

By the Committee on Criminal Justice; and Senator Baker

591-1852-05

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. 782.09, F.S.;
6 providing that killing an unborn quick child by
7 injury to the mother which would be murder in
8 any degree if it resulted in the death of the
9 mother is murder in the same degree; providing
10 penalties; providing that the unlawful killing
11 of an unborn quick child by injury to the
12 mother which would be manslaughter if it
13 resulted in the death of the mother is
14 manslaughter; providing penalties; providing
15 that the death of the mother does not bar
16 prosecution under specified circumstances;
17 providing that the section does not authorize
18 prosecution of a person in connection with a
19 termination of pregnancy; amending ss. 435.03
20 and 435.04, F.S., to conform provisions to
21 changes made by the amendments to s. 782.09,
22 F.S.; reenacting s. 921.0022(3)(h) and (i),
23 F.S., relating to the Criminal Punishment Code
24 offense severity ranking chart, to incorporate
25 the amendment to s. 316.193, F.S., in
26 references thereto; reenacting s. 316.656(3),
27 F.S., relating to mandatory adjudication, to
28 incorporate the amendment to s. 316.193, F.S.,
29 in a reference thereto; reenacting s.
30 947.146(3)(j), F.S., relating to the Control
31 Release Authority, to incorporate the amendment

1 to s. 316.193, F.S., in a reference thereto;
2 reenacting s. 960.03(3)(b), F.S., relating to
3 the definition of "crime" under the Florida
4 Crimes Compensation Act, to incorporate the
5 amendment to s. 316.193, F.S., in a reference
6 thereto; providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

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

12 316.193 Driving under the influence; penalties.--

13 (3) Any person:

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

15 (b) Who operates a vehicle; and

16 (c) Who, by reason of such operation, causes or

17 contributes to causing:

18 1. Damage to the property or person of another commits
19 a misdemeanor of the first degree, punishable as provided in
20 s. 775.082 or s. 775.083.

21 2. Serious bodily injury to another, as defined in s.
22 316.1933, commits a felony of the third degree, punishable as
23 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

3 Section 2. Section 782.09, Florida Statutes, is
4 amended to read:

5 782.09 Killing of unborn quick child by injury to
6 mother.--

7 (1) The unlawful ~~willful~~ killing of an unborn quick
8 child, by any injury to the mother of such child which would
9 be murder if it resulted in the death of such mother, shall be
10 deemed murder in the same degree as that which would have been
11 committed against the mother. Any person, other than the
12 mother, who unlawfully kills an unborn quick child by any
13 injury to the mother:

14 (a) Which would be murder in the first degree
15 constituting a capital felony if it resulted in the mother's
16 death commits murder in the first degree constituting a
17 capital felony, punishable as provided in s. 775.082.

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

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

26 (2) The unlawful killing of an unborn quick child by
27 any injury to the mother of such child which would be
28 manslaughter if it resulted in the death of such mother shall
29 be deemed manslaughter. A person who unlawfully kills an
30 unborn quick child by any injury to the mother which would be
31 manslaughter if it resulted in the mother's death commits

1 manslaughter, a felony of the second degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084.

3 (3) The death of the mother resulting from the same
4 act or criminal episode that caused the death of the unborn
5 quick child does not bar prosecution under this section.

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

9 Section 3. Paragraph (g) of subsection (2) of section
10 435.03, Florida Statutes, is amended to read:

11 435.03 Level 1 screening standards.--

12 (2) Any person for whom employment screening is
13 required by statute must not have been found guilty of,
14 regardless of adjudication, or entered a plea of nolo
15 contendere or guilty to, any offense prohibited under any of
16 the following provisions of the Florida Statutes or under any
17 similar statute of another jurisdiction:

18 (g) Section 782.09, relating to killing of an unborn
19 quick child by injury to the mother.

20 Section 4. Paragraph (g) of subsection (2) of section
21 435.04, Florida Statutes, is amended to read:

22 435.04 Level 2 screening standards.--

23 (2) The security background investigations under this
24 section must ensure that no persons subject to the provisions
25 of this section have been found guilty of, regardless of
26 adjudication, or entered a plea of nolo contendere or guilty
27 to, any offense prohibited under any of the following
28 provisions of the Florida Statutes or under any similar
29 statute of another jurisdiction:

30 (g) Section 782.09, relating to killing of an unborn
31 quick child by injury to the mother.

1 Section 5. For the purpose of incorporating the
2 amendment to s. 316.193, Florida Statutes, in a reference
3 thereto, paragraphs (h) and (i) of subsection (3) of section
4 921.0022, Florida Statutes, are reenacted to read:

5 921.0022 Criminal Punishment Code; offense severity
6 ranking chart.--

7 (3) OFFENSE SEVERITY RANKING CHART

8	9 Florida	Felony	
10	Statute	Degree	Description
11			
12			
13			(h) LEVEL 8
14	316.193		
15	(3)(c)3.a.	2nd	DUI manslaughter.
16	316.1935(4)(b)	1st	Aggravated fleeing or attempted
17			eluding with serious bodily
18			injury or death.
19	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
20	499.0051(7)	1st	Forgery of prescription or legend
21			drug labels.
22	499.0052	1st	Trafficking in contraband legend
23			drugs.
24	560.123(8)(b)2.	2nd	Failure to report currency or
25			payment instruments totaling or
26			exceeding \$20,000, but less than
27			\$100,000 by money transmitter.
28			
29			
30			
31			

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)	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.
30			
31			

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	812.014(2)(a)2.	1st	Property stolen; cargo valued at
20			\$50,000 or more, grand theft in
21			1st degree.
22	812.13(2)(b)	1st	Robbery with a weapon.
23	812.135(2)(c)	1st	Home-invasion robbery, no
24			firearm, deadly weapon, or other
25			weapon.
26	817.568(6)	2nd	Fraudulent use of personal
27			identification information of an
28			individual under the age of 18.
29	825.102(2)	2nd	Aggravated abuse of an elderly
30			person or disabled adult.
31			

1	825.1025(2)	2nd	Lewd or lascivious battery upon
2			an elderly person or disabled
3			adult.
4	825.103(2)(a)	1st	Exploiting an elderly person or
5			disabled adult and property is
6			valued at \$100,000 or more.
7	837.02(2)	2nd	Perjury in official proceedings
8			relating to prosecution of a
9			capital felony.
10	837.021(2)	2nd	Making contradictory statements
11			in official proceedings relating
12			to prosecution of a capital
13			felony.
14	860.121(2)(c)	1st	Shooting at or throwing any
15			object in path of railroad
16			vehicle resulting in great bodily
17			harm.
18	860.16	1st	Aircraft piracy.
19	893.13(1)(b)	1st	Sell or deliver in excess of 10
20			grams of any substance specified
21			in s. 893.03(1)(a) or (b).
22	893.13(2)(b)	1st	Purchase in excess of 10 grams of
23			any substance specified in s.
24			893.03(1)(a) or (b).
25	893.13(6)(c)	1st	Possess in excess of 10 grams of
26			any substance specified in s.
27			893.03(1)(a) or (b).
28	893.135(1)(a)2.	1st	Trafficking in cannabis, more
29			than 2,000 lbs., less than 10,000
30			lbs.
31			

1	893.135		
2	(1)(b)1.b.	1st	Trafficking in cocaine, more than
3			200 grams, less than 400 grams.
4	893.135		
5	(1)(c)1.b.	1st	Trafficking in illegal drugs,
6			more than 14 grams, less than 28
7			grams.
8	893.135		
9	(1)(d)1.b.	1st	Trafficking in phencyclidine,
10			more than 200 grams, less than
11			400 grams.
12	893.135		
13	(1)(e)1.b.	1st	Trafficking in methaqualone, more
14			than 5 kilograms, less than 25
15			kilograms.
16	893.135		
17	(1)(f)1.b.	1st	Trafficking in amphetamine, more
18			than 28 grams, less than 200
19			grams.
20	893.135		
21	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
22			grams or more, less than 28
23			grams.
24	893.135		
25	(1)(h)1.b.	1st	Trafficking in
26			gamma-hydroxybutyric acid (GHB),
27			5 kilograms or more, less than 10
28			kilograms.
29			
30			
31			

1	893.135		
2	(1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5
3			kilograms or more, less than 10
4			kilograms.
5	893.135		
6	(1)(k)2.b.	1st	Trafficking in Phenethylamines,
7			200 grams or more, less than 400
8			grams.
9	895.03(1)	1st	Use or invest proceeds derived
10			from pattern of racketeering
11			activity.
12	895.03(2)	1st	Acquire or maintain through
13			racketeering activity any
14			interest in or control of any
15			enterprise or real property.
16	895.03(3)	1st	Conduct or participate in any
17			enterprise through pattern of
18			racketeering activity.
19	896.101(5)(b)	2nd	Money laundering, financial
20			transactions totaling or
21			exceeding \$20,000, but less than
22			\$100,000.
23	896.104(4)(a)2.	2nd	Structuring transactions to evade
24			reporting or registration
25			requirements, financial
26			transactions totaling or
27			exceeding \$20,000 but less than
28			\$100,000.
29			(i) LEVEL 9
30			
31			

1	316.193		
2	(3)(c)3.b.	1st	DUI manslaughter; failing to
3			render aid or give information.
4	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to
5			render aid or give information.
6	499.0053	1st	Sale or purchase of contraband
7			legend drugs resulting in great
8			bodily harm.
9	560.123(8)(b)3.	1st	Failure to report currency or
10			payment instruments totaling or
11			exceeding \$100,000 by money
12			transmitter.
13	560.125(5)(c)	1st	Money transmitter business by
14			unauthorized person, currency, or
15			payment instruments totaling or
16			exceeding \$100,000.
17	655.50(10)(b)3.	1st	Failure to report financial
18			transactions totaling or
19			exceeding \$100,000 by financial
20			institution.
21	775.0844	1st	Aggravated white collar crime.
22	782.04(1)	1st	Attempt, conspire, or solicit to
23			commit premeditated murder.
24	782.04(3)	1st,PBL	Accomplice to murder in
25			connection with arson, sexual
26			battery, robbery, burglary, and
27			other specified felonies.
28	782.051(1)	1st	Attempted felony murder while
29			perpetrating or attempting to
30			perpetrate a felony enumerated in
31			s. 782.04(3).

1	782.07(2)	1st	Aggravated manslaughter of an
2			elderly person or disabled adult.
3	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
4			reward or as a shield or hostage.
5	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
6			or facilitate commission of any
7			felony.
8	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
9			interfere with performance of any
10			governmental or political
11			function.
12	787.02(3)(a)	1st	False imprisonment; child under
13			age 13; perpetrator also commits
14			aggravated child abuse, sexual
15			battery, or lewd or lascivious
16			battery, molestation, conduct, or
17			exhibition.
18	790.161	1st	Attempted capital destructive
19			device offense.
20	790.166(2)	1st,PBL	Possessing, selling, using, or
21			attempting to use a weapon of
22			mass destruction.
23	794.011(2)	1st	Attempted sexual battery; victim
24			less than 12 years of age.
25	794.011(2)	Life	Sexual battery; offender younger
26			than 18 years and commits sexual
27			battery on a person less than 12
28			years.
29	794.011(4)	1st	Sexual battery; victim 12 years
30			or older, certain circumstances.
31			

1	794.011(8)(b)	1st	Sexual battery; engage in sexual
2			conduct with minor 12 to 18 years
3			by person in familial or
4			custodial authority.
5	800.04(5)(b)	1st	Lewd or lascivious molestation;
6			victim less than 12 years;
7			offender 18 years or older.
8	812.13(2)(a)	1st,PBL	Robbery with firearm or other
9			deadly weapon.
10	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
11			deadly weapon.
12	812.135(2)(b)	1st	Home-invasion robbery with
13			weapon.
14	817.568(7)	2nd,PBL	Fraudulent use of personal
15			identification information of an
16			individual under the age of 18 by
17			his or her parent, legal
18			guardian, or person exercising
19			custodial authority.
20	827.03(2)	1st	Aggravated child abuse.
21	847.0145(1)	1st	Selling, or otherwise
22			transferring custody or control,
23			of a minor.
24	847.0145(2)	1st	Purchasing, or otherwise
25			obtaining custody or control, of
26			a minor.
27			
28			
29			
30			
31			

1	859.01	1st	Poisoning or introducing
2			bacteria, radioactive materials,
3			viruses, or chemical compounds
4			into food, drink, medicine, or
5			water with intent to kill or
6			injure another person.
7	893.135	1st	Attempted capital trafficking
8			offense.
9	893.135(1)(a)3.	1st	Trafficking in cannabis, more
10			than 10,000 lbs.
11	893.135		
12	(1)(b)1.c.	1st	Trafficking in cocaine, more than
13			400 grams, less than 150
14			kilograms.
15	893.135		
16	(1)(c)1.c.	1st	Trafficking in illegal drugs,
17			more than 28 grams, less than 30
18			kilograms.
19	893.135		
20	(1)(d)1.c.	1st	Trafficking in phencyclidine,
21			more than 400 grams.
22	893.135		
23	(1)(e)1.c.	1st	Trafficking in methaqualone, more
24			than 25 kilograms.
25	893.135		
26	(1)(f)1.c.	1st	Trafficking in amphetamine, more
27			than 200 grams.
28	893.135		
29	(1)(h)1.c.	1st	Trafficking in
30			gamma-hydroxybutyric acid (GHB),
31			10 kilograms or more.

1 893.135
2 (1)(j)1.c. 1st Trafficking in 1,4-Butanediol, 10
3 kilograms or more.
4 893.135
5 (1)(k)2.c. 1st Trafficking in Phenethylamines,
6 400 grams or more.
7 896.101(5)(c) 1st Money laundering, financial
8 instruments totaling or exceeding
9 \$100,000.
10 896.104(4)(a)3. 1st Structuring transactions to evade
11 reporting or registration
12 requirements, financial
13 transactions totaling or
14 exceeding \$100,000.

15 Section 6. For the purpose of incorporating the
16 amendment to section 316.193, Florida Statutes, in a reference
17 thereto, subsection (1) of section 316.656, Florida Statutes,
18 is reenacted to read:

19 316.656 Mandatory adjudication; prohibition against
20 accepting plea to lesser included offense.--

21 (1) Notwithstanding the provisions of s. 948.01, no
22 court may suspend, defer, or withhold adjudication of guilt or
23 imposition of sentence for any violation of s. 316.193, for
24 manslaughter resulting from the operation of a motor vehicle,
25 or for vehicular homicide.

26 Section 7. For the purpose of incorporating the
27 amendment to section 316.193, Florida Statutes, in a reference
28 thereto, paragraph (j) of subsection (3) of section 947.146,
29 Florida Statutes, is reenacted to read:

30 947.146 Control Release Authority.--

31

1 (3) Within 120 days prior to the date the state
2 correctional system is projected pursuant to s. 216.136 to
3 exceed 99 percent of total capacity, the authority shall
4 determine eligibility for and establish a control release date
5 for an appropriate number of parole ineligible inmates
6 committed to the department and incarcerated within the state
7 who have been determined by the authority to be eligible for
8 discretionary early release pursuant to this section. In
9 establishing control release dates, it is the intent of the
10 Legislature that the authority prioritize consideration of
11 eligible inmates closest to their tentative release date. The
12 authority shall rely upon commitment data on the offender
13 information system maintained by the department to initially
14 identify inmates who are to be reviewed for control release
15 consideration. The authority may use a method of objective
16 risk assessment in determining if an eligible inmate should be
17 released. Such assessment shall be a part of the department's
18 management information system. However, the authority shall
19 have sole responsibility for determining control release
20 eligibility, establishing a control release date, and
21 effectuating the release of a sufficient number of inmates to
22 maintain the inmate population between 99 percent and 100
23 percent of total capacity. Inmates who are ineligible for
24 control release are inmates who are parole eligible or inmates
25 who:

26 (j) Are convicted, or have been previously convicted,
27 of DUI manslaughter under s. 316.193(3)(c)3., and are
28 sentenced, or have been sentenced at any time, as a habitual
29 offender for such offense, or have been sentenced at any time
30 in another jurisdiction as a habitual offender for such
31 offense;

1
2 In making control release eligibility determinations under
3 this subsection, the authority may rely on any document
4 leading to or generated during the course of the criminal
5 proceedings, including, but not limited to, any presentence or
6 postsentence investigation or any information contained in
7 arrest reports relating to circumstances of the offense.

8 Section 8. For the purpose of incorporating the
9 amendment to section 316.193, Florida Statutes, in a reference
10 thereto, paragraph (b) of subsection (3) of section 960.03,
11 Florida Statutes, is reenacted to read:

12 960.03 Definitions; ss. 960.01-960.28.--As used in ss.
13 960.01-960.28, unless the context otherwise requires, the
14 term:

15 (3) "Crime" means:

16 (b) A violation of s. 316.193, s. 316.027(1), s.
17 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results
18 in physical injury or death; however, no other act involving
19 the operation of a motor vehicle, boat, or aircraft which
20 results in injury or death shall constitute a crime for the
21 purpose of this chapter unless the injury or death was
22 intentionally inflicted through the use of such vehicle, boat,
23 or aircraft or unless such vehicle, boat, or aircraft is an
24 implement of a crime to which this act applies.

25 Section 9. This act shall take effect October 1, 2005,
26 and shall apply to offenses committed on or after that date.
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1526

- The Committee Substitute omits the definition of "unborn quick child" that was contained in the bill. This has the effect of retaining current law.
- The Committee Substitute reinstates current law with regard to the killing of a "viable fetus" in the Vehicular Manslaughter statute, and deletes the bill's corresponding amendment of the Criminal Punishment Code.