

By the Committees on Justice Appropriations; Criminal Justice;
and Senator Baker

604-2239-05

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

1 thereto; reenacting s. 947.146(3)(j), F.S.,
2 relating to the Control Release Authority, to
3 incorporate the amendment to s. 316.193, F.S.,
4 in a reference thereto; reenacting s.
5 960.03(3)(b), F.S., relating to the definition
6 of "crime" under the Florida Crimes
7 Compensation Act, to incorporate the amendment
8 to s. 316.193, F.S., in a reference thereto;
9 providing an effective date.

10

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

12

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

15 316.193 Driving under the influence; penalties.--

16 (3) Any person:

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

18 (b) Who operates a vehicle; and

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

20 contributes to causing:

21 1. Damage to the property or person of another commits
22 a misdemeanor of the first degree, punishable as provided in
23 s. 775.082 or s. 775.083.

24 2. Serious bodily injury to another, as defined in s.
25 316.1933, commits a felony of the third degree, punishable as
26 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

7
8 For purposes of this subsection, the definition of the term
9 "unborn quick child" shall be determined in accordance with
10 the definition of viable fetus as set forth in s. 782.071.

11 Section 2. Section 782.09, Florida Statutes, is
12 amended to read:

13 782.09 Killing of unborn quick child by injury to
14 mother.--

15 (1) The unlawful ~~willful~~ killing of an unborn quick
16 child, by any injury to the mother of such child which would
17 be murder if it resulted in the death of such mother, shall be
18 deemed murder in the same degree as that which would have been
19 committed against the mother. Any person, other than the
20 mother, who unlawfully kills an unborn quick child by any
21 injury to the mother:

22 (a) Which would be murder in the first degree
23 constituting a capital felony if it resulted in the mother's
24 death commits murder in the first degree constituting a
25 capital felony, punishable as provided in s. 775.082.

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

30 (c) Which would be murder in the third degree if it
31 resulted in the mother's death commits murder in the third

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

3 (2) The unlawful killing of an unborn quick child by
4 any injury to the mother of such child which would be
5 manslaughter if it resulted in the death of such mother shall
6 be deemed manslaughter. A person who unlawfully kills an
7 unborn quick child by any injury to the mother which would be
8 manslaughter if it resulted in the mother's death commits
9 manslaughter, a felony of the second degree, punishable as
10 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

17 (5) For purposes of this section, the definition of
18 the term "unborn quick child" shall be determined in
19 accordance with the definition of viable fetus as set forth in
20 s. 782.071.

21 Section 3. Paragraph (g) of subsection (2) of section
22 435.03, Florida Statutes, is amended to read:

23 435.03 Level 1 screening standards.--

24 (2) Any person for whom employment screening is
25 required by statute must not have been found guilty of,
26 regardless of adjudication, or entered a plea of nolo
27 contendere or guilty to, any offense prohibited under any of
28 the following provisions of the Florida Statutes or under any
29 similar 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 4. Paragraph (g) of subsection (2) of section
2 435.04, Florida Statutes, is amended to read:

3 435.04 Level 2 screening standards.--

4 (2) The security background investigations under this
5 section must ensure that no persons subject to the provisions
6 of this section have been found guilty of, regardless of
7 adjudication, or entered a plea of nolo contendere or guilty
8 to, any offense prohibited under any of the following
9 provisions of the Florida Statutes or under any similar
10 statute of another jurisdiction:

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

13 Section 5. For the purpose of incorporating the
14 amendment to s. 316.193, Florida Statutes, in a reference
15 thereto, paragraphs (h) and (i) of subsection (3) of section
16 921.0022, Florida Statutes, are reenacted to read:

17 921.0022 Criminal Punishment Code; offense severity
18 ranking chart.--

19 (3) OFFENSE SEVERITY RANKING CHART

21 Florida	Felony	
22 Statute	Degree	Description
		(h) LEVEL 8
26 316.193		
27 (3)(c)3.a.	2nd	DUI manslaughter.
28 316.1935(4)(b)	1st	Aggravated fleeing or attempted
		eluding with serious bodily
		injury or death.
31 327.35(3)(c)3.	2nd	Vessel BUI manslaughter.

1	499.0051(7)	1st	Forgery of prescription or legend
2			drug labels.
3	499.0052	1st	Trafficking in contraband legend
4			drugs.
5	560.123(8)(b)2.	2nd	Failure to report currency or
6			payment instruments totaling or
7			exceeding \$20,000, but less than
8			\$100,000 by money transmitter.
9	560.125(5)(b)	2nd	Money transmitter business by
10			unauthorized person, currency or
11			payment instruments totaling or
12			exceeding \$20,000, but less than
13			\$100,000.
14	655.50(10)(b)2.	2nd	Failure to report financial
15			transactions totaling or
16			exceeding \$20,000, but less than
17			\$100,000 by financial
18			institutions.
19	777.03(2)(a)	1st	Accessory after the fact, capital
20			felony.
21	782.04(4)	2nd	Killing of human without design
22			when engaged in act or attempt of
23			any felony other than arson,
24			sexual battery, robbery,
25			burglary, kidnapping, aircraft
26			piracy, or unlawfully discharging
27			bomb.
28	782.051(2)	1st	Attempted felony murder while
29			perpetrating or attempting to
30			perpetrate a felony not
31			enumerated in s. 782.04(3).

1	782.071(1)(b)	1st	Committing vehicular homicide and
2			failing to render aid or give
3			information.
4	782.072(2)	1st	Committing vessel homicide and
5			failing to render aid or give
6			information.
7	790.161(3)	1st	Discharging a destructive device
8			which results in bodily harm or
9			property damage.
10	794.011(5)	2nd	Sexual battery, victim 12 years
11			or over, offender does not use
12			physical force likely to cause
13			serious injury.
14	800.04(4)	2nd	Lewd or lascivious battery.
15	806.01(1)	1st	Maliciously damage dwelling or
16			structure by fire or explosive,
17			believing person in structure.
18	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
19	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
20			or dangerous weapon.
21	810.02(2)(c)	1st	Burglary of a dwelling or
22			structure causing structural
23			damage or \$1,000 or more property
24			damage.
25	812.014(2)(a)2.	1st	Property stolen; cargo valued at
26			\$50,000 or more, grand theft in
27			1st degree.
28	812.13(2)(b)	1st	Robbery with a weapon.
29	812.135(2)(c)	1st	Home-invasion robbery, no
30			firearm, deadly weapon, or other
31			weapon.

1	817.568(6)	2nd	Fraudulent use of personal
2			identification information of an
3			individual under the age of 18.
4	825.102(2)	2nd	Aggravated abuse of an elderly
5			person or disabled adult.
6	825.1025(2)	2nd	Lewd or lascivious battery upon
7			an elderly person or disabled
8			adult.
9	825.103(2)(a)	1st	Exploiting an elderly person or
10			disabled adult and property is
11			valued at \$100,000 or more.
12	837.02(2)	2nd	Perjury in official proceedings
13			relating to prosecution of a
14			capital felony.
15	837.021(2)	2nd	Making contradictory statements
16			in official proceedings relating
17			to prosecution of a capital
18			felony.
19	860.121(2)(c)	1st	Shooting at or throwing any
20			object in path of railroad
21			vehicle resulting in great bodily
22			harm.
23	860.16	1st	Aircraft piracy.
24	893.13(1)(b)	1st	Sell or deliver in excess of 10
25			grams of any substance specified
26			in s. 893.03(1)(a) or (b).
27	893.13(2)(b)	1st	Purchase in excess of 10 grams of
28			any substance specified in s.
29			893.03(1)(a) or (b).
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1	893.13(6)(c)	1st	Possess in excess of 10 grams of
2			any substance specified in s.
3			893.03(1)(a) or (b).
4	893.135(1)(a)2.	1st	Trafficking in cannabis, more
5			than 2,000 lbs., less than 10,000
6			lbs.
7	893.135		
8	(1)(b)1.b.	1st	Trafficking in cocaine, more than
9			200 grams, less than 400 grams.
10	893.135		
11	(1)(c)1.b.	1st	Trafficking in illegal drugs,
12			more than 14 grams, less than 28
13			grams.
14	893.135		
15	(1)(d)1.b.	1st	Trafficking in phencyclidine,
16			more than 200 grams, less than
17			400 grams.
18	893.135		
19	(1)(e)1.b.	1st	Trafficking in methaqualone, more
20			than 5 kilograms, less than 25
21			kilograms.
22	893.135		
23	(1)(f)1.b.	1st	Trafficking in amphetamine, more
24			than 28 grams, less than 200
25			grams.
26	893.135		
27	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
28			grams or more, less than 28
29			grams.
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1	893.135		
2	(1)(h)1.b.	1st	Trafficking in
3			gamma-hydroxybutyric acid (GHB),
4			5 kilograms or more, less than 10
5			kilograms.
6	893.135		
7	(1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5
8			kilograms or more, less than 10
9			kilograms.
10	893.135		
11	(1)(k)2.b.	1st	Trafficking in Phenethylamines,
12			200 grams or more, less than 400
13			grams.
14	895.03(1)	1st	Use or invest proceeds derived
15			from pattern of racketeering
16			activity.
17	895.03(2)	1st	Acquire or maintain through
18			racketeering activity any
19			interest in or control of any
20			enterprise or real property.
21	895.03(3)	1st	Conduct or participate in any
22			enterprise through pattern of
23			racketeering activity.
24	896.101(5)(b)	2nd	Money laundering, financial
25			transactions totaling or
26			exceeding \$20,000, but less than
27			\$100,000.
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1	896.104(4)(a)2.	2nd	Structuring transactions to evade
2			reporting or registration
3			requirements, financial
4			transactions totaling or
5			exceeding \$20,000 but less than
6			\$100,000.
7			(i) LEVEL 9
8	316.193		
9	(3)(c)3.b.	1st	DUI manslaughter; failing to
10			render aid or give information.
11	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to
12			render aid or give information.
13	499.0053	1st	Sale or purchase of contraband
14			legend drugs resulting in great
15			bodily harm.
16	560.123(8)(b)3.	1st	Failure to report currency or
17			payment instruments totaling or
18			exceeding \$100,000 by money
19			transmitter.
20	560.125(5)(c)	1st	Money transmitter business by
21			unauthorized person, currency, or
22			payment instruments totaling or
23			exceeding \$100,000.
24	655.50(10)(b)3.	1st	Failure to report financial
25			transactions totaling or
26			exceeding \$100,000 by financial
27			institution.
28	775.0844	1st	Aggravated white collar crime.
29	782.04(1)	1st	Attempt, conspire, or solicit to
30			commit premeditated murder.
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1	782.04(3)	1st,PBL	Accomplice to murder in
2			connection with arson, sexual
3			battery, robbery, burglary, and
4			other specified felonies.
5	782.051(1)	1st	Attempted felony murder while
6			perpetrating or attempting to
7			perpetrate a felony enumerated in
8			s. 782.04(3).
9	782.07(2)	1st	Aggravated manslaughter of an
10			elderly person or disabled adult.
11	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
12			reward or as a shield or hostage.
13	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
14			or facilitate commission of any
15			felony.
16	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
17			interfere with performance of any
18			governmental or political
19			function.
20	787.02(3)(a)	1st	False imprisonment; child under
21			age 13; perpetrator also commits
22			aggravated child abuse, sexual
23			battery, or lewd or lascivious
24			battery, molestation, conduct, or
25			exhibition.
26	790.161	1st	Attempted capital destructive
27			device offense.
28	790.166(2)	1st,PBL	Possessing, selling, using, or
29			attempting to use a weapon of
30			mass destruction.
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1	794.011(2)	1st	Attempted sexual battery; victim
2			less than 12 years of age.
3	794.011(2)	Life	Sexual battery; offender younger
4			than 18 years and commits sexual
5			battery on a person less than 12
6			years.
7	794.011(4)	1st	Sexual battery; victim 12 years
8			or older, certain circumstances.
9	794.011(8)(b)	1st	Sexual battery; engage in sexual
10			conduct with minor 12 to 18 years
11			by person in familial or
12			custodial authority.
13	800.04(5)(b)	1st	Lewd or lascivious molestation;
14			victim less than 12 years;
15			offender 18 years or older.
16	812.13(2)(a)	1st,PBL	Robbery with firearm or other
17			deadly weapon.
18	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
19			deadly weapon.
20	812.135(2)(b)	1st	Home-invasion robbery with
21			weapon.
22	817.568(7)	2nd,PBL	Fraudulent use of personal
23			identification information of an
24			individual under the age of 18 by
25			his or her parent, legal
26			guardian, or person exercising
27			custodial authority.
28	827.03(2)	1st	Aggravated child abuse.
29	847.0145(1)	1st	Selling, or otherwise
30			transferring custody or control,
31			of a minor.

1	847.0145(2)	1st	Purchasing, or otherwise
2			obtaining custody or control, of
3			a minor.
4	859.01	1st	Poisoning or introducing
5			bacteria, radioactive materials,
6			viruses, or chemical compounds
7			into food, drink, medicine, or
8			water with intent to kill or
9			injure another person.
10	893.135	1st	Attempted capital trafficking
11			offense.
12	893.135(1)(a)3.	1st	Trafficking in cannabis, more
13			than 10,000 lbs.
14	893.135		
15	(1)(b)1.c.	1st	Trafficking in cocaine, more than
16			400 grams, less than 150
17			kilograms.
18	893.135		
19	(1)(c)1.c.	1st	Trafficking in illegal drugs,
20			more than 28 grams, less than 30
21			kilograms.
22	893.135		
23	(1)(d)1.c.	1st	Trafficking in phencyclidine,
24			more than 400 grams.
25	893.135		
26	(1)(e)1.c.	1st	Trafficking in methaqualone, more
27			than 25 kilograms.
28	893.135		
29	(1)(f)1.c.	1st	Trafficking in amphetamine, more
30			than 200 grams.
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1 893.135
2 (1)(h)1.c. 1st Trafficking in
3 gamma-hydroxybutyric acid (GHB),
4 10 kilograms or more.
5 893.135
6 (1)(j)1.c. 1st Trafficking in 1,4-Butanediol, 10
7 kilograms or more.
8 893.135
9 (1)(k)2.c. 1st Trafficking in Phenethylamines,
10 400 grams or more.
11 896.101(5)(c) 1st Money laundering, financial
12 instruments totaling or exceeding
13 \$100,000.
14 896.104(4)(a)3. 1st Structuring transactions to evade
15 reporting or registration
16 requirements, financial
17 transactions totaling or
18 exceeding \$100,000.

19 Section 6. For the purpose of incorporating the
20 amendment to section 316.193, Florida Statutes, in a reference
21 thereto, subsection (1) of section 316.656, Florida Statutes,
22 is reenacted to read:

23 316.656 Mandatory adjudication; prohibition against
24 accepting plea to lesser included offense.--

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

30 Section 7. For the purpose of incorporating the
31 amendment to section 316.193, Florida Statutes, in a reference

1 thereto, paragraph (j) of subsection (3) of section 947.146,
2 Florida Statutes, is reenacted to read:

3 947.146 Control Release Authority.--

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

29 (j) Are convicted, or have been previously convicted,
30 of DUI manslaughter under s. 316.193(3)(c)3., and are
31 sentenced, or have been sentenced at any time, as a habitual

1 offender for such offense, or have been sentenced at any time
2 in another jurisdiction as a habitual offender for such
3 offense;

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

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

15 960.03 Definitions; ss. 960.01-960.28.--As used in ss.
16 960.01-960.28, unless the context otherwise requires, the
17 term:

18 (3) "Crime" means:

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS for SB 1526

The committee substitute for committee substitute adopts the definition of the term "viable fetus", as set forth in s. 782.071, F.S., for purposes of the offenses proscribed in the bill.