

STORAGE NAME: h0375s1a.jud

DATE: February 21, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 375

RELATING TO: Unlawful Killing of Human Being

SPONSOR(S): Committee on Crime & Punishment and Representative Stafford

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) JUDICIARY YEAS 7 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

First degree felony murder is the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any of a list of felony offenses contained in section 782.04(1)(a)2., Florida Statutes. Second degree felony murder is the unlawful killing of a human being, by someone other than the perpetrator, of one of the enumerated list of felonies which occurs during the course of the felony. Included in the list are offenses such as arson, sexual battery, burglary and aggravated child abuse. A killing which occurs during the commission of a felony which is not contained on the list constitutes third degree murder.

CS/HB 375 adds the offense of resisting an officer with violence to his or her person to the list of enumerated offenses. Thus, the committee substitute allows for prosecution for either first degree or second degree felony murder (depending on who actually did the killing) rather than for third degree murder, for an unlawful killing which occurs during the course of resisting an officer with violence.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

1. First Degree Felony Murder

In Florida, first degree felony murder is the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any of the following:

- a. Trafficking offense prohibited by s. 893.135(1),
- b. Arson,
- c. Sexual battery,
- d. Robbery,
- e. Burglary,
- f. Kidnapping,
- g. Escape,
- h. Aggravated child abuse,
- i. Aggravated abuse of an elderly person or disabled adult,
- j. Aircraft piracy,
- k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- l. Carjacking,
- m. Home-invasion robbery,
- n. Aggravated stalking,
- o. Murder of another human being

s. 782.04(1)(a)2., F. S.

First degree felony murder is a capital felony, punishable by death or life imprisonment. s.s. 782.04(1), 775.082(1), F.S.

According to the standard jury instruction, in order to find a defendant guilty of first degree felony murder, the state must prove the following:

1. The victim is dead.
2. a. The death occurred as a consequence and while the defendant was engaged in the commission of one of the above list of enumerated felonies or;

- b. The death occurred as a consequence and while the defendant was attempting to commit one of the above list of enumerated felonies, or
 - c. The death occurred as a consequence of and while the defendant or an accomplice was escaping from the immediate scene of one of the above enumerated felonies.
3. a. The defendant was the person who actually killed the victim or
 - b. The victim was killed by a person other than the defendant but both the defendant and the person who killed the victim were principals in the commission of one of the above enumerated felonies.

In order to convict of first degree felony murder, it is not necessary for the state to prove that the defendant had a premeditated design or intent to kill. See Fla. Std. Jury Instr. (Crim.) 96-97; See also s. 782.04(1)(a)2., F.S.

2. Second Degree Felony Murder

Second degree felony murder occurs when a person is killed during the perpetration or during the attempt to perpetrate any of the above enumerated felonies by a person other than the perpetrator of the felony.

The standard jury instruction provides that:

Before you can find the defendant guilty of second degree felony murder, the state must prove the following four elements beyond a reasonable doubt:

1. The victim is dead.
2. a. The death occurred as a consequence of and while one of the list of enumerated felonies was being committed.
- b. The death occurred as a consequence of and while there was an attempt to commit one of an enumerated list of crimes.
- c. The death occurred as a consequence of and while there was an escape from the immediate scene of one of the enumerate list of crimes.
3. Defendant was not the person who actually killed the victim but did knowingly aid, abet, counsel, hire or otherwise procure the commission of one of an enumerated list of felonies.
4. The person who actually killed the victim was not involved in the commission or the attempt to commit the crime alleged. See Fla. Std. Jury Instr. (Crim.) 99; See also s. 782.04(3), F.S.

For example, if a defendant commits a robbery and during the course of the robbery, the victim of the robbery shoots at the defendant but instead kills another person, the defendant could be charged with second degree felony murder. s. 782.04(3), F.S. However, the "fact that an incidental death occurs in conjunction with a felony does not in itself make the perpetrator of the felony guilty of felony murder. In any felony murder conviction, the element of causation, i.e. that the homicide was committed in the

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perpetration of the felony, must be established.” Allen v. State, 690 So. 2d 1332, 1334 (Fla. 2d DCA 1997). Second degree felony murder is a first degree felony, punishable by up to life in prison. s. 782.04(3), F.S.

3. Third Degree Felony Murder

Third degree felony murder is the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration or in the attempt to perpetrate any felony other than those contained in the above list. Third degree felony murder is a second degree felony, punishable by up to fifteen years in prison. s. 775.082(4), F.S.

4. Resisting Officer with Violence

Section 843.01, Florida Statutes, provides that whoever knowingly and willfully resists, obstructs, or opposes any officer in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer is guilty of a third degree felony. "[A]ttempting to do violence is the same as offering to do violence." Fields v. State, 685 So. 2d 961, 961 (Fla. 4th DCA 1996).

The term "officer" includes: law enforcement officers, correctional officers, correctional and county probation officers, auxiliary law enforcement officers, members of the Parole Commission, personnel or representatives of the Department of Law Enforcement and any other person legally authorized to execute process. s. 843.01, F.S. See also s. 943.10, F.S. (defining some of the officers included under section 843.01).

Because the offense of resisting an officer with violence is not one of the list of enumerated offenses, if a defendant kills a person while resisting an officer with violence, the offense could be charged as third degree felony murder, punishable by up to fifteen years in prison.

C. EFFECT OF PROPOSED CHANGES:

The committee substitute amends section 782.04, Florida Statutes, to add the offense of resisting an officer with violence to his or her person to the list of enumerated offenses in the first and second degree felony murder statutes. The effect will be to increase from third degree felony murder to either second or first degree felony murder, an unlawful killing which occurs during the course of and as a consequence of resisting an officer with violence. As a result, a defendant could be charged with first degree felony murder if he or she resists an officer with violence and, during the course of resisting, kills someone. Further, this committee substitute will allow a defendant to be charged with second degree felony murder when a person is killed as a consequence of and during the defendant resisting an officer with violence and the killing is done by a person other than the defendant.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 782.04 to add resisting an officer with violence to the list of enumerated offenses for first and second degree felony murder.

Section 2: Reenacts sections 775.0823, 782.051, 903.133, 921.0022 and 947.146.

Section 3: Provides an October 1, 2000 effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference projects the committee substitute will not have a significant fiscal impact on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the January 28, 2000, meeting of the Committee on Crime & Punishment, the sponsor offered an amendment which changed the references to "resisting a law enforcement officer with violence" to "resisting an officer with violence to his or her person". This change will conform the reference to the title of section 843.01, F.S., and ensure that officers other than law enforcement officers are included. The amendment was adopted and the bill was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

L. Michael Billmeier, J.D.

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