

Bill No. HB 233, 1st Eng.

Barcode 305800

CHAMBER ACTION

Senate

House

1		.	
	1/AD/3R	.	C
2	4/28/2005 02:23 PM	.	05/05/2005 11:23:16
3		.	
4		.	
5	<hr/>		
6			
7			
8			
9			
10	<hr/>		

11 Senator Baker moved the following amendment:

12  
13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

15  
16 and insert:

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

19 316.193 Driving under the influence; penalties.--

20 (3) Any person:

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

22 (b) Who operates a vehicle; and

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

24 contributes to causing:

25 1. Damage to the property or person of another commits  
26 a misdemeanor of the first degree, punishable as provided in  
27 s. 775.082 or s. 775.083.

28 2. Serious bodily injury to another, as defined in s.  
29 316.1933, commits a felony of the third degree, punishable as  
30 provided in s. 775.082, s. 775.083, or s. 775.084.

31 3. The death of any human being or unborn quick child

Bill No. HB 233, 1st Eng.

Barcode 305800

1 commits DUI manslaughter, and commits:

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

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

10

11 For purposes of this subsection, the definition of the term  
12 "unborn quick child" shall be determined in accordance with  
13 the definition of viable fetus as set forth in s. 782.071.

14 Section 2. Section 782.09, Florida Statutes, is  
15 amended to read:

16 782.09 Killing of unborn quick child by injury to  
17 mother.--

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

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

29 (b) Which would be murder in the second degree if it  
30 resulted in the mother's death commits murder in the second  
31 degree, a felony of the first degree, punishable as provided

Bill No. HB 233, 1st Eng.

Barcode 305800

1 in s. 775.082, s. 775.083, or s. 775.084.

2 (c) Which would be murder in the third degree if it  
3 resulted in the mother's death commits murder in the third  
4 degree manslaughter, a felony of the second degree, punishable  
5 as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

24 Section 3. Paragraph (g) of subsection (2) of section  
25 435.03, Florida Statutes, is amended to read:

26 435.03 Level 1 screening standards.--

27 (2) Any person for whom employment screening is  
28 required by statute must not have been found guilty of,  
29 regardless of adjudication, or entered a plea of nolo  
30 contendere or guilty to, any offense prohibited under any of  
31 the following provisions of the Florida Statutes or under any

Bill No. HB 233, 1st Eng.

Barcode 305800

1 similar statute of another jurisdiction:

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

4 Section 4. Paragraph (g) of subsection (2) of section  
5 435.04, Florida Statutes, is amended to read:

6 435.04 Level 2 screening standards.--

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

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

16 Section 5. For the purpose of incorporating the  
17 amendment to s. 316.193, Florida Statutes, in a reference  
18 thereto, paragraphs (h) and (i) of subsection (3) of section  
19 921.0022, Florida Statutes, are reenacted to read:

20 921.0022 Criminal Punishment Code; offense severity  
21 ranking chart.--

22 (3) OFFENSE SEVERITY RANKING CHART

24	Florida	Felony	
25	Statute	Degree	Description

26  
27  
28 (h) LEVEL 8

29 316.193

30 (3)(c)3.a. 2nd DUI manslaughter.

31

Bill No. HB 233, 1st Eng.

Barcode 305800

1	316.1935(4)(b)	1st	Aggravated fleeing or attempted
2			eluding with serious bodily
3			injury or death.
4	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
5	499.0051(7)	1st	Forgery of prescription or legend
6			drug labels.
7	499.0052	1st	Trafficking in contraband legend
8			drugs.
9	560.123(8)(b)2.	2nd	Failure to report currency or
10			payment instruments totaling or
11			exceeding \$20,000, but less than
12			\$100,000 by money transmitter.
13	560.125(5)(b)	2nd	Money transmitter business by
14			unauthorized person, currency or
15			payment instruments totaling or
16			exceeding \$20,000, but less than
17			\$100,000.
18	655.50(10)(b)2.	2nd	Failure to report financial
19			transactions totaling or
20			exceeding \$20,000, but less than
21			\$100,000 by financial
22			institutions.
23	777.03(2)(a)	1st	Accessory after the fact, capital
24			felony.
25	782.04(4)	2nd	Killing of human without design
26			when engaged in act or attempt of
27			any felony other than arson,
28			sexual battery, robbery,
29			burglary, kidnapping, aircraft
30			piracy, or unlawfully discharging
31			bomb.

Bill No. HB 233, 1st Eng.

Barcode 305800

1	782.051(2)	1st	Attempted felony murder while
2			perpetrating or attempting to
3			perpetrate a felony not
4			enumerated in s. 782.04(3).
5	782.071(1)(b)	1st	Committing vehicular homicide and
6			failing to render aid or give
7			information.
8	782.072(2)	1st	Committing vessel homicide and
9			failing to render aid or give
10			information.
11	790.161(3)	1st	Discharging a destructive device
12			which results in bodily harm or
13			property damage.
14	794.011(5)	2nd	Sexual battery, victim 12 years
15			or over, offender does not use
16			physical force likely to cause
17			serious injury.
18	800.04(4)	2nd	Lewd or lascivious battery.
19	806.01(1)	1st	Maliciously damage dwelling or
20			structure by fire or explosive,
21			believing person in structure.
22	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
23	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
24			or dangerous weapon.
25	810.02(2)(c)	1st	Burglary of a dwelling or
26			structure causing structural
27			damage or \$1,000 or more property
28			damage.
29	812.014(2)(a)2.	1st	Property stolen; cargo valued at
30			\$50,000 or more, grand theft in
31			1st degree.

Bill No. HB 233, 1st Eng.

Barcode 305800

1	812.13(2)(b)	1st	Robbery with a weapon.
2	812.135(2)(c)	1st	Home-invasion robbery, no
3			firearm, deadly weapon, or other
4			weapon.
5	817.568(6)	2nd	Fraudulent use of personal
6			identification information of an
7			individual under the age of 18.
8	825.102(2)	2nd	Aggravated abuse of an elderly
9			person or disabled adult.
10	825.1025(2)	2nd	Lewd or lascivious battery upon
11			an elderly person or disabled
12			adult.
13	825.103(2)(a)	1st	Exploiting an elderly person or
14			disabled adult and property is
15			valued at \$100,000 or more.
16	837.02(2)	2nd	Perjury in official proceedings
17			relating to prosecution of a
18			capital felony.
19	837.021(2)	2nd	Making contradictory statements
20			in official proceedings relating
21			to prosecution of a capital
22			felony.
23	860.121(2)(c)	1st	Shooting at or throwing any
24			object in path of railroad
25			vehicle resulting in great bodily
26			harm.
27	860.16	1st	Aircraft piracy.
28	893.13(1)(b)	1st	Sell or deliver in excess of 10
29			grams of any substance specified
30			in s. 893.03(1)(a) or (b).
31			

Bill No. HB 233, 1st Eng.

Barcode 305800

1	893.13(2)(b)	1st	Purchase in excess of 10 grams of
2			any substance specified in s.
3			893.03(1)(a) or (b).
4	893.13(6)(c)	1st	Possess in excess of 10 grams of
5			any substance specified in s.
6			893.03(1)(a) or (b).
7	893.135(1)(a)2.	1st	Trafficking in cannabis, more
8			than 2,000 lbs., less than 10,000
9			lbs.
10	893.135		
11	(1)(b)1.b.	1st	Trafficking in cocaine, more than
12			200 grams, less than 400 grams.
13	893.135		
14	(1)(c)1.b.	1st	Trafficking in illegal drugs,
15			more than 14 grams, less than 28
16			grams.
17	893.135		
18	(1)(d)1.b.	1st	Trafficking in phencyclidine,
19			more than 200 grams, less than
20			400 grams.
21	893.135		
22	(1)(e)1.b.	1st	Trafficking in methaqualone, more
23			than 5 kilograms, less than 25
24			kilograms.
25	893.135		
26	(1)(f)1.b.	1st	Trafficking in amphetamine, more
27			than 28 grams, less than 200
28			grams.
29	893.135		
30	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
31			grams or more, less than 28



Bill No. HB 233, 1st Eng.

Barcode 305800

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

Bill No. HB 233, 1st Eng.

Barcode 305800

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

Bill No. HB 233, 1st Eng.

Barcode 305800

1	782.051(1)	1st	Attempted felony murder while
2			perpetrating or attempting to
3			perpetrate a felony enumerated in
4			s. 782.04(3).
5	782.07(2)	1st	Aggravated manslaughter of an
6			elderly person or disabled adult.
7	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
8			reward or as a shield or hostage.
9	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
10			or facilitate commission of any
11			felony.
12	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
13			interfere with performance of any
14			governmental or political
15			function.
16	787.02(3)(a)	1st	False imprisonment; child under
17			age 13; perpetrator also commits
18			aggravated child abuse, sexual
19			battery, or lewd or lascivious
20			battery, molestation, conduct, or
21			exhibition.
22	790.161	1st	Attempted capital destructive
23			device offense.
24	790.166(2)	1st,PBL	Possessing, selling, using, or
25			attempting to use a weapon of
26			mass destruction.
27	794.011(2)	1st	Attempted sexual battery; victim
28			less than 12 years of age.
29	794.011(2)	Life	Sexual battery; offender younger
30			than 18 years and commits sexual
31			battery on a person less than 12

Bill No. HB 233, 1st Eng.

Barcode 305800

1			years.
2	794.011(4)	1st	Sexual battery; victim 12 years
3			or older, certain circumstances.
4	794.011(8)(b)	1st	Sexual battery; engage in sexual
5			conduct with minor 12 to 18 years
6			by person in familial or
7			custodial authority.
8	800.04(5)(b)	1st	Lewd or lascivious molestation;
9			victim less than 12 years;
10			offender 18 years or older.
11	812.13(2)(a)	1st,PBL	Robbery with firearm or other
12			deadly weapon.
13	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
14			deadly weapon.
15	812.135(2)(b)	1st	Home-invasion robbery with
16			weapon.
17	817.568(7)	2nd,PBL	Fraudulent use of personal
18			identification information of an
19			individual under the age of 18 by
20			his or her parent, legal
21			guardian, or person exercising
22			custodial authority.
23	827.03(2)	1st	Aggravated child abuse.
24	847.0145(1)	1st	Selling, or otherwise
25			transferring custody or control,
26			of a minor.
27	847.0145(2)	1st	Purchasing, or otherwise
28			obtaining custody or control, of
29			a minor.
30	859.01	1st	Poisoning or introducing
31			bacteria, radioactive materials,

Bill No. HB 233, 1st Eng.

Barcode 305800

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

Bill No. HB 233, 1st Eng.

Barcode 305800

1 kilograms or more.

2 893.135

3 (1)(k)2.c. 1st Trafficking in Phenethylamines,  
4 400 grams or more.

5 896.101(5)(c) 1st Money laundering, financial  
6 instruments totaling or exceeding  
7 \$100,000.

8 896.104(4)(a)3. 1st Structuring transactions to evade  
9 reporting or registration  
10 requirements, financial  
11 transactions totaling or  
12 exceeding \$100,000.

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

17 316.656 Mandatory adjudication; prohibition against  
18 accepting plea to lesser included offense.--

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

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

28 947.146 Control Release Authority.--

29 (3) Within 120 days prior to the date the state  
30 correctional system is projected pursuant to s. 216.136 to  
31 exceed 99 percent of total capacity, the authority shall

Bill No. HB 233, 1st Eng.

Barcode 305800

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

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

29  
30 In making control release eligibility determinations under  
31 this subsection, the authority may rely on any document

Bill No. HB 233, 1st Eng.

Barcode 305800

1 leading to or generated during the course of the criminal  
2 proceedings, including, but not limited to, any presentence or  
3 postsentence investigation or any information contained in  
4 arrest reports relating to circumstances of the offense.

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

9 960.03 Definitions; ss. 960.01-960.28.--As used in ss.  
10 960.01-960.28, unless the context otherwise requires, the  
11 term:

12 (3) "Crime" means:

13 (b) A violation of s. 316.193, s. 316.027(1), s.  
14 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results  
15 in physical injury or death; however, no other act involving  
16 the operation of a motor vehicle, boat, or aircraft which  
17 results in injury or death shall constitute a crime for the  
18 purpose of this chapter unless the injury or death was  
19 intentionally inflicted through the use of such vehicle, boat,  
20 or aircraft or unless such vehicle, boat, or aircraft is an  
21 implement of a crime to which this act applies.

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

24  
25

26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete everything before the enacting clause

29

30 and insert:

31 A bill to be entitled



Bill No. HB 233, 1st Eng.

Barcode 305800

1 An act relating to homicide of an unborn quick  
2 child; amending s. 316.193, F.S.; including the  
3 death of an unborn quick child under DUI  
4 manslaughter; adopting the definition of viable  
5 fetus for purposes of this offense; amending s.  
6 782.09, F.S.; providing that killing an unborn  
7 quick child by injury to the mother which would  
8 be murder in any degree if it resulted in the  
9 death of the mother is murder in the same  
10 degree; providing penalties; providing that the  
11 unlawful killing of an unborn quick child by  
12 injury to the mother which would be  
13 manslaughter if it resulted in the death of the  
14 mother is manslaughter; providing penalties;  
15 providing that the death of the mother does not  
16 bar 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; adopting the  
20 definition of viable fetus for purposes of this  
21 offense; amending ss. 435.03 and 435.04, F.S.,  
22 to conform provisions to changes made by the  
23 amendments to s. 782.09, F.S.; reenacting s.  
24 921.0022(3)(h) and (i), F.S., relating to the  
25 Criminal Punishment Code offense severity  
26 ranking chart, to incorporate the amendment to  
27 s. 316.193, F.S., in references thereto;  
28 reenacting s. 316.656(3), F.S., relating to  
29 mandatory adjudication, to incorporate the  
30 amendment to s. 316.193, F.S., in a reference  
31 thereto; reenacting s. 947.146(3)(j), F.S.,

Bill No. HB 233, 1st Eng.

Barcode 305800

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

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31