

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: The bill increases the severity of certain criminal offenses that result in the death of an unborn quick child.

Provide limited government: Under the provisions of the bill, a person could be charged with DUI manslaughter for the death of a unborn quick child.

B. EFFECT OF PROPOSED CHANGES:

Killing of Unborn Quick Child: Section 782.09, F.S. 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.”¹ 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”.

HB 233 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.² 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 bill 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.”

The bill 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 bill provides that prosecution of any person in connection with a termination of pregnancy pursuant to chapter 390 is not authorized by this section.

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.³ The degree of culpability

¹ § 782.07, F.S.

² 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.

³ § 782.071, F.S.

required to prove that a driver was reckless is less than culpable negligence, which is the standard for manslaughter, but more than a mere failure to use ordinary care.⁴ 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 the section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.⁵ 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.⁶

HB 233 amends the vehicular homicide statute to change the definition of vehicular homicide to include the killing of a “unborn quick child” (as defined by the bill, described above) rather than a “viable fetus.” It also removes the definition of “viable fetus” described above.

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

- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of the victim.
- 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.

HB 233 amends the DUI manslaughter statute to include the death of an unborn quick child as defined in the bill and described above.

C. SECTION DIRECTORY:

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

Section 2: Amending s. 782.071, F.S.; includes death of unborn quick child in 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 portion of s. 435.03, F.S. to make corresponding changes; reenacting portion of section for the purpose of incorporating by reference changes made by bill to s. 782.071, F.S.

Section 5. Amending portion of s. 435.04, F.S. to make corresponding changes; reenacting portion of section for the purpose of incorporating by reference amendment to s. 782.071, F.S.

⁴ 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)

⁵ § 782.071(2), F.S.

⁶ § 782.071(4), F.S.

Section 6: Amending s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code; reenacting subsections for the purpose of incorporating by reference amendments made by bill.

Section 7. Reenacting s. 316.656, F.S. for the purpose of incorporating by reference amendment to s. 316.193, F.S.

Section 8. Reenacting s. 947.146, F.S. for the purpose of incorporating by reference amendment to s. 316.193, F.S.

Section 9. Reenacting s. 960.03, F.S. for the purpose of incorporating by reference amendment to s. 782.071, F.S.

Section 10: Providing effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 22, 2004, the Criminal Justice Impact Conference determined that this bill would 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:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES