

CHAMBER ACTION

1 The Justice Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to unlawful killing of an unborn quick  
7 child; amending s. 316.193, F.S.; including the death of  
8 an unborn quick child under DUI manslaughter; amending s.  
9 782.09, F.S.; providing that the unlawful killing of an  
10 unborn quick child by injury to the mother that would be  
11 murder in any degree if it resulted in the death of the  
12 mother is murder in the same degree; providing that the  
13 unlawful killing of an unborn quick child by injury to the  
14 mother that would be manslaughter if it resulted in the  
15 death of the mother is manslaughter; providing an  
16 exception for acts by the mother; providing penalties;  
17 providing that the death of the mother does not bar  
18 prosecution under specified circumstances; providing that  
19 the section does not authorize prosecution of a person in  
20 connection with a termination of pregnancy; amending ss.  
21 435.03 and 435.04, F.S., to conform language to changes  
22 made by this act to s. 782.09, F.S.; reenacting s.  
23 921.0022(3)(h) and (i), F.S., to incorporate the amendment

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24 to s. 316.193, F.S., in references thereto; reenacting s.  
 25 316.656(1) and (2)(b), F.S., relating to mandatory  
 26 adjudication, to incorporate the amendment to s. 316.193,  
 27 F.S., in references thereto; reenacting s. 947.146(3)(j),  
 28 F.S., relating to the Control Release Authority, to  
 29 incorporate the amendment to s. 316.193, F.S., in a  
 30 reference thereto; providing applicability; providing an  
 31 effective date.

32  
 33 Be It Enacted by the Legislature of the State of Florida:

34  
 35 Section 1. Subsection (3) of section 316.193, Florida  
 36 Statutes, is amended to read:

37 316.193 Driving under the influence; penalties.--

38 (3) Any person:

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

40 (b) Who operates a vehicle; and

41 (c) Who, by reason of such operation, causes or  
 42 contributes to causing:

43 1. Damage to the property or person of another commits a  
 44 misdemeanor of the first degree, punishable as provided in s.  
 45 775.082 or s. 775.083.

46 2. Serious bodily injury to another, as defined in s.  
 47 316.1933, commits a felony of the third degree, punishable as  
 48 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

59 Section 2. Section 782.09, Florida Statutes, is amended to  
60 read:

61 782.09 Unlawful killing of unborn quick child by injury to  
62 mother.--

63 (1) The unlawful ~~willful~~ killing of an unborn quick child,  
64 by any injury to the mother of such child which would be murder  
65 if it resulted in the death of such mother, shall be deemed  
66 murder in the same degree as that which would have been  
67 committed against the mother. Any person, other than the mother,  
68 who unlawfully kills an unborn quick child by any injury to the  
69 mother:

70 (a) Which would be murder in the first degree constituting  
71 a capital felony if it resulted in the mother's death commits  
72 murder in the first degree constituting a capital felony,  
73 punishable as provided in s. 775.082.

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

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

82           (2) The unlawful killing of an unborn quick child by any  
 83 injury to the mother of such child which would be manslaughter  
 84 if it resulted in the death of such mother shall be deemed  
 85 manslaughter. A person who unlawfully kills an unborn quick  
 86 child by any injury to the mother which would be manslaughter if  
 87 it resulted in the mother's death commits manslaughter, a felony  
 88 of the second degree, punishable as provided in s. 775.082, s.  
 89 775.083, or s. 775.084.

90           (3) The death of the mother resulting from the same act or  
 91 criminal episode that caused the death of the unborn quick child  
 92 shall not bar prosecution under this section.

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

96           Section 3. Paragraph (g) of subsection (2) of section  
 97 435.03, Florida Statutes, is amended, to read:

98           435.03 Level 1 screening standards.--

99           (2) Any person for whom employment screening is required  
 100 by statute must not have been found guilty of, regardless of  
 101 adjudication, or entered a plea of nolo contendere or guilty to,  
 102 any offense prohibited under any of the following provisions of  
 103 the Florida Statutes or under any similar statute of another  
 104 jurisdiction:

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

107 Section 4. Paragraph (g) of subsection (2) of section  
108 435.04, Florida Statutes, is amended, to read:

109 435.04 Level 2 screening standards.--

110 (2) The security background investigations under this  
111 section must ensure that no persons subject to the provisions of  
112 this section have been found guilty of, regardless of  
113 adjudication, or entered a plea of nolo contendere or guilty to,  
114 any offense prohibited under any of the following provisions of  
115 the Florida Statutes or under any similar statute of another  
116 jurisdiction:

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

119 Section 5. For the purpose of incorporating the amendment  
120 to section 316.193, Florida Statutes, in references thereto,  
121 paragraphs (h) and (i) of subsection (3) of section 921.0022,  
122 Florida Statutes, are reenacted to read:

123 921.0022 Criminal Punishment Code; offense severity  
124 ranking chart.--

125 (3) OFFENSE SEVERITY RANKING CHART

126

Florida	Felony	Description
Statute	Degree	

127

(h) LEVEL 8

128

316.193(3)(c)3.a.	2nd	DUI manslaughter.
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129	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
130	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
131	499.0051(7)	1st	Forgery of prescription or legend drug labels.
132	499.0052	1st	Trafficking in contraband legend drugs.
133	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
134	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
135	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

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136	777.03(2)(a)	1st	Accessory after the fact, capital felony.
137	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
138	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
139	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
140	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
141	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
142	794.011(5)	2nd	Sexual battery, victim 12 years

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			or over, offender does not use physical force likely to cause serious injury.
143	800.04(4)	2nd	Lewd or lascivious battery.
144	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
145	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
146	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
147	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
148	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
149	812.13(2)(b)	1st	Robbery with a weapon.
150	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.



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151	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
152	825.102(2)	2nd	Aggravated abuse of an elderly person or disabled adult.
153	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
154	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
155	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
156	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
157	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

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158	860.16	1st	Aircraft piracy.
159	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
160	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
161	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
162	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
163	893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
164	893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
165	893.135(1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than

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166	893.135(1)(e)1.b.	1st	400 grams. Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
167	893.135(1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
168	893.135(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
169	893.135(1)(h)1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
170	893.135(1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
171	893.135(1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
172	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.

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173	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
174	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
175	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
176	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
177			(i) LEVEL 9
178	316.193(3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
179	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
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181	499.0053	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
182	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
183	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
184	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
185	775.0844	1st	Aggravated white collar crime.
186	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
187	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
187	782.051(1)	1st	Attempted felony murder while

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			perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
188	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
189	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
190	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
191	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
192	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
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194	790.161	1st	Attempted capital destructive device offense.
195	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
196	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
197	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
198	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
199	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
200	800.04(5)(b)	1st	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
	812.13(2)(a)	1st,PBL	Robbery with firearm or other

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201	812.133(2)(a)	1st,PBL	deadly weapon. Carjacking; firearm or other deadly weapon.
202	812.135(2)(b)	1st	Home-invasion robbery with weapon.
203	817.568(7)	2nd,PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
204	827.03(2)	1st	Aggravated child abuse.
205	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
206	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
207	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent



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			to kill or injure another person.
208	893.135	1st	Attempted capital trafficking offense.
209	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
210	893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
211	893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
212	893.135(1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
213	893.135(1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
214	893.135(1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
215	893.135(1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
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- 217 893.135(1)(j)1.c. 1st Trafficking in 1,4-Butanediol,  
10 kilograms or more.
- 218 893.135(1)(k)2.c. 1st Trafficking in Phenethylamines,  
400 grams or more.
- 219 896.101(5)(c) 1st Money laundering, financial  
instruments totaling or  
exceeding \$100,000.
- 220 896.104(4)(a)3. 1st Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or  
exceeding \$100,000.

221 Section 6. For the purpose of incorporating the amendment  
222 to section 316.193, Florida Statutes, in references thereto,  
223 subsection (1) and paragraph (b) of subsection (2) of section  
224 316.656, Florida Statutes, are reenacted to read:

225 316.656 Mandatory adjudication; prohibition against  
226 accepting plea to lesser included offense.--

227 (1) Notwithstanding the provisions of s. 948.01, no court  
228 may suspend, defer, or withhold adjudication of guilt or  
229 imposition of sentence for any violation of s. 316.193, for  
230 manslaughter resulting from the operation of a motor vehicle, or  
231 for vehicular homicide.

232 (2)

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233 (b) No trial judge may accept a plea of guilty to a lesser  
 234 offense from a person charged with a violation of s. 316.193(3),  
 235 manslaughter resulting from the operation of a motor vehicle, or  
 236 vehicular homicide.

237 Section 7. For the purpose of incorporating the amendment  
 238 to section 316.193, Florida Statutes, in a reference thereto,  
 239 paragraph (j) of subsection (3) of section 947.146, Florida  
 240 Statutes, is reenacted to read:

241 947.146 Control Release Authority.--

242 (3) Within 120 days prior to the date the state  
 243 correctional system is projected pursuant to s. 216.136 to  
 244 exceed 99 percent of total capacity, the authority shall  
 245 determine eligibility for and establish a control release date  
 246 for an appropriate number of parole ineligible inmates committed  
 247 to the department and incarcerated within the state who have  
 248 been determined by the authority to be eligible for  
 249 discretionary early release pursuant to this section. In  
 250 establishing control release dates, it is the intent of the  
 251 Legislature that the authority prioritize consideration of  
 252 eligible inmates closest to their tentative release date. The  
 253 authority shall rely upon commitment data on the offender  
 254 information system maintained by the department to initially  
 255 identify inmates who are to be reviewed for control release  
 256 consideration. The authority may use a method of objective risk  
 257 assessment in determining if an eligible inmate should be  
 258 released. Such assessment shall be a part of the department's  
 259 management information system. However, the authority shall have  
 260 sole responsibility for determining control release eligibility,

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261 | establishing a control release date, and effectuating the  
 262 | release of a sufficient number of inmates to maintain the inmate  
 263 | population between 99 percent and 100 percent of total capacity.  
 264 | Inmates who are ineligible for control release are inmates who  
 265 | are parole eligible or inmates who:

266 |       (j) Are convicted, or have been previously convicted, of  
 267 | DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or  
 268 | have been sentenced at any time, as a habitual offender for such  
 269 | offense, or have been sentenced at any time in another  
 270 | jurisdiction as a habitual offender for such offense;

271 |  
 272 | In making control release eligibility determinations under this  
 273 | subsection, the authority may rely on any document leading to or  
 274 | generated during the course of the criminal proceedings,  
 275 | including, but not limited to, any presentence or postsentence  
 276 | investigation or any information contained in arrest reports  
 277 | relating to circumstances of the offense.

278 |       Section 8. This act shall take effect October 1, 2005, and  
 279 | shall apply to offenses committed on or after that date.