

## ENROLLED

HB 233, Engrossed 2

2005 Legislature

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

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29 | 316.193, F.S., in a reference thereto; reenacting s.  
 30 | 960.03(3)(b), F.S., relating to the definition of "crime"  
 31 | under the Florida Crimes Compensation Act, to incorporate  
 32 | the amendment to s. 316.193, F.S., in a reference thereto;  
 33 | providing an effective date.

34

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

36

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

39 | 316.193 Driving under the influence; penalties.--

40 | (3) Any person:

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

42 | (b) Who operates a vehicle; and

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

44 | contributes to causing:

45 | 1. Damage to the property or person of another commits a  
 46 | misdemeanor of the first degree, punishable as provided in s.  
 47 | 775.082 or s. 775.083.

48 | 2. Serious bodily injury to another, as defined in s.  
 49 | 316.1933, commits a felony of the third degree, punishable as  
 50 | provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

61  
62 For purposes of this subsection, the definition of the term  
63 "unborn quick child" shall be determined in accordance with the  
64 definition of viable fetus as set forth in s. 782.071.

65 Section 2. Section 782.09, Florida Statutes, is amended to  
66 read:

67 782.09 Killing of unborn quick child by injury to mother.-

68 -

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

76 (a) Which would be murder in the first degree constituting  
77 a capital felony if it resulted in the mother's death commits  
78 murder in the first degree constituting a capital felony,  
79 punishable as provided in s. 775.082.

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

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

88           (2) The unlawful killing of an unborn quick child by any  
 89 injury to the mother of such child which would be manslaughter  
 90 if it resulted in the death of such mother shall be deemed  
 91 manslaughter. A person who unlawfully kills an unborn quick  
 92 child by any injury to the mother which would be manslaughter if  
 93 it resulted in the mother's death commits manslaughter, a felony  
 94 of the second degree, punishable as provided in s. 775.082, s.  
 95 775.083, or s. 775.084.

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

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

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

105           Section 3. Paragraph (g) of subsection (2) of section  
 106 435.03, Florida Statutes, is amended to read:

107           435.03 Level 1 screening standards.--

108           (2) Any person for whom employment screening is required  
 109 by statute must not have been found guilty of, regardless of  
 110 adjudication, or entered a plea of nolo contendere or guilty to,  
 111 any offense prohibited under any of the following provisions of

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

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

116 |       Section 4. Paragraph (g) of subsection (2) of section  
 117 | 435.04, Florida Statutes, is amended to read:

118 |       435.04 Level 2 screening standards.--

119 |       (2) The security background investigations under this  
 120 | section must ensure that no persons subject to the provisions of  
 121 | this section have been found guilty of, regardless of  
 122 | adjudication, or entered a plea of nolo contendere or guilty to,  
 123 | any offense prohibited under any of the following provisions of  
 124 | the Florida Statutes or under any similar statute of another  
 125 | jurisdiction:

126 |       (g) Section 782.09, relating to killing of an unborn quick  
 127 | child by injury to the mother.

128 |       Section 5. For the purpose of incorporating the amendment  
 129 | to s. 316.193, Florida Statutes, in a reference thereto,  
 130 | paragraphs (h) and (i) of subsection (3) of section 921.0022,  
 131 | Florida Statutes, are reenacted to read:

132 |       921.0022 Criminal Punishment Code; offense severity  
 133 | ranking chart.--

134 |       (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	
Statute	Degree	Description

136 |

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 138  
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		(h) LEVEL 8
316.193	2nd	DUI manslaughter.
(3) (c) 3.a.		
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 legend drugs.
560.123 (8) (b) 2.	2nd	Failure to report currency or payment

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145	560.125 (5) (b)	2nd	instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
146	655.50 (10) (b) 2.	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
147	777.03 (2) (a)	1st	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
			Accessory after the fact, capital

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148	782.04 (4)	2nd	felony.
149	782.051 (2)	1st	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.
150	782.071 (1) (b)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04 (3).
151			Committing vehicular homicide and failing to render aid or give information.



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152	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
153	790.161 (3)	1st	Discharging a destructive device which results in bodily harm or property damage.
154	794.011 (5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
155	800.04 (4)	2nd	Lewd or lascivious battery.
156	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

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157	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
158	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
159	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
160	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
161	812.13 (2) (b)	1st	Robbery with a weapon.
162	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.

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163	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
164	825.102 (2)	2nd	Aggravated abuse of an elderly person or disabled adult.
165	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
166	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
167	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.

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168	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
169	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
170	860.16	1st	Aircraft piracy.
171	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).
172	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).

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173	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
174	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
175	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
176	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
177	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
177	893.135	1st	Trafficking in

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178	(1) (e) 1.b.	1st	methaqualone, more than 5 kilograms, less than 25 kilograms.
179	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
180	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
181	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
182	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.

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183	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
184	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
185	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
186	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
	896.101 (5) (b)	2nd	Money laundering,

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187	896.104 (4) (a) 2.	2nd	financial transactions totaling or exceeding \$20,000, but less than \$100,000.
188			Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
189	316.193 (3) (c) 3.b.	1st	(i) LEVEL 9  DUI manslaughter; failing to render aid or give information.
190	327.35 (3) (c) 3.b.	1st	BUI manslaughter;



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191	499.0053	1st	failing to render aid or give information.
192	560.123 (8) (b) 3.	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
193	560.125 (5) (c)	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
194	655.50 (10) (b) 3.	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
			Failure to report financial transactions

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195			totaling or exceeding \$100,000 by financial institution.
196	775.0844	1st	Aggravated white collar crime.
197	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
198	782.04 (3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
199	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3) .

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200	782.07 (2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
201	787.01 (1) (a) 1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
202	787.01 (1) (a) 2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
203	787.01 (1) (a) 4.	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
203	787.02 (3) (a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual

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204	790.161	1st	battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
205	790.166 (2)	1st, PBL	Attempted capital destructive device offense.
206	794.011 (2)	1st	Possessing, selling, using, or attempting to use a weapon of mass destruction.
207	794.011 (2)	Life	Attempted sexual battery; victim less than 12 years of age.
208	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

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209	794.011 (4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
210	794.011 (8) (b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
211	800.04 (5) (b)	1st	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
212	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
213	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.

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214	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
215	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.
216	827.03 (2)	1st	Aggravated child abuse.
217	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
218	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.

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	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.
219	893.135	1st	Attempted capital trafficking offense.
220	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
221	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
222	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less

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223	893.135 (1) (d) 1.c.	1st	than 30 kilograms.  Trafficking in phencyclidine, more than 400 grams.
224	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
225	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
226	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
227	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4- Butanediol, 10 kilograms or more.
228	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
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896.101(5)(c) 1st Money laundering,  
 financial  
 instruments totaling  
 or exceeding  
 \$100,000.

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

232

233 Section 6. For the purpose of incorporating the amendment  
 234 to section 316.193, Florida Statutes, in a reference thereto,  
 235 subsection (1) of section 316.656, Florida Statutes, is  
 236 reenacted to read:

237 316.656 Mandatory adjudication; prohibition against  
 238 accepting plea to lesser included offense.--

239 (1) Notwithstanding the provisions of s. 948.01, no court  
 240 may suspend, defer, or withhold adjudication of guilt or  
 241 imposition of sentence for any violation of s. 316.193, for  
 242 manslaughter resulting from the operation of a motor vehicle, or  
 243 for vehicular homicide.

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244 Section 7. For the purpose of incorporating the amendment  
245 to section 316.193, Florida Statutes, in a reference thereto,  
246 paragraph (j) of subsection (3) of section 947.146, Florida  
247 Statutes, is reenacted to read:

248 947.146 Control Release Authority.--

249 (3) Within 120 days prior to the date the state  
250 correctional system is projected pursuant to s. 216.136 to  
251 exceed 99 percent of total capacity, the authority shall  
252 determine eligibility for and establish a control release date  
253 for an appropriate number of parole ineligible inmates committed  
254 to the department and incarcerated within the state who have  
255 been determined by the authority to be eligible for  
256 discretionary early release pursuant to this section. In  
257 establishing control release dates, it is the intent of the  
258 Legislature that the authority prioritize consideration of  
259 eligible inmates closest to their tentative release date. The  
260 authority shall rely upon commitment data on the offender  
261 information system maintained by the department to initially  
262 identify inmates who are to be reviewed for control release  
263 consideration. The authority may use a method of objective risk  
264 assessment in determining if an eligible inmate should be  
265 released. Such assessment shall be a part of the department's  
266 management information system. However, the authority shall have  
267 sole responsibility for determining control release eligibility,  
268 establishing a control release date, and effectuating the  
269 release of a sufficient number of inmates to maintain the inmate  
270 population between 99 percent and 100 percent of total capacity.

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271 | Inmates who are ineligible for control release are inmates who  
 272 | are parole eligible or inmates who:

273 |       (j) Are convicted, or have been previously convicted, of  
 274 | DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or  
 275 | have been sentenced at any time, as a habitual offender for such  
 276 | offense, or have been sentenced at any time in another  
 277 | jurisdiction as a habitual offender for such offense;

278 |  
 279 | In making control release eligibility determinations under this  
 280 | subsection, the authority may rely on any document leading to or  
 281 | generated during the course of the criminal proceedings,  
 282 | including, but not limited to, any presentence or postsentence  
 283 | investigation or any information contained in arrest reports  
 284 | relating to circumstances of the offense.

285 |       Section 8. For the purpose of incorporating the amendment  
 286 | to section 316.193, Florida Statutes, in a reference thereto,  
 287 | paragraph (b) of subsection (3) of section 960.03, Florida  
 288 | Statutes, is reenacted to read:

289 |       960.03 Definitions; ss. 960.01-960.28.--As used in ss.  
 290 | 960.01-960.28, unless the context otherwise requires, the term:

291 |       (3) "Crime" means:  
 292 |       (b) A violation of s. 316.193, s. 316.027(1), s.  
 293 | 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results in  
 294 | physical injury or death; however, no other act involving the  
 295 | operation of a motor vehicle, boat, or aircraft which results in  
 296 | injury or death shall constitute a crime for the purpose of this  
 297 | chapter unless the injury or death was intentionally inflicted  
 298 | through the use of such vehicle, boat, or aircraft or unless

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299 | such vehicle, boat, or aircraft is an implement of a crime to  
300 | which this act applies.

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