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FLOOR DEBATE

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deals only with a living child. There must be a birth, if I understand Senator Foley correctly. So let me explain first what Senator Foley's bill will not do. And he knows it, but he's unwilling to say it, because he's in such a defensive posture he thinks anything he acknowledges will make him vulnerable on this bill to attack. I pointed out yesterday, or the other day, at some point in our debate, that assault cannot include as a lesser offense homicide or attempted murder. Maybe I didn't say homicide. I think we were talking about attempted murder. I said that an assault statute does not include, as a lesser included offense in assault, attempted murder. A lesser offense cannot include a greater offense, but a greater offense can include a lesser offense. I emphasized that if death occurred or an attempted murder, that would not be brought under the assault bill, but rather under his homicide bill, because if an attempt was made to commit murder, there may not be any injury to the person who was to be the victim at all, no injury whatsoever. The victim may not even realize that he or she was the target. It is the act of the perpetrator, the circumstances under which it is perpetrated, and the intent of the perpetrator. And these things are established through circumstantial evidence. What Senator Foley thinks that I'm trying to do, I believe, is trap him into admitting that an embryo does not have a body, and therefore could not be subject to serious bodily injury, which is my position. But in the hypothetical I gave him, the embryo was expelled from the woman's body, the embryo is not living. His bill does not cover that.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Let me ask him a question, now that I've said all that, which is more direct. Senator Foley, would you respond to a question?

SENATOR CUDABACK: Senator Foley, Senator Chambers would like to ask you a question.

SENATOR CHAMBERS: Senator Foley, if death results to a fetus or an embryo, that act would not be prosecuted under your fetal assault bill, would it?