possess, or
7			deliver hoax bomb.
8	790.165(3)	2nd	Possessing, displaying, or
9			threatening to use any hoax bomb
10			while committing or attempting to
11			commit a felony.
12	790.166(3)	2nd	Possessing, selling, using, or
13			attempting to use a hoax weapon
14			of mass destruction.
15	790.166(4)	2nd	Possessing, displaying, or
16			threatening to use a hoax weapon
17			of mass destruction while
18			committing or attempting to
19			commit a felony.
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; cargo stolen
9			valued at \$50,000 or more;
10			property stolen while causing
11			other property damage; 1st degree
12			grand theft.
13	812.014(2)(b)3.	2nd	Property stolen, emergency
14			medical equipment; 2nd degree
15			grand theft.
16	812.0145(2)(a)	1st	Theft from person 65 years of age
17			or older; \$50,000 or more.
18	812.019(2)	1st	Stolen property; initiates,
19			organizes, plans, etc., the theft
20			of property and traffics in
21			stolen property.
22	812.131(2)(a)	2nd	Robbery by sudden snatching.
23	812.133(2)(b)	1st	Carjacking; no firearm, deadly
24			weapon, or other weapon.
25	817.234(8)(a)	2nd	Solicitation of motor vehicle
26			accident victims with intent to
27			defraud.
28	817.234(9)	2nd	Organizing, planning, or
29			participating in an intentional
30			motor vehicle collision.
31			

1	817.234(11)(c)	1st	Insurance fraud; property value
2			\$100,000 or more.
3	817.2341(2)(b)&		
4	(3)(b)	1st	Making false entries of material
5			fact or false statements
6			regarding property values
7			relating to the solvency of an
8			insuring entity which are a
9			significant cause of the
10			insolvency of that entity.
11	825.102(3)(b)	2nd	Neglecting an elderly person or
12			disabled adult causing great
13			bodily harm, disability, or
14			disfigurement.
15	825.103(2)(b)	2nd	Exploiting an elderly person or
16			disabled adult and property is
17			valued at \$20,000 or more, but
18			less than \$100,000.
19	827.03(3)(b)	2nd	Neglect of a child causing great
20			bodily harm, disability, or
21			disfigurement.
22	827.04(3)	3rd	Impregnation of a child under 16
23			years of age by person 21 years
24			of age or older.
25	837.05(2)	3rd	Giving false information about
26			alleged capital felony to a law
27			enforcement officer.
28	838.015	2nd	Bribery.
29	838.016	2nd	Unlawful compensation or reward
30			for official behavior.
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1	838.021(3)(a)	2nd	Unlawful harm to a public
2			servant.
3	838.22	2nd	Bid tampering.
4	872.06	2nd	Abuse of a dead human body.
5	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
6			cocaine (or other drug prohibited
7			under s. 893.03(1)(a), (1)(b),
8			(1)(d), (2)(a), (2)(b), or
9			(2)(c)4.) within 1,000 feet of a
10			child care facility, school, or
11			state, county, or municipal park
12			or publicly owned recreational
13			facility or community center.
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 25 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)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1
26			kilogram or more, less than 5
27			kilograms.
28	893.135		
29	(1)(k)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 Section 5. This act shall take effect October 1, 2004,  
10 and shall apply to offenses committed on or after that date.

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12  
13 SENATE SUMMARY

14 Includes the death of an unborn quick child under DUI  
15 manslaughter. Makes the killing of an unborn quick child  
16 rather than the killing of a viable fetus a "vehicular  
17 homicide." Deletes a provision describing the viability  
18 of a fetus. Provides that killing an unborn quick child  
19 by injury to the mother which would be murder in any  
20 degree if it resulted in the death of the mother is  
21 murder in the same degree. Provides that the unlawful  
22 killing of an unborn quick child by injury to the mother  
23 which would be manslaughter if it resulted in the death  
24 of the mother is manslaughter. Provides penalties.  
25 Provides that the death of the mother does not bar  
26 prosecution under specified circumstances. Declares that  
27 the section does not authorize prosecution of a person in  
28 connection with a termination of pregnancy. Conforming  
29 provisions of the Criminal Punishment Code offense  
30 severity ranking chart to changes made by the act.  
31