

1 A bill to be entitled

2 An act relating to unlawful killing of an unborn quick
3 child; amending s. 316.193, F.S.; including the death of
4 an unborn quick child under DUI manslaughter; amending s.
5 782.09, F.S.; providing that the unlawful killing of an
6 unborn quick child by injury to the mother that would be
7 murder in any degree if it resulted in the death of the
8 mother is murder in the same degree; providing that the
9 unlawful killing of an unborn quick child by injury to the
10 mother that would be manslaughter if it resulted in the
11 death of the mother is manslaughter; providing an
12 exception for acts by the mother; providing penalties;
13 providing that the death of the mother does not bar
14 prosecution under specified circumstances; providing that
15 the section does not authorize prosecution of a person in
16 connection with a termination of pregnancy; amending ss.
17 435.03 and 435.04, F.S., to conform language to changes
18 made by this act to s. 782.09, F.S.; reenacting s.
19 921.0022(3)(h) and (i), F.S., to incorporate the amendment
20 to s. 316.193, F.S., in references thereto; reenacting s.
21 316.656(1) and (2)(b), F.S., relating to mandatory
22 adjudication, to incorporate the amendment to s. 316.193,
23 F.S., in references thereto; reenacting s. 947.146(3)(j),
24 F.S., relating to the Control Release Authority, to
25 incorporate the amendment to s. 316.193, F.S., in a
26 reference thereto; providing applicability; providing an
27 effective date.

28

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

31 | Section 1. Subsection (3) of section 316.193, Florida
32 | Statutes, is amended to read:

33 | 316.193 Driving under the influence; penalties.--

34 | (3) Any person:

35 | (a) Who is in violation of subsection (1);

36 | (b) Who operates a vehicle; and

37 | (c) Who, by reason of such operation, causes or
38 | contributes to causing:

39 | 1. Damage to the property or person of another commits a
40 | misdemeanor of the first degree, punishable as provided in s.
41 | 775.082 or s. 775.083.

42 | 2. Serious bodily injury to another, as defined in s.
43 | 316.1933, commits a felony of the third degree, punishable as
44 | provided in s. 775.082, s. 775.083, or s. 775.084.

45 | 3. The death of any human being or unborn quick child
46 | commits DUI manslaughter, and commits:

47 | a. A felony of the second degree, punishable as provided
48 | in s. 775.082, s. 775.083, or s. 775.084.

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

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

53 | (II) The person failed to give information and render aid
54 | as required by s. 316.062.

55 | Section 2. Section 782.09, Florida Statutes, is amended to
56 | read:

57 782.09 Unlawful killing of unborn quick child by injury to
58 mother.--

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

66 (a) Which would be murder in the first degree constituting
67 a capital felony if it resulted in the mother's death commits
68 murder in the first degree constituting a capital felony,
69 punishable as provided in s. 775.082.

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

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

78 (2) The unlawful killing of an unborn quick child by any
79 injury to the mother of such child which would be manslaughter
80 if it resulted in the death of such mother shall be deemed
81 manslaughter. A person who unlawfully kills an unborn quick
82 child by any injury to the mother which would be manslaughter if
83 it resulted in the mother's death commits manslaughter, a felony

84 of the second degree, punishable as provided in s. 775.082, s.
 85 775.083, or s. 775.084.

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

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

92 Section 3. Paragraph (g) of subsection (2) of section
 93 435.03, Florida Statutes, is amended, to read:

94 435.03 Level 1 screening standards.--

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

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

103 Section 4. Paragraph (g) of subsection (2) of section
 104 435.04, Florida Statutes, is amended, to read:

105 435.04 Level 2 screening standards.--

106 (2) The security background investigations under this
 107 section must ensure that no persons subject to the provisions of
 108 this section have been found guilty of, regardless of
 109 adjudication, or entered a plea of nolo contendere or guilty to,
 110 any offense prohibited under any of the following provisions of

111 the Florida Statutes or under any similar statute of another
 112 jurisdiction:

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

115 Section 5. For the purpose of incorporating the amendment
 116 to section 316.193, Florida Statutes, in references thereto,
 117 paragraphs (h) and (i) of subsection (3) of section 921.0022,
 118 Florida Statutes, are reenacted to read:

119 921.0022 Criminal Punishment Code; offense severity
 120 ranking chart.--

121 (3) OFFENSE SEVERITY RANKING CHART

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Florida Statute	Felony Degree	Description
		(h) LEVEL 8
316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
499.0051 (7)	1st	Forgery of prescription or legend drug labels.
499.0052	1st	Trafficking in contraband

129	560.123 (8) (b) 2.	2nd	legend drugs. Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
130	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.
131	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
132	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
133	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

134	782.051 (2)	1st	discharging bomb. Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
135	782.071 (1) (b)	1st	Committing vehicular homicide and failing to render aid or give information.
136	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
137	790.161 (3)	1st	Discharging a destructive device which results in bodily harm or property damage.
138	794.011 (5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
139	800.04 (4)	2nd	Lewd or lascivious battery.
140	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
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142	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
143	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
144	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
145	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
146	812.13 (2) (b)	1st	Robbery with a weapon.
147	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
148	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
149	825.102 (2)	2nd	Aggravated abuse of an elderly person or disabled adult.
	825.1025 (2)	2nd	Lewd or lascivious battery upon

			an elderly person or disabled adult.
150	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
151	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
152	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
153	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
154	860.16	1st	Aircraft piracy.
155	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) .
156	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in

157	893.13 (6) (c)	1st	s. 893.03(1) (a) or (b). Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
158	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
159	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
160	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
161	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
162	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
163	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
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165	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
166	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
167	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
168	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
169	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
170	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
171	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

172	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
173	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.
174	316.193 (3) (c) 3.b.	1st	(i) LEVEL 9
175	327.35 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
176	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
177	499.0053	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
178	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
	560.125 (5) (c)	1st	Money transmitter business by

			unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
179	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
180	775.0844	1st	Aggravated white collar crime.
181	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
182	782.04 (3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
183	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3).
184	782.07 (2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
185	787.01 (1) (a) 1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or

186	787.01(1)(a)2.	1st,PBL	hostage. Kidnapping with intent to commit or facilitate commission of any felony.
187	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
188	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.
189	790.161	1st	Attempted capital destructive device offense.
190	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
191	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
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193	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
194	794.011 (4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
195	794.011 (8) (b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
196	800.04 (5) (b)	1st	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
197	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
198	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
199	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
	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.
200	827.03 (2)	1st	Aggravated child abuse.
201	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
202	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
203	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
204	893.135	1st	Attempted capital trafficking offense.
205	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
206	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150

			kilograms.
207	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
208	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
209	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
210	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
211	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
212	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
213	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
214	896.101 (5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
215	896.104 (4) (a) 3.	1st	Structuring transactions to

evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.

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217 Section 6. For the purpose of incorporating the amendment
 218 to section 316.193, Florida Statutes, in references thereto,
 219 subsection (1) and paragraph (b) of subsection (2) of section
 220 316.656, Florida Statutes, are reenacted to read:

221 316.656 Mandatory adjudication; prohibition against
 222 accepting plea to lesser included offense.--

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

228 (2)

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

233 Section 7. For the purpose of incorporating the amendment
 234 to section 316.193, Florida Statutes, in a reference thereto,
 235 paragraph (j) of subsection (3) of section 947.146, Florida
 236 Statutes, is reenacted to read:

237 947.146 Control Release Authority.--

238 (3) Within 120 days prior to the date the state
 239 correctional system is projected pursuant to s. 216.136 to

240 exceed 99 percent of total capacity, the authority shall
241 determine eligibility for and establish a control release date
242 for an appropriate number of parole ineligible inmates committed
243 to the department and incarcerated within the state who have
244 been determined by the authority to be eligible for
245 discretionary early release pursuant to this section. In
246 establishing control release dates, it is the intent of the
247 Legislature that the authority prioritize consideration of
248 eligible inmates closest to their tentative release date. The
249 authority shall rely upon commitment data on the offender
250 information system maintained by the department to initially
251 identify inmates who are to be reviewed for control release
252 consideration. The authority may use a method of objective risk
253 assessment in determining if an eligible inmate should be
254 released. Such assessment shall be a part of the department's
255 management information system. However, the authority shall have
256 sole responsibility for determining control release eligibility,
257 establishing a control release date, and effectuating the
258 release of a sufficient number of inmates to maintain the inmate
259 population between 99 percent and 100 percent of total capacity.
260 Inmates who are ineligible for control release are inmates who
261 are parole eligible or inmates who:

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

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

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