

By Senator Campbell

33-592-98

1 A bill to be entitled
 2 An act relating to the offense of murder;
 3 amending s. 782.04, F.S.; redefining the
 4 offense of capital murder in the first degree
 5 to include the act of unlawfully killing a
 6 human being while perpetrating, or attempting
 7 to perpetrate, the murder of another human
 8 being; reenacting ss. 39.464(1)(d),
 9 435.03(2)(b), 435.04(2)(b), 775.0823(1) and
 10 (2), 921.0022(3)(i), 943.325(1), 947.146(3),
 11 F.S., relating to the termination of parental
 12 rights, screening standards, violent offenses
 13 against law enforcement officers and others,
 14 the Criminal Punishment Code, blood testing,
 15 and the Control Release Authority, to
 16 incorporate the amendment to 782.04, F.S., in
 17 references thereto; providing an effective
 18 date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Subsection (1) of section 782.04, Florida
 23 Statutes, is amended to read:

- 24 782.04 Murder.--
 25 (1)(a) The unlawful killing of a human being:
 26 1. When perpetrated from a premeditated design to
 27 effect the death of the person killed or any human being; ~~or~~
 28 2. When committed by a person engaged in the
 29 perpetration of, or in the attempt to perpetrate, any:
 30 a. Trafficking offense prohibited by s. 893.135(1),
 31 b. Arson,

1 c. Sexual battery,
2 d. Robbery,
3 e. Burglary,
4 f. Kidnapping,
5 g. Escape,
6 h. Aggravated child abuse,
7 i. Aggravated abuse of an elderly person or disabled
8 adult,
9 j. Aircraft piracy,
10 k. Unlawful throwing, placing, or discharging of a
11 destructive device or bomb,
12 l. Carjacking,
13 m. Home-invasion robbery,
14 n. Aggravated stalking; ~~or~~
15 3. Which resulted from the unlawful distribution of
16 any substance controlled under s. 893.03(1), cocaine as
17 described in s. 893.03(2)(a)4., or opium or any synthetic or
18 natural salt, compound, derivative, or preparation of opium by
19 a person 18 years of age or older, when such drug is proven to
20 be the proximate cause of the death of the user; or
21 4. When committed by a person engaged in perpetrating,
22 or attempting to perpetrate, any murder of another human
23 being,
24
25 is murder in the first degree and constitutes a capital
26 felony, punishable as provided in s. 775.082.
27 (b) In all cases under this section, the procedure set
28 forth in s. 921.141 shall be followed in order to determine
29 sentence of death or life imprisonment.
30 Section 2. For the purpose of incorporating the
31 amendment made by this act to section 782.04, Florida

1 Statutes, in references thereto, paragraph (d) of subsection
2 (1) of section 39.464, Florida Statutes, is reenacted to read:

3 39.464 Grounds for termination of parental rights.--

4 (1) The department, the guardian ad litem, a licensed
5 child-placing agency, or any person who has knowledge of the
6 facts alleged or who is informed of said facts and believes
7 that they are true, may petition for the termination of
8 parental rights under any of the following circumstances:

9 (d) When the parent of a child is incarcerated in a
10 state or federal correctional institution and:

11 1. The period of time for which the parent is expected
12 to be incarcerated will constitute a substantial portion of
13 the period of time before the child will attain the age of 18
14 years;

15 2. The incarcerated parent has been determined by the
16 court to be a violent career criminal as defined in s.
17 775.084, a habitual violent felony offender as defined in s.
18 775.084, or a sexual predator as defined in s. 775.21; has
19 been convicted of first degree or second degree murder in
20 violation of s. 782.04 or a sexual battery that constitutes a
21 capital, life, or first degree felony violation of s. 794.011;
22 or has been convicted of an offense in another jurisdiction
23 which is substantially similar to one of the offenses listed
24 in this paragraph. As used in this section, the term
25 "substantially similar offense" means any offense that is
26 substantially similar in elements and penalties to one of
27 those listed in this paragraph, and that is in violation of a
28 law of any other jurisdiction, whether that of another state,
29 the District of Columbia, the United States or any possession
30 or territory thereof, or any foreign jurisdiction; and

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1 3. The court determines by clear and convincing
2 evidence that continuing the parental relationship with the
3 incarcerated parent would be harmful to the child and, for
4 this reason, that termination of the parental rights of the
5 incarcerated parent is in the best interest of the child.

6 Section 3. For the purpose of incorporating the
7 amendment made by this act to section 782.04, Florida
8 Statutes, in references thereto, paragraph (b) of subsection
9 (2) of section 435.03, Florida Statutes, is reenacted to read:

10 435.03 Level 1 screening standards.--

11 (2) Any person for whom employment screening is
12 required by statute must not have been found guilty of,
13 regardless of adjudication, or entered a plea of nolo
14 contendere or guilty to, any offense prohibited under any of
15 the following provisions of the Florida Statutes or under any
16 similar statute of another jurisdiction:

17 (b) Section 782.04, relating to murder.

18 Section 4. For the purpose of incorporating the
19 amendment made by this act to section 782.04, Florida
20 Statutes, in references thereto, paragraph (b) of subsection
21 (2) of section 435.04, Florida Statutes, is reenacted to read:

22 435.04 Level 2 screening standards.--

23 (2) The security background investigations under this
24 section must ensure that no persons subject to the provisions
25 of this section have been found guilty of, regardless of
26 adjudication, or entered a plea of nolo contendere or guilty
27 to, any offense prohibited under any of the following
28 provisions of the Florida Statutes or under any similar
29 statute of another jurisdiction:

30 (b) Section 782.04, relating to murder.

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1 Section 5. For the purpose of incorporating the
2 amendment made by this act to section 782.04, Florida
3 Statutes, in references thereto, subsections (1) and (2) of
4 section 775.0823, Florida Statutes, as amended by section 11
5 of chapter 97-194, Laws of Florida, are reenacted to read:

6 775.0823 Violent offenses committed against law
7 enforcement officers, correctional officers, state attorneys,
8 assistant state attorneys, justices, or judges.--Any provision
9 of law to the contrary notwithstanding, the Legislature does
10 hereby provide for an increase and certainty of penalty for
11 any person convicted of a violent offense against any law
12 enforcement or correctional officer, as defined in s.
13 943.10(1), (2), (3), (6), (7), (8), or (9); against any state
14 attorney elected pursuant to s. 27.01 or assistant state
15 attorney appointed under s. 27.181; or against any justice or
16 judge of a court described in Art. V of the State
17 Constitution, which offense arises out of or in the scope of
18 the officer's duty as a law enforcement or correctional
19 officer, the state attorney's or assistant state attorney's
20 duty as a prosecutor or investigator, or the justice's or
21 judge's duty as a judicial officer, as follows:

22 (1) For murder in the first degree as described in s.
23 782.04(1), if the death sentence is not imposed, a sentence of
24 imprisonment for life without eligibility for release.

25 (2) For attempted murder in the first degree as
26 described in s. 782.04(1), a sentence pursuant to the Criminal
27 Punishment Code.

28
29 Notwithstanding the provisions of s. 948.01, with respect to
30 any person who is found to have violated this section,
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1 adjudication of guilt or imposition of sentence shall not be
2 suspended, deferred, or withheld.

3 Section 6. For the purpose of incorporating the
4 amendment made by this act to section 782.04, Florida
5 Statutes, in references thereto, paragraph (i) of subsection
6 (3) of section 921.0022, Florida Statutes, as created by
7 section 5 of chapter 97-194, Laws of Florida, is reenacted to
8 read:

9 921.0022 Criminal Punishment Code; offense severity
10 ranking chart.--

11 (3) OFFENSE SEVERITY RANKING CHART

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13 Florida	Felony	
14 Statute	Degree	Description
		(i) LEVEL 9
17 316.193		
18 (3)(c)3.b.	1st	DUI manslaughter; failing to 19 render aid or give information.
20 782.04(1)	1st	Attempt, conspire, or solicit to 21 commit premeditated murder.
22 782.04(3)	1st,PBL	Accomplice to murder in 23 connection with arson, sexual 24 battery, robbery, burglary, and 25 other specified felonies.
26 782.07(2)	1st	Aggravated manslaughter of an 27 elderly person or disabled adult.
28 782.07(3)	1st	Aggravated manslaughter of a 29 child.
30 787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or 31 reward or as a shield or hostage.

1	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
2			or facilitate commission of any
3			felony.
4	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
5			interfere with performance of any
6			governmental or political
7			function.
8	787.02(3)(a)	1st	False imprisonment; child under
9			age 13; perpetrator also commits
10			child abuse, sexual battery,
11			lewd, or lascivious act, etc.
12	790.161	1st	Attempted capital destructive
13			device offense.
14	794.011(2)	1st	Attempted sexual battery; victim
15			less than 12 years of age.
16	794.011(2)	Life	Sexual battery; offender younger
17			than 18 years and commits sexual
18			battery on a person less than 12
19			years.
20	794.011(4)	1st	Sexual battery; victim 12 years
21			or older, certain circumstances.
22	794.011(8)(b)	1st	Sexual battery; engage in sexual
23			conduct with minor 12 to 18 years
24			by person in familial or
25			custodial authority.
26	812.13(2)(a)	1st,PBL	Robbery with firearm or other
27			deadly weapon.
28	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
29			deadly weapon.
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1	847.0145(1)	1st	Selling, or otherwise
2			transferring custody or control,
3			of a minor.
4	847.0145(2)	1st	Purchasing, or otherwise
5			obtaining custody or control, of
6			a minor.
7	859.01	1st	Poisoning food, drink, medicine,
8			or water with intent to kill or
9			injure another person.
10	893.135	1st	Attempted capital trafficking
11			offense.
12	893.135(1)(a)3.	1st	Trafficking in cannabis, more
13			than 10,000 lbs.
14	893.135		
15	(1)(b)1.c.	1st	Trafficking in cocaine, more than
16			400 grams, less than 150
17			kilograms.
18	893.135		
19	(1)(c)1.c.	1st	Trafficking in illegal drugs,
20			more than 28 grams, less than 30
21			kilograms.
22	893.135		
23	(1)(d)1.c.	1st	Trafficking in phencyclidine,
24			more than 400 grams.
25	893.135		
26	(1)(e)1.c.	1st	Trafficking in methaqualone, more
27			than 25 kilograms.
28	893.135		
29	(1)(f)1.c.	1st	Trafficking in amphetamine, more
30			than 200 grams.
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1 Section 7. For the purpose of incorporating the
2 amendment made by this act to section 782.04, Florida
3 Statutes, in references thereto, subsection (1) of section
4 943.325, Florida Statutes, is reenacted to read:

5 943.325 Blood specimen testing for DNA analysis.--

6 (1)(a) Any person convicted, or who was previously
7 convicted and is still incarcerated, in this state for any
8 offense or attempted offense defined in chapter 794, chapter
9 800, s. 782.04, s. 784.045, s. 812.133, or s. 812.135, and who
10 is within the confines of the legal state boundaries, shall be
11 required to submit two specimens of blood to a Department of
12 Law Enforcement designated testing facility as directed by the
13 department.

14 (b) For the purpose of this section, the term "any
15 person" shall include both juveniles and adults committed to
16 or under the supervision of the Department of Corrections or
17 the Department of Juvenile Justice.

18 Section 8. For the purpose of incorporating the
19 amendment made by this act to section 782.04, Florida
20 Statutes, in references thereto, subsection (3) of section
21 947.146, Florida Statutes, as amended by section 31 of chapter
22 97-194, Laws of Florida, is reenacted to read:

23 947.146 Control Release Authority.--

24 (3) Within 120 days prior to the date the state
25 correctional system is projected pursuant to s. 216.136 to
26 exceed 99 percent of total capacity, the authority shall
27 determine eligibility for and establish a control release date
28 for an appropriate number of parole ineligible inmates
29 committed to the department and incarcerated within the state
30 who have been determined by the authority to be eligible for
31 discretionary early release pursuant to this section. In

1 establishing control release dates, it is the intent of the
2 Legislature that the authority prioritize consideration of
3 eligible inmates closest to their tentative release date. The
4 authority shall rely upon commitment data on the offender
5 information system maintained by the department to initially
6 identify inmates who are to be reviewed for control release
7 consideration. The authority may use a method of objective
8 risk assessment in determining if an eligible inmate should be
9 released. Such assessment shall be a part of the department's
10 management information system. However, the authority shall
11 have sole responsibility for determining control release
12 eligibility, establishing a control release date, and
13 effectuating the release of a sufficient number of inmates to
14 maintain the inmate population between 99 percent and 100
15 percent of total capacity. Inmates who are ineligible for
16 control release are inmates who are parole eligible or inmates
17 who:

18 (a) Are serving a sentence that includes a mandatory
19 minimum provision for a capital offense or drug trafficking
20 offense and have not served the number of days equal to the
21 mandatory minimum term less any jail-time credit awarded by
22 the court;

23 (b) Are serving the mandatory minimum portion of a
24 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

25 (c) Are convicted, or have been previously convicted,
26 of committing or attempting to commit sexual battery, incest,
27 or any of the following lewd or indecent assaults or acts:
28 masturbating in public; exposing the sexual organs in a
29 perverted manner; or nonconsensual handling or fondling of the
30 sexual organs of another person;

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1 (d) Are convicted, or have been previously convicted,
2 of committing or attempting to commit assault, aggravated
3 assault, battery, or aggravated battery, and a sex act was
4 attempted or completed during commission of such offense;

5 (e) Are convicted, or have been previously convicted,
6 of committing or attempting to commit kidnapping, burglary, or
7 murder, and the offense was committed with the intent to
8 commit sexual battery or a sex act was attempted or completed
9 during commission of the offense;

10 (f) Are convicted, or have been previously convicted,
11 of committing or attempting to commit false imprisonment upon
12 a child under the age of 13 and, in the course of committing
13 the offense, the inmate committed aggravated child abuse,
14 sexual battery against the child, or a lewd, lascivious, or
15 indecent assault or act upon or in the presence of the child;

16 (g) Are sentenced, have previously been sentenced, or
17 have been sentenced at any time under s. 775.084, or have been
18 sentenced at any time in another jurisdiction as a habitual
19 offender;

20 (h) Are convicted, or have been previously convicted,
21 of committing or attempting to commit assault, aggravated
22 assault, battery, aggravated battery, kidnapping,
23 manslaughter, or murder against an officer as defined in s.
24 943.10(1), (2), (3), (6), (7), (8), or (9); against a state
25 attorney or assistant state attorney; or against a justice or
26 judge of a court described in Art. V of the State
27 Constitution; or against an officer, judge, or state attorney
28 employed in a comparable position by any other jurisdiction;
29 or

30 (i) Are convicted, or have been previously convicted,
31 of committing or attempting to commit murder in the first,

1 second, or third degree under s. 782.04(1), (2), (3), or (4),
2 or have ever been convicted of any degree of murder or
3 attempted murder in another jurisdiction;

4 (j) Are convicted, or have been previously convicted,
5 of DUI manslaughter under s. 316.193(3)(c)3., and are
6 sentenced, or have been sentenced at any time, as a habitual
7 offender for such offense, or have been sentenced at any time
8 in another jurisdiction as a habitual offender for such
9 offense;

10 (k)1. Are serving a sentence for an offense committed
11 on or after January 1, 1994, for a violation of the Law
12 Enforcement Protection Act under s. 775.0823(2), (3), (4), or
13 (5), and the subtotal of the offender's sentence points is
14 multiplied pursuant to former s. 921.0014 or s. 921.0024;

15 2. Are serving a sentence for an offense committed on
16 or after October 1, 1995, for a violation of the Law
17 Enforcement Protection Act under s. 775.0823(2), (3), (4),
18 (5), (6), (7), or (8), and the subtotal of the offender's
19 sentence points is multiplied pursuant to former s. 921.0014
20 or s. 921.0024;

21 (l) Are serving a sentence for an offense committed on
22 or after January 1, 1994, for possession of a firearm,
23 semiautomatic firearm, or machine gun in which additional
24 points are added to the subtotal of the offender's sentence
25 points pursuant to former s. 921.0014 or s. 921.0024; or

26 (m) Are convicted, or have been previously convicted,
27 of committing or attempting to commit manslaughter,
28 kidnapping, robbery, carjacking, home-invasion robbery, or a
29 burglary under s. 810.02(2).

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1 In making control release eligibility determinations under
2 this subsection, the authority may rely on any document
3 leading to or generated during the course of the criminal
4 proceedings, including, but not limited to, any presentence or
5 postsentence investigation or any information contained in
6 arrest reports relating to circumstances of the offense.

7 Section 9. This act shall take effect October 1, 1998.

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SENATE SUMMARY

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Provides that the offense of first-degree capital murder
12 includes a murder that is committed by a person engaged
13 in perpetrating, or attempting to perpetrate, the murder
of another human being.

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