

By the Committee on Criminal Justice and Senator Campbell

307-942-98

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; redefining the offense of second-degree
 9 felony murder to include the act of unlawfully
 10 killing a human being while perpetrating or
 11 attempting to perpetrate the murder of another
 12 human being; adding murder to the list of
 13 felony offenses which do not constitute
 14 third-degree felony murder; reenacting ss.
 15 39.464(1)(d), 435.03(2)(b), 435.04(2)(b),
 16 775.0823(1) and (2), 921.0022(3)(i),
 17 943.325(1), 947.146(3), F.S., relating to the
 18 termination of parental rights, screening
 19 standards, violent offenses against law
 20 enforcement officers and others, the Criminal
 21 Punishment Code, blood testing, and the Control
 22 Release Authority, to incorporate the amendment
 23 to 782.04, F.S., in references thereto;
 24 providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Section 782.04, Florida Statutes, is
 29 amended to read:
 30 782.04 Murder.--
 31 (1)(a) The unlawful killing of a human being:

- 1 1. When perpetrated from a premeditated design to
2 effect the death of the person killed or any human being; ~~or~~
3 2. When committed by a person engaged in the
4 perpetration of, or in the attempt to perpetrate, any:
5 a. Trafficking offense prohibited by s. 893.135(1),
6 b. Arson,
7 c. Sexual battery,
8 d. Robbery,
9 e. Burglary,
10 f. Kidnapping,
11 g. Escape,
12 h. Aggravated child abuse,
13 i. Aggravated abuse of an elderly person or disabled
14 adult,
15 j. Aircraft piracy,
16 k. Unlawful throwing, placing, or discharging of a
17 destructive device or bomb,
18 l. Carjacking,
19 m. Home-invasion robbery,
20 n. Aggravated stalking, ~~or~~
21 o. Murder of another human being; or
22 3. Which resulted from the unlawful distribution of
23 any substance controlled under s. 893.03(1), cocaine as
24 described in s. 893.03(2)(a)4., or opium or any synthetic or
25 natural salt, compound, derivative, or preparation of opium by
26 a person 18 years of age or older, when such drug is proven to
27 be the proximate cause of the death of the user,
28
29 is murder in the first degree and constitutes a capital
30 felony, punishable as provided in s. 775.082.
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1 (b) In all cases under this section, the procedure set
2 forth in s. 921.141 shall be followed in order to determine
3 sentence of death or life imprisonment.

4 (2) The unlawful killing of a human being, when
5 perpetrated by any act imminently dangerous to another and
6 evincing a depraved mind regardless of human life, although
7 without any premeditated design to effect the death of any
8 particular individual, is murder in the second degree and
9 constitutes a felony of the first degree, punishable by
10 imprisonment for a term of years not exceeding life or as
11 provided in s. 775.082, s. 775.083, or s. 775.084.

12 (3) When a person is killed in the perpetration of, or
13 in the attempt to perpetrate, any:

14 (a) Trafficking offense prohibited by s. 893.135(1),

15 (b) Arson,

16 (c) Sexual battery,

17 (d) Robbery,

18 (e) Burglary,

19 (f) Kidnapping,

20 (g) Escape,

21 (h) Aggravated child abuse,

22 (i) Aggravated abuse of an elderly person or disabled
23 adult,

24 (j) Aircraft piracy,

25 (k) Unlawful throwing, placing, or discharging of a
26 destructive device or bomb,

27 (l) Carjacking,

28 (m) Home-invasion robbery, ~~or~~

29 (n) Aggravated stalking, or

30 (o) Murder of another human being,

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1 by a person other than the person engaged in the perpetration
2 of or in the attempt to perpetrate such felony, the person
3 perpetrating or attempting to perpetrate such felony is guilty
4 of murder in the second degree, which constitutes a felony of
5 the first degree, punishable by imprisonment for a term of
6 years not exceeding life or as provided in s. 775.082, s.
7 775.083, or s. 775.084.

8 (4) The unlawful killing of a human being, when
9 perpetrated without any design to effect death, by a person
10 engaged in the perpetration of, or in the attempt to
11 perpetrate, any felony other than any:

12 (a) Trafficking offense prohibited by s. 893.135(1),

13 (b) Arson,

14 (c) Sexual battery,

15 (d) Robbery,

16 (e) Burglary,

17 (f) Kidnapping,

18 (g) Escape,

19 (h) Aggravated child abuse,

20 (i) Aggravated abuse of an elderly person or disabled
21 adult,

22 (j) Aircraft piracy,

23 (k) Unlawful throwing, placing, or discharging of a
24 destructive device or bomb,

25 (l) Unlawful distribution of any substance controlled
26 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
27 or opium or any synthetic or natural salt, compound,
28 derivative, or preparation of opium by a person 18 years of
29 age or older, when such drug is proven to be the proximate
30 cause of the death of the user,

31 (m) Carjacking,

- 1 (n) Home-invasion robbery, ~~or~~
2 (o) Aggravated stalking, or
3 (p) Murder of another human being,
4

5 is murder in the third degree and constitutes a felony of the
6 second degree, punishable as provided in s. 775.082, s.
7 775.083, or s. 775.084.

8 Section 2. For the purpose of incorporating the
9 amendment made by this act to section 782.04, Florida
10 Statutes, in references thereto, paragraph (d) of subsection

11 (1) of section 39.464, Florida Statutes, is reenacted to read:

12 39.464 Grounds for termination of parental rights.--

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

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

20 1. The period of time for which the parent is expected
21 to be incarcerated will constitute a substantial portion of
22 the period of time before the child will attain the age of 18
23 years;

24 2. The incarcerated parent has been determined by the
25 court to be a violent career criminal as defined in s.
26 775.084, a habitual violent felony offender as defined in s.
27 775.084, or a sexual predator as defined in s. 775.21; has
28 been convicted of first degree or second degree murder in
29 violation of s. 782.04 or a sexual battery that constitutes a
30 capital, life, or first degree felony violation of s. 794.011;
31 or has been convicted of an offense in another jurisdiction

1 which is substantially similar to one of the offenses listed
2 in this paragraph. As used in this section, the term
3 "substantially similar offense" means any offense that is
4 substantially similar in elements and penalties to one of
5 those listed in this paragraph, and that is in violation of a
6 law of any other jurisdiction, whether that of another state,
7 the District of Columbia, the United States or any possession
8 or territory thereof, or any foreign jurisdiction; and

9 3. The court determines by clear and convincing
10 evidence that continuing the parental relationship with the
11 incarcerated parent would be harmful to the child and, for
12 this reason, that termination of the parental rights of the
13 incarcerated parent is in the best interest of the child.

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

18 435.03 Level 1 screening standards.--

19 (2) Any person for whom employment screening is
20 required by statute must not have been found guilty of,
21 regardless of adjudication, or entered a plea of nolo
22 contendere or guilty to, any offense prohibited under any of
23 the following provisions of the Florida Statutes or under any
24 similar statute of another jurisdiction:

25 (b) Section 782.04, relating to murder.

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

30 435.04 Level 2 screening standards.--

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1 (2) The security background investigations under this
2 section must ensure that no persons subject to the provisions
3 of this section have been found guilty of, regardless of
4 adjudication, or entered a plea of nolo contendere or guilty
5 to, any offense prohibited under any of the following
6 provisions of the Florida Statutes or under any similar
7 statute of another jurisdiction:

8 (b) Section 782.04, relating to murder.

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

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

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1 (1) For murder in the first degree as described in s.
2 782.04(1), if the death sentence is not imposed, a sentence of
3 imprisonment for life without eligibility for release.

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

7
8 Notwithstanding the provisions of s. 948.01, with respect to
9 any person who is found to have violated this section,
10 adjudication of guilt or imposition of sentence shall not be
11 suspended, deferred, or withheld.

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

18 921.0022 Criminal Punishment Code; offense severity
19 ranking chart.--

20 (3) OFFENSE SEVERITY RANKING CHART

21

22 Florida	Felony	
23 Statute	Degree	Description
		(i) LEVEL 9
26 316.193		
27 (3)(c)3.b.	1st	DUI manslaughter; failing to 28 render aid or give information.
29 782.04(1)	1st	Attempt, conspire, or solicit to 30 commit premeditated murder.

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1	782.04(3)	1st,PBL	Accomplice to murder in
2			connection with arson, sexual
3			battery, robbery, burglary, and
4			other specified felonies.
5	782.07(2)	1st	Aggravated manslaughter of an
6			elderly person or disabled adult.
7	782.07(3)	1st	Aggravated manslaughter of a
8			child.
9	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
10			reward or as a shield or hostage.
11	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
12			or facilitate commission of any
13			felony.
14	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
15			interfere with performance of any
16			governmental or political
17			function.
18	787.02(3)(a)	1st	False imprisonment; child under
19			age 13; perpetrator also commits
20			child abuse, sexual battery,
21			lewd, or lascivious act, etc.
22	790.161	1st	Attempted capital destructive
23			device offense.
24	794.011(2)	1st	Attempted sexual battery; victim
25			less than 12 years of age.
26	794.011(2)	Life	Sexual battery; offender younger
27			than 18 years and commits sexual
28			battery on a person less than 12
29			years.
30	794.011(4)	1st	Sexual battery; victim 12 years
31			or older, certain circumstances.

1	794.011(8)(b)	1st	Sexual battery; engage in sexual
2			conduct with minor 12 to 18 years
3			by person in familial or
4			custodial authority.
5	812.13(2)(a)	1st,PBL	Robbery with firearm or other
6			deadly weapon.
7	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
8			deadly weapon.
9	847.0145(1)	1st	Selling, or otherwise
10			transferring custody or control,
11			of a minor.
12	847.0145(2)	1st	Purchasing, or otherwise
13			obtaining custody or control, of
14			a minor.
15	859.01	1st	Poisoning food, drink, medicine,
16			or water with intent to kill or
17			injure another person.
18	893.135	1st	Attempted capital trafficking
19			offense.
20	893.135(1)(a)3.	1st	Trafficking in cannabis, more
21			than 10,000 lbs.
22	893.135		
23	(1)(b)1.c.	1st	Trafficking in cocaine, more than
24			400 grams, less than 150
25			kilograms.
26	893.135		
27	(1)(c)1.c.	1st	Trafficking in illegal drugs,
28			more than 28 grams, less than 30
29			kilograms.
30			
31			

1 893.135

2 (1)(d)1.c. 1st Trafficking in phencyclidine,
3 more than 400 grams.

4 893.135

5 (1)(e)1.c. 1st Trafficking in methaqualone, more
6 than 25 kilograms.

7 893.135

8 (1)(f)1.c. 1st Trafficking in amphetamine, more
9 than 200 grams.

10 Section 7. For the purpose of incorporating the
11 amendment made by this act to section 782.04, Florida
12 Statutes, in references thereto, subsection (1) of section
13 943.325, Florida Statutes, is reenacted to read:

14 943.325 Blood specimen testing for DNA analysis.--

15 (1)(a) Any person convicted, or who was previously
16 convicted and is still incarcerated, in this state for any
17 offense or attempted offense defined in chapter 794, chapter
18 800, s. 782.04, s. 784.045, s. 812.133, or s. 812.135, and who
19 is within the confines of the legal state boundaries, shall be
20 required to submit two specimens of blood to a Department of
21 Law Enforcement designated testing facility as directed by the
22 department.

23 (b) For the purpose of this section, the term "any
24 person" shall include both juveniles and adults committed to
25 or under the supervision of the Department of Corrections or
26 the Department of Juvenile Justice.

27 Section 8. For the purpose of incorporating the
28 amendment made by this act to section 782.04, Florida
29 Statutes, in references thereto, subsection (3) of section
30 947.146, Florida Statutes, as amended by section 31 of chapter
31 97-194, Laws of Florida, is reenacted to read:

1 947.146 Control Release Authority.--
2 (3) Within 120 days prior to the date the state
3 correctional system is projected pursuant to s. 216.136 to
4 exceed 99 percent of total capacity, the authority shall
5 determine eligibility for and establish a control release date
6 for an appropriate number of parole ineligible inmates
7 committed to the department and incarcerated within the state
8 who have been determined by the authority to be eligible for
9 discretionary early release pursuant to this section. In
10 establishing control release dates, it is the intent of the
11 Legislature that the authority prioritize consideration of
12 eligible inmates closest to their tentative release date. The
13 authority shall rely upon commitment data on the offender
14 information system maintained by the department to initially
15 identify inmates who are to be reviewed for control release
16 consideration. The authority may use a method of objective
17 risk assessment in determining if an eligible inmate should be
18 released. Such assessment shall be a part of the department's
19 management information system. However, the authority shall
20 have sole responsibility for determining control release
21 eligibility, establishing a control release date, and
22 effectuating the release of a sufficient number of inmates to
23 maintain the inmate population between 99 percent and 100
24 percent of total capacity. Inmates who are ineligible for
25 control release are inmates who are parole eligible or inmates
26 who:
27 (a) Are serving a sentence that includes a mandatory
28 minimum provision for a capital offense or drug trafficking
29 offense and have not served the number of days equal to the
30 mandatory minimum term less any jail-time credit awarded by
31 the court;

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

3 (c) Are convicted, or have been previously convicted,
4 of committing or attempting to commit sexual battery, incest,
5 or any of the following lewd or indecent assaults or acts:
6 masturbating in public; exposing the sexual organs in a
7 perverted manner; or nonconsensual handling or fondling of the
8 sexual organs of another person;

9 (d) Are convicted, or have been previously convicted,
10 of committing or attempting to commit assault, aggravated
11 assault, battery, or aggravated battery, and a sex act was
12 attempted or completed during commission of such offense;

13 (e) Are convicted, or have been previously convicted,
14 of committing or attempting to commit kidnapping, burglary, or
15 murder, and the offense was committed with the intent to
16 commit sexual battery or a sex act was attempted or completed
17 during commission of the offense;

18 (f) Are convicted, or have been previously convicted,
19 of committing or attempting to commit false imprisonment upon
20 a child under the age of 13 and, in the course of committing
21 the offense, the inmate committed aggravated child abuse,
22 sexual battery against the child, or a lewd, lascivious, or
23 indecent assault or act upon or in the presence of the child;

24 (g) Are sentenced, have previously been sentenced, or
25 have been sentenced at any time under s. 775.084, or have been
26 sentenced at any time in another jurisdiction as a habitual
27 offender;

28 (h) Are convicted, or have been previously convicted,
29 of committing or attempting to commit assault, aggravated
30 assault, battery, aggravated battery, kidnapping,
31 manslaughter, or murder against an officer as defined in s.

1 943.10(1), (2), (3), (6), (7), (8), or (9); against a state
2 attorney or assistant state attorney; or against a justice or
3 judge of a court described in Art. V of the State
4 Constitution; or against an officer, judge, or state attorney
5 employed in a comparable position by any other jurisdiction;
6 or

7 (i) Are convicted, or have been previously convicted,
8 of committing or attempting to commit murder in the first,
9 second, or third degree under s. 782.04(1), (2), (3), or (4),
10 or have ever been convicted of any degree of murder or
11 attempted murder in another jurisdiction;

12 (j) Are convicted, or have been previously convicted,
13 of DUI manslaughter under s. 316.193(3)(c)3., and are
14 sentenced, or have been sentenced at any time, as a habitual
15 offender for such offense, or have been sentenced at any time
16 in another jurisdiction as a habitual offender for such
17 offense;

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

23 2. Are serving a sentence for an offense committed on
24 or after October 1, 1995, for a violation of the Law
25 Enforcement Protection Act under s. 775.0823(2), (3), (4),
26 (5), (6), (7), or (8), and the subtotal of the offender's
27 sentence points is multiplied pursuant to former s. 921.0014
28 or s. 921.0024;

29 (l) Are serving a sentence for an offense committed on
30 or after January 1, 1994, for possession of a firearm,
31 semiautomatic firearm, or machine gun in which additional

1 points are added to the subtotal of the offender's sentence
2 points pursuant to former s. 921.0014 or s. 921.0024; or
3 (m) Are convicted, or have been previously convicted,
4 of committing or attempting to commit manslaughter,
5 kidnapping, robbery, carjacking, home-invasion robbery, or a
6 burglary under s. 810.02(2).

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8 In making control release eligibility determinations under
9 this subsection, the authority may rely on any document
10 leading to or generated during the course of the criminal
11 proceedings, including, but not limited to, any presentence or
12 postsentence investigation or any information contained in
13 arrest reports relating to circumstances of the offense.

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

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 Senate Bill 524

19 The CS moves "murder of another human being" from subparagraph
20 "4" to the list of offenses which may constitute first degree
felony murder.

21 The CS adds a provision which will allow prosecution of an
22 offender for second degree felony murder when a third party
23 kills a person during the offender's perpetration of, or
attempt to perpetrate, any murder of another human being.

24 The CS adds "murder of another human being" to the list of
25 offenses which do not constitute third degree felony murder as
defined in section 782.04(4), F.S.

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