

By the Committee on Crime & Punishment and 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 an officer with violence
7 to his or her person; providing penalties for
8 specified murders involving the perpetration of
9 or the attempt to perpetrate the act of
10 resisting an officer with violence to his or
11 her person; reenacting ss. 775.0823(1), (2),
12 (3), (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:

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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 an officer with violence to his or her
21 person; 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,

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

30 (o) Murder of another human being, or

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1 (p) Resisting an officer with violence to his or her
2 person,
3
4 by a person other than the person engaged in the perpetration
5 of or in the attempt to perpetrate such felony, the person
6 perpetrating or attempting to perpetrate such felony is guilty
7 of murder in the second degree, which constitutes a felony of
8 the first degree, punishable by imprisonment for a term of
9 years not exceeding life or as provided in s. 775.082, s.
10 775.083, or s. 775.084.

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

15 (a) Trafficking offense prohibited by s. 893.135(1),
16 (b) Arson,
17 (c) Sexual battery,
18 (d) Robbery,
19 (e) Burglary,
20 (f) Kidnapping,
21 (g) Escape,
22 (h) Aggravated child abuse,
23 (i) Aggravated abuse of an elderly person or disabled
24 adult,
25 (j) Aircraft piracy,
26 (k) Unlawful throwing, placing, or discharging of a
27 destructive device or bomb,
28 (l) Unlawful distribution of any substance controlled
29 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
30 or opium or any synthetic or natural salt, compound,
31 derivative, or preparation of opium by a person 18 years of

1 age or older, when such drug is proven to be the proximate
2 cause of the death of the user,
3 (m) Carjacking,
4 (n) Home-invasion robbery,
5 (o) Aggravated stalking, ~~or~~
6 (p) Murder of another human being, or
7 (q) Resisting an officer with violence to his or her
8 person,
9

10 is murder in the third degree and constitutes a felony of the
11 second degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084.

13 Section 2. For the purpose of incorporating the
14 amendment to section 782.04, Florida Statutes, in references
15 thereto, the sections or subdivisions of Florida Statutes set
16 forth below are reenacted to read:

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

3 (1) For murder in the first degree as described in s.
4 782.04(1), if the death sentence is not imposed, a sentence of
5 imprisonment for life without eligibility for release.

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

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

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

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

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

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

26 782.051 Attempted felony murder.--

27 (1) Any person who perpetrates or attempts to
28 perpetrate any felony enumerated in s. 782.04(3) and who
29 commits, aids, or abets an intentional act that is not an
30 essential element of the felony and that could, but does not,
31 cause the death of another commits a felony of the first

1 degree, punishable by imprisonment for a term of years not
2 exceeding life, or as provided in s. 775.082, s. 775.083, or
3 s. 775.084, which is an offense ranked in level 9 of the
4 Criminal Punishment Code. Victim injury points shall be scored
5 under this subsection.

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

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

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

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1 921.0022 Criminal Punishment Code; offense severity
2 ranking chart.--
3 (3) OFFENSE SEVERITY RANKING CHART
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5 Florida Felony
6 Statute Degree Description
7
8 (h) LEVEL 8
9 316.193
10 (3)(c)3.a. 2nd DUI manslaughter.
11 327.35(3)(c)3. 2nd Vessel BUI manslaughter.
12 777.03(2)(a) 1st Accessory after the fact, capital
13 felony.
14 782.04(4) 2nd Killing of human without design
15 when engaged in act or attempt of
16 any felony other than arson,
17 sexual battery, robbery,
18 burglary, kidnapping, aircraft
19 piracy, or unlawfully discharging
20 bomb.
21 782.051(2) 1st Attempted felony murder while
22 perpetrating or attempting to
23 perpetrate a felony not
24 enumerated in s. 782.04(3).
25 782.071(2) 1st Committing vehicular homicide and
26 failing to render aid or give
27 information.
28 782.072(2) 1st Committing vessel homicide and
29 failing to render aid or give
30 information.
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1	790.161(3)	1st	Discharging a destructive device
2			which results in bodily harm or
3			property damage.
4	794.011(5)	2nd	Sexual battery, victim 12 years
5			or over, offender does not use
6			physical force likely to cause
7			serious injury.
8	800.04(4)	2nd	Lewd or lascivious battery.
9	806.01(1)	1st	Maliciously damage dwelling or
10			structure by fire or explosive,
11			believing person in structure.
12	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
13	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
14			or dangerous weapon.
15	810.02(2)(c)	1st	Burglary of a dwelling or
16			structure causing structural
17			damage or \$1,000 or more property
18			damage.
19	812.13(2)(b)	1st	Robbery with a weapon.
20	812.135(2)	1st	Home-invasion robbery.
21	825.102(2)	2nd	Aggravated abuse of an elderly
22			person or disabled adult.
23	825.103(2)(a)	1st	Exploiting an elderly person or
24			disabled adult and property is
25			valued at \$100,000 or more.
26	837.02(2)	2nd	Perjury in official proceedings
27			relating to prosecution of a
28			capital felony.
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1	837.021(2)	2nd	Making contradictory statements
2			in official proceedings relating
3			to prosecution of a capital
4			felony.
5	860.121(2)(c)	1st	Shooting at or throwing any
6			object in path of railroad
7			vehicle resulting in great bodily
8			harm.
9	860.16	1st	Aircraft piracy.
10	893.13(1)(b)	1st	Sell or deliver in excess of 10
11			grams of any substance specified
12			in s. 893.03(1)(a) or (b).
13	893.13(2)(b)	1st	Purchase in excess of 10 grams of
14			any substance specified in s.
15			893.03(1)(a) or (b).
16	893.13(6)(c)	1st	Possess in excess of 10 grams of
17			any substance specified in s.
18			893.03(1)(a) or (b).
19	893.135(1)(a)2.	1st	Trafficking in cannabis, more
20			than 2,000 lbs., less than 10,000
21			lbs.
22	893.135		
23	(1)(b)1.b.	1st	Trafficking in cocaine, more than
24			200 grams, less than 400 grams.
25	893.135		
26	(1)(c)1.b.	1st	Trafficking in illegal drugs,
27			more than 14 grams, less than 28
28			grams.
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1	893.135		
2	(1)(d)1.b.	1st	Trafficking in phencyclidine,
3			more than 200 grams, less than
4			400 grams.
5	893.135		
6	(1)(e)1.b.	1st	Trafficking in methaqualone, more
7			than 5 kilograms, less than 25
8			kilograms.
9	893.135		
10	(1)(f)1.b.	1st	Trafficking in amphetamine, more
11			than 28 grams, less than 200
12			grams.
13	893.135		
14	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
15			grams or more, less than 28
16			grams.
17	895.03(1)	1st	Use or invest proceeds derived
18			from pattern of racketeering
19			activity.
20	895.03(2)	1st	Acquire or maintain through
21			racketeering activity any
22			interest in or control of any
23			enterprise or real property.
24	895.03(3)	1st	Conduct or participate in any
25			enterprise through pattern of
26			racketeering activity.
27			(i) LEVEL 9
28	316.193		
29	(3)(c)3.b.	1st	DUI manslaughter; failing to
30			render aid or give information.
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1	782.04(1)	1st	Attempt, conspire, or solicit to
2			commit premeditated murder.
3	782.04(3)	1st,PBL	Accomplice to murder in
4			connection with arson, sexual
5			battery, robbery, burglary, and
6			other specified felonies.
7	782.051(1)	1st	Attempted felony murder while
8			perpetrating or attempting to
9			perpetrate a felony enumerated in
10			s. 782.04(3).
11	782.07(2)	1st	Aggravated manslaughter of an
12			elderly person or disabled adult.
13	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
14			reward or as a shield or hostage.
15	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
16			or facilitate commission of any
17			felony.
18	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
19			interfere with performance of any
20			governmental or political
21			function.
22	787.02(3)(a)	1st	False imprisonment; child under
23			age 13; perpetrator also commits
24			aggravated child abuse, sexual
25			battery, or lewd or lascivious
26			battery, molestation, conduct, or
27			exhibition.
28	790.161	1st	Attempted capital destructive
29			device offense.
30	794.011(2)	1st	Attempted sexual battery; victim
31			less than 12 years of age.

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.
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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
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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.

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