HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:   HB 233 CS   Homicide of an Unborn Quick Child
SPONSOR(S): Planas and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	5 Y, 3 N	Kramer	Kramer
2) Justice Appropriations Committee	8 Y, 3 N, w/CS	Sneed	DeBeaugrine
3) Justice Council	8 Y, 1 N, w/CS	Kramer	De La Paz
4)			
5)			

SUMMARY ANALYSIS

Currently, the willful killing of an unborn quick child by any injury to the mother that would be murder if it resulted in the death of the mother is considered manslaughter. This bill amends this section by punishing the unlawful killing of an unborn quick child by injury to the mother in the same manner as if the mother was killed. For example, if an offender kills an unborn quick child by committing an act that would constitute first degree murder if the mother were to die, the offender could be charged with first degree murder for the death of the unborn quick child.

This bill amends the DUI manslaughter statute to include the killing of an unborn quick child.

This bill does not appear to have a significant fiscal impact on state or local government or on the private sector. The bill takes effect October 1, 2005.

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 a person other than the mother, 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 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.

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.

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[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.

- 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.

C. SECTION DIRECTORY:

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

Section 2: Amending s. 782.09, 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 3: 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 4. 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.

Section 5: 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 6. Reenacting s. 316.656, F.S. for the purpose of incorporating by reference amendment to s. 316.193, F.S.

Section 7. Reenacting s. 947.146, F.S. for the purpose of incorporating by reference amendment to s. 316.193, F.S.

Section 8: 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

On March 21, 2005, the Justice Appropriations Committee adopted an amendment providing that section 782.09, F.S. applies only to persons other than the mother who unlawfully kills an unborn quick child.

The Justice Council adopted four amendments to the bill. Three of the amendments removed the definition of the term "unborn quick child" created in the bill and made conforming changes. The other amendment removed the vehicular homicide statute from the bill. This will have the effect of reverting that section to current law which includes a viable fetus in the definition of vehicular homicide.