

By Representative Stafford

1                                   A bill to be entitled  
 2           An act relating to criminal justice; amending  
 3           s. 782.04, F.S.; making it a capital felony to  
 4           commit the unlawful killing of a human being  
 5           while perpetrating or attempting to perpetrate  
 6           the act of resisting a law enforcement officer  
 7           with violence; providing penalties for  
 8           specified murders involving the perpetration of  
 9           or the attempt to perpetrate the act of  
 10          resisting a law enforcement officer with  
 11          violence; reenacting ss. 775.0823(1), (2), (3),  
 12          (4), (5), and (6), 782.051, 903.133,  
 13          921.0022(3)(h), (i), and (j), and  
 14          947.146(3)(i), F.S., relating to violent  
 15          offenses committed against law enforcement  
 16          officers, correctional officers, state  
 17          attorneys, assistant state attorneys, justices,  
 18          or judges, attempted felony murder, bail on  
 19          appeal prohibited for certain felony  
 20          convictions, Criminal Punishment Code offense  
 21          severity ranking chart, Control Release  
 22          Authority; providing an effective date.

23  
 24 Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Section 782.04, Florida Statutes, is  
 27 amended to read:  
 28           782.04 Murder.--  
 29           (1)(a) The unlawful killing of a human being:  
 30           1. When perpetrated from a premeditated design to  
 31 effect the death of the person killed or any human being;

- 1           2. When committed by a person engaged in the  
2     perpetration of, or in the attempt to perpetrate, any:  
3           a. Trafficking offense prohibited by s. 893.135(1),  
4           b. Arson,  
5           c. Sexual battery,  
6           d. Robbery,  
7           e. Burglary,  
8           f. Kidnapping,  
9           g. Escape,  
10          h. Aggravated child abuse,  
11          i. Aggravated abuse of an elderly person or disabled  
12     adult,  
13          j. Aircraft piracy,  
14          k. Unlawful throwing, placing, or discharging of a  
15     destructive device or bomb,  
16          l. Carjacking,  
17          m. Home-invasion robbery,  
18          n. Aggravated stalking,  
19          o. Murder of another human being, ~~or~~  
20          p. Resisting a law enforcement officer with violence;  
21     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.  
31

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,

29 (n) Aggravated stalking, ~~or~~

30 (o) Murder of another human being, or

31 (p) Resisting a law enforcement officer with violence,

1  
2 by a person other than the person engaged in the perpetration  
3 of or in the attempt to perpetrate such felony, the person  
4 perpetrating or attempting to perpetrate such felony is guilty  
5 of murder in the second degree, which constitutes a felony of  
6 the first degree, punishable by imprisonment for a term of  
7 years not exceeding life or as provided in s. 775.082, s.  
8 775.083, or s. 775.084.

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

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

14 (b) Arson,

15 (c) Sexual battery,

16 (d) Robbery,

17 (e) Burglary,

18 (f) Kidnapping,

19 (g) Escape,

20 (h) Aggravated child abuse,

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

23 (j) Aircraft piracy,

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

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

- 1 (m) Carjacking,  
2 (n) Home-invasion robbery,  
3 (o) Aggravated stalking, ~~or~~  
4 (p) Murder of another human being, or  
5 (q) Resisting a law enforcement officer with violence,  
6

7 is murder in the third degree and constitutes a felony of the  
8 second degree, punishable as provided in s. 775.082, s.  
9 775.083, or s. 775.084.

10 Section 2. For the purpose of incorporating the  
11 amendment to section 782.04, Florida Statutes, in references  
12 thereto, the sections or subdivisions of Florida Statutes set  
13 forth below 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:

30  
31

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           (3) For murder in the second degree as described in s.  
8 782.04(2) and (3), a sentence pursuant to the Criminal  
9 Punishment Code.

10           (4) For attempted murder in the second degree as  
11 described in s. 782.04(2) and (3), a sentence pursuant to the  
12 Criminal Punishment Code.

13           (5) For murder in the third degree as described in s.  
14 782.04(4), a sentence pursuant to the Criminal Punishment  
15 Code.

16           (6) For attempted murder in the third degree as  
17 described in s. 782.04(4), a sentence pursuant to the Criminal  
18 Punishment Code.

19  
20 Notwithstanding the provisions of s. 948.01, with respect to  
21 any person who is found to have violated this section,  
22 adjudication of guilt or imposition of sentence shall not be  
23 suspended, deferred, or withheld.

24           782.051 Attempted felony murder.--

25           (1) Any person who perpetrates or attempts to  
26 perpetrate any felony enumerated in s. 782.04(3) and who  
27 commits, aids, or abets an intentional act that is not an  
28 essential element of the felony and that could, but does not,  
29 cause the death of another commits a felony of the first  
30 degree, punishable by imprisonment for a term of years not  
31 exceeding life, or as provided in s. 775.082, s. 775.083, or

1 s. 775.084, which is an offense ranked in level 9 of the  
2 Criminal Punishment Code. Victim injury points shall be scored  
3 under this subsection.

4 (2) Any person who perpetrates or attempts to  
5 perpetrate any felony other than a felony enumerated in s.  
6 782.04(3) and who commits, aids, or abets an intentional act  
7 that is not an essential element of the felony and that could,  
8 but does not, cause the death of another commits a felony of  
9 the first degree, punishable as provided in s. 775.082, s.  
10 775.083, or s. 775.084, which is an offense ranked in level 8  
11 of the Criminal Punishment Code. Victim injury points shall be  
12 scored under this subsection.

13 (3) When a person is injured during the perpetration  
14 of or the attempt to perpetrate any felony enumerated in s.  
15 782.04(3) by a person other than the person engaged in the  
16 perpetration of or the attempt to perpetrate such felony, the  
17 person perpetrating or attempting to perpetrate such felony  
18 commits a felony of the second degree, punishable as provided  
19 in s. 775.082, s. 775.083, or s. 775.084, which is an offense  
20 ranked in level 7 of the Criminal Punishment Code. Victim  
21 injury points shall be scored under this subsection.

22 903.133 Bail on appeal; prohibited for certain felony  
23 convictions.--Notwithstanding the provisions of s. 903.132, no  
24 person adjudged guilty of a felony of the first degree for a  
25 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.  
26 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a  
27 violation of s. 794.011(2) or (3), shall be admitted to bail  
28 pending review either by posttrial motion or appeal.

29 921.0022 Criminal Punishment Code; offense severity  
30 ranking chart.--

31 (3) OFFENSE SEVERITY RANKING CHART

1	2	3	4
5	6	7	8
9	10	11	12
13	14	15	16
17	18	19	20
21	22	23	24
25	26	27	28
29	30	31	
	Florida	Felony	
	Statute	Degree	Description
			(h) LEVEL 8
	316.193		
	(3)(c)3.a.	2nd	DUI manslaughter.
	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
	777.03(2)(a)	1st	Accessory after the fact, capital felony.
	782.04(4)	2nd	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.
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
	782.071(2)	1st	Committing vehicular homicide and failing to render aid or give information.
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.



1	794.011(5)	2nd	Sexual battery, victim 12 years
2			or over, offender does not use
3			physical force likely to cause
4			serious injury.
5	800.04(4)	2nd	Lewd or lascivious battery.
6	806.01(1)	1st	Maliciously damage dwelling or
7			structure by fire or explosive,
8			believing person in structure.
9	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
10	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
11			or dangerous weapon.
12	810.02(2)(c)	1st	Burglary of a dwelling or
13			structure causing structural
14			damage or \$1,000 or more property
15			damage.
16	812.13(2)(b)	1st	Robbery with a weapon.
17	812.135(2)	1st	Home-invasion robbery.
18	825.102(2)	2nd	Aggravated abuse of an elderly
19			person or disabled adult.
20	825.103(2)(a)	1st	Exploiting an elderly person or
21			disabled adult and property is
22			valued at \$100,000 or more.
23	837.02(2)	2nd	Perjury in official proceedings
24			relating to prosecution of a
25			capital felony.
26	837.021(2)	2nd	Making contradictory statements
27			in official proceedings relating
28			to prosecution of a capital
29			felony.
30			
31			

1	860.121(2)(c)	1st	Shooting at or throwing any
2			object in path of railroad
3			vehicle resulting in great bodily
4			harm.
5	860.16	1st	Aircraft piracy.
6	893.13(1)(b)	1st	Sell or deliver in excess of 10
7			grams of any substance specified
8			in s. 893.03(1)(a) or (b).
9	893.13(2)(b)	1st	Purchase in excess of 10 grams of
10			any substance specified in s.
11			893.03(1)(a) or (b).
12	893.13(6)(c)	1st	Possess in excess of 10 grams of
13			any substance specified in s.
14			893.03(1)(a) or (b).
15	893.135(1)(a)2.	1st	Trafficking in cannabis, more
16			than 2,000 lbs., less than 10,000
17			lbs.
18	893.135		
19	(1)(b)1.b.	1st	Trafficking in cocaine, more than
20			200 grams, less than 400 grams.
21	893.135		
22	(1)(c)1.b.	1st	Trafficking in illegal drugs,
23			more than 14 grams, less than 28
24			grams.
25	893.135		
26	(1)(d)1.b.	1st	Trafficking in phencyclidine,
27			more than 200 grams, less than
28			400 grams.
29			
30			
31			

1	893.135		
2	(1)(e)1.b.	1st	Trafficking in methaqualone, more
3			than 5 kilograms, less than 25
4			kilograms.
5	893.135		
6	(1)(f)1.b.	1st	Trafficking in amphetamine, more
7			than 28 grams, less than 200
8			grams.
9	893.135		
10	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
11			grams or more, less than 28
12			grams.
13	895.03(1)	1st	Use or invest proceeds derived
14			from pattern of racketeering
15			activity.
16	895.03(2)	1st	Acquire or maintain through
17			racketeering activity any
18			interest in or control of any
19			enterprise or real property.
20	895.03(3)	1st	Conduct or participate in any
21			enterprise through pattern of
22			racketeering activity.
23			(i) LEVEL 9
24	316.193		
25	(3)(c)3.b.	1st	DUI manslaughter; failing to
26			render aid or give information.
27	782.04(1)	1st	Attempt, conspire, or solicit to
28			commit premeditated murder.
29			
30			
31			

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	782.051(1)	1st	Attempted felony murder while
6			perpetrating or attempting to
7			perpetrate a felony enumerated in
8			s. 782.04(3).
9	782.07(2)	1st	Aggravated manslaughter of an
10			elderly person or disabled adult.
11	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
12			reward or as a shield or hostage.
13	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
14			or facilitate commission of any
15			felony.
16	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
17			interfere with performance of any
18			governmental or political
19			function.
20	787.02(3)(a)	1st	False imprisonment; child under
21			age 13; perpetrator also commits
22			aggravated child abuse, sexual
23			battery, or lewd or lascivious
24			battery, molestation, conduct, or
25			exhibition.
26	790.161	1st	Attempted capital destructive
27			device offense.
28	794.011(2)	1st	Attempted sexual battery; victim
29			less than 12 years of age.
30			
31			

1	794.011(2)	Life	Sexual battery; offender younger
2			than 18 years and commits sexual
3			battery on a person less than 12
4			years.
5	794.011(4)	1st	Sexual battery; victim 12 years
6			or older, certain circumstances.
7	794.011(8)(b)	1st	Sexual battery; engage in sexual
8			conduct with minor 12 to 18 years
9			by person in familial or
10			custodial authority.
11	800.04(5)(b)	1st	Lewd or lascivious molestation;
12			victim less than 12 years;
13			offender 18 years or older.
14	812.13(2)(a)	1st,PBL	Robbery with firearm or other
15			deadly weapon.
16	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
17			deadly weapon.
18	827.03(2)	1st	Aggravated child abuse.
19	847.0145(1)	1st	Selling, or otherwise
20			transferring custody or control,
21			of a minor.
22	847.0145(2)	1st	Purchasing, or otherwise
23			obtaining custody or control, of
24			a minor.
25	859.01	1st	Poisoning food, drink, medicine,
26			or water with intent to kill or
27			injure another person.
28	893.135	1st	Attempted capital trafficking
29			offense.
30	893.135(1)(a)3.	1st	Trafficking in cannabis, more
31			than 10,000 lbs.

1	893.135		
2	(1)(b)1.c.	1st	Trafficking in cocaine, more than
3			400 grams, less than 150
4			kilograms.
5	893.135		
6	(1)(c)1.c.	1st	Trafficking in illegal drugs,
7			more than 28 grams, less than 30
8			kilograms.
9	893.135		
10	(1)(d)1.c.	1st	Trafficking in phencyclidine,
11			more than 400 grams.
12	893.135		
13	(1)(e)1.c.	1st	Trafficking in methaqualone, more
14			than 25 kilograms.
15	893.135		
16	(1)(f)1.c.	1st	Trafficking in amphetamine, more
17			than 200 grams.
18			(j) LEVEL 10
19	782.04(2)	1st,PBL	Unlawful killing of human; act is
20			homicide, unpremeditated.
21	787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm
22			upon or terrorize victim.
23	787.01(3)(a)	Life	Kidnapping; child under age 13,
24			perpetrator also commits
25			aggravated child abuse, sexual
26			battery, or lewd or lascivious
27			battery, molestation, conduct, or
28			exhibition.
29	782.07(3)	1st	Aggravated manslaughter of a
30			child.
31			

1 794.011(3) Life Sexual battery; victim 12 years  
2 or older, offender uses or  
3 threatens to use deadly weapon or  
4 physical force to cause serious  
5 injury.  
6 876.32 1st Treason against the state.  
7 947.146 Control Release Authority.--  
8 (3) Within 120 days prior to the date the state  
9 correctional system is projected pursuant to s. 216.136 to  
10 exceed 99 percent of total capacity, the authority shall  
11 determine eligibility for and establish a control release date  
12 for an appropriate number of parole ineligible inmates  
13 committed to the department and incarcerated within the state  
14 who have been determined by the authority to be eligible for  
15 discretionary early release pursuant to this section. In  
16 establishing control release dates, it is the intent of the  
17 Legislature that the authority prioritize consideration of  
18 eligible inmates closest to their tentative release date. The  
19 authority shall rely upon commitment data on the offender  
20 information system maintained by the department to initially  
21 identify inmates who are to be reviewed for control release  
22 consideration. The authority may use a method of objective  
23 risk assessment in determining if an eligible inmate should be  
24 released. Such assessment shall be a part of the department's  
25 management information system. However, the authority shall  
26 have sole responsibility for determining control release  
27 eligibility, establishing a control release date, and  
28 effectuating the release of a sufficient number of inmates to  
29 maintain the inmate population between 99 percent and 100  
30 percent of total capacity. Inmates who are ineligible for  
31

1 control release are inmates who are parole eligible or inmates  
2 who:

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

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

15 Section 3. This act shall take effect October 1, 2000.

16

17 \*\*\*\*\*

18 HOUSE SUMMARY

19  
20 Makes it a capital felony to commit the unlawful killing  
21 of a human being while perpetrating or attempting to  
22 perpetrate the act of resisting a law enforcement officer  
23 with violence. Provides penalties for specified murders  
24 involving the perpetration of or the attempt to  
25 perpetrate the act of resisting a law enforcement officer  
26 with violence.  
27  
28  
29  
30  
31