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Bill No. CS/HB 955

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

11 Representative(s) Stafford offered the following:

Amendment (with title amendment)

On page 13, between lines 6 and 7, of the bill

insert:

Section 3. Effective October 1, 2000, section 782.04, Florida Statutes, is amended to read:

782.04 Murder.--

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

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

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

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- 1 h. Aggravated child abuse,
- 2 i. Aggravated abuse of an elderly person or disabled
- 3 adult,
- 4 j. Aircraft piracy,
- 5 k. Unlawful throwing, placing, or discharging of a
- 6 destructive device or bomb,
- 7 l. Carjacking,
- 8 m. Home-invasion robbery,
- 9 n. Aggravated stalking,
- 10 o. Murder of another human being, ~~or~~
- 11 p. Resisting an officer with violence to his or her
- 12 person; or

13 3. Which resulted from the unlawful distribution of
 14 any substance controlled under s. 893.03(1), cocaine as
 15 described in s. 893.03(2)(a)4., or opium or any synthetic or
 16 natural salt, compound, derivative, or preparation of opium by
 17 a person 18 years of age or older, when such drug is proven to
 18 be the proximate cause of the death of the user,
 19
 20 is murder in the first degree and constitutes a capital
 21 felony, punishable as provided in s. 775.082.

22 (b) In all cases under this section, the procedure set
 23 forth in s. 921.141 shall be followed in order to determine
 24 sentence of death or life imprisonment.

25 (2) The unlawful killing of a human being, when
 26 perpetrated by any act imminently dangerous to another and
 27 evincing a depraved mind regardless of human life, although
 28 without any premeditated design to effect the death of any
 29 particular individual, is murder in the second degree and
 30 constitutes a felony of the first degree, punishable by
 31 imprisonment for a term of years not exceeding life or as

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1 provided in s. 775.082, s. 775.083, or s. 775.084.

2 (3) When a person is killed in the perpetration of, or

3 in the attempt to perpetrate, any:

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

5 (b) Arson,

6 (c) Sexual battery,

7 (d) Robbery,

8 (e) Burglary,

9 (f) Kidnapping,

10 (g) Escape,

11 (h) Aggravated child abuse,

12 (i) Aggravated abuse of an elderly person or disabled

13 adult,

14 (j) Aircraft piracy,

15 (k) Unlawful throwing, placing, or discharging of a

16 destructive device or bomb,

17 (l) Carjacking,

18 (m) Home-invasion robbery,

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

20 (o) Murder of another human being, or

21 (p) Resisting an officer with violence to his or her

22 person,

23

24 by a person other than the person engaged in the perpetration

25 of or in the attempt to perpetrate such felony, the person

26 perpetrating or attempting to perpetrate such felony is guilty

27 of murder in the second degree, which constitutes a felony of

28 the first degree, punishable by imprisonment for a term of

29 years not exceeding life or as provided in s. 775.082, s.

30 775.083, or s. 775.084.

31 (4) The unlawful killing of a human being, when

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1 perpetrated without any design to effect death, by a person
2 engaged in the perpetration of, or in the attempt to
3 perpetrate, any felony other than any:

- 4 (a) Trafficking offense prohibited by s. 893.135(1),
- 5 (b) Arson,
- 6 (c) Sexual battery,
- 7 (d) Robbery,
- 8 (e) Burglary,
- 9 (f) Kidnapping,
- 10 (g) Escape,
- 11 (h) Aggravated child abuse,
- 12 (i) Aggravated abuse of an elderly person or disabled
13 adult,
- 14 (j) Aircraft piracy,
- 15 (k) Unlawful throwing, placing, or discharging of a
16 destructive device or bomb,
- 17 (l) Unlawful distribution of any substance controlled
18 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
19 or opium or any synthetic or natural salt, compound,
20 derivative, or preparation of opium by a person 18 years of
21 age or older, when such drug is proven to be the proximate
22 cause of the death of the user,
- 23 (m) Carjacking,
- 24 (n) Home-invasion robbery,
- 25 (o) Aggravated stalking, ~~or~~
- 26 (p) Murder of another human being, or
- 27 (q) Resisting an officer with violence to his or her
28 person,

29
30 is murder in the third degree and constitutes a felony of the
31 second degree, punishable as provided in s. 775.082, s.

1 775.083, or s. 775.084.

2 Section 4. For the purpose of incorporating the
3 amendment to section 782.04, Florida Statutes, in references
4 thereto, the sections or subdivisions of Florida Statutes set
5 forth below 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 (3) For murder in the second degree as described in s.
29 782.04(2) and (3), a sentence pursuant to the Criminal
30 Punishment Code.

31 (4) For attempted murder in the second degree as

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1 described in s. 782.04(2) and (3), a sentence pursuant to the
2 Criminal Punishment Code.

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

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

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

14 782.051 Attempted felony murder.--

15 (1) Any person who perpetrates or attempts to
16 perpetrate any felony enumerated in s. 782.04(3) and who
17 commits, aids, or abets an intentional act that is not an
18 essential element of the felony and that could, but does not,
19 cause the death of another commits a felony of the first
20 degree, punishable by imprisonment for a term of years not
21 exceeding life, or as provided in s. 775.082, s. 775.083, or
22 s. 775.084, which is an offense ranked in level 9 of the
23 Criminal Punishment Code. Victim injury points shall be scored
24 under this subsection.

25 (2) Any person who perpetrates or attempts to
26 perpetrate any felony other than a felony enumerated in s.
27 782.04(3) and who commits, aids, or abets an intentional act
28 that is not an essential element of the felony and that could,
29 but does not, cause the death of another commits a felony of
30 the first degree, punishable as provided in s. 775.082, s.
31 775.083, or s. 775.084, which is an offense ranked in level 8

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1 of the Criminal Punishment Code. Victim injury points shall be
2 scored under this subsection.

3 (3) When a person is injured during the perpetration
4 of or the attempt to perpetrate any felony enumerated in s.
5 782.04(3) by a person other than the person engaged in the
6 perpetration of or the attempt to perpetrate such felony, the
7 person perpetrating or attempting to perpetrate such felony
8 commits a felony of the second degree, punishable as provided
9 in s. 775.082, s. 775.083, or s. 775.084, which is an offense
10 ranked in level 7 of the Criminal Punishment Code. Victim
11 injury points shall be scored under this subsection.

12 903.133 Bail on appeal; prohibited for certain felony
13 convictions.--Notwithstanding the provisions of s. 903.132, no
14 person adjudged guilty of a felony of the first degree for a
15 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
16 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
17 violation of s. 794.011(2) or (3), shall be admitted to bail
18 pending review either by posttrial motion or appeal.

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

21 (3) OFFENSE SEVERITY RANKING CHART

23 Florida	Felony	
24 Statute	Degree	Description
		(h) LEVEL 8
27 316.193		
28 (3)(c)3.a.	2nd	DUI manslaughter.
29 327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
30 777.03(2)(a)	1st	Accessory after the fact, capital
31		felony.

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1	782.04(4)	2nd	Killing of human without design
2			when engaged in act or attempt of
3			any felony other than arson,
4			sexual battery, robbery,
5			burglary, kidnapping, aircraft
6			piracy, or unlawfully discharging
7			bomb.
8	782.051(2)	1st	Attempted felony murder while
9			perpetrating or attempting to
10			perpetrate a felony not
11			enumerated in s. 782.04(3).
12	782.071(2)	1st	Committing vehicular homicide and
13			failing to render aid or give
14			information.
15	782.072(2)	1st	Committing vessel homicide and
16			failing to render aid or give
17			information.
18	790.161(3)	1st	Discharging a destructive device
19			which results in bodily harm or
20			property damage.
21	794.011(5)	2nd	Sexual battery, victim 12 years
22			or over, offender does not use
23			physical force likely to cause
24			serious injury.
25	800.04(4)	2nd	Lewd or lascivious battery.
26	806.01(1)	1st	Maliciously damage dwelling or
27			structure by fire or explosive,
28			believing person in structure.
29	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
30	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
31			or dangerous weapon.

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1	810.02(2)(c)	1st	Burglary of a dwelling or
2			structure causing structural
3			damage or \$1,000 or more property
4			damage.
5	812.13(2)(b)	1st	Robbery with a weapon.
6	812.135(2)	1st	Home-invasion robbery.
7	825.102(2)	2nd	Aggravated abuse of an elderly
8			person or disabled adult.
9	825.103(2)(a)	1st	Exploiting an elderly person or
10			disabled adult and property is
11			valued at \$100,000 or more.
12	837.02(2)	2nd	Perjury in official proceedings
13			relating to prosecution of a
14			capital felony.
15	837.021(2)	2nd	Making contradictory statements
16			in official proceedings relating
17			to prosecution of a capital
18			felony.
19	860.121(2)(c)	1st	Shooting at or throwing any
20			object in path of railroad
21			vehicle resulting in great bodily
22			harm.
23	860.16	1st	Aircraft piracy.
24	893.13(1)(b)	1st	Sell or deliver in excess of 10
25			grams of any substance specified
26			in s. 893.03(1)(a) or (b).
27	893.13(2)(b)	1st	Purchase in excess of 10 grams of
28			any substance specified in s.
29			893.03(1)(a) or (b).
30	893.13(6)(c)	1st	Possess in excess of 10 grams of
31			any substance specified in s.

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1			893.03(1)(a) or (b).
2	893.135(1)(a)2.	1st	Trafficking in cannabis, more
3			than 2,000 lbs., less than 10,000
4			lbs.
5	893.135		
6	(1)(b)1.b.	1st	Trafficking in cocaine, more than
7			200 grams, less than 400 grams.
8	893.135		
9	(1)(c)1.b.	1st	Trafficking in illegal drugs,
10			more than 14 grams, less than 28
11			grams.
12	893.135		
13	(1)(d)1.b.	1st	Trafficking in phencyclidine,
14			more than 200 grams, less than
15			400 grams.
16	893.135		
17	(1)(e)1.b.	1st	Trafficking in methaqualone, more
18			than 5 kilograms, less than 25
19			kilograms.
20	893.135		
21	(1)(f)1.b.	1st	Trafficking in amphetamine, more
22			than 28 grams, less than 200
23			grams.
24	893.135		
25	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
26			grams or more, less than 28
27			grams.
28	895.03(1)	1st	Use or invest proceeds derived
29			from pattern of racketeering
30			activity.
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1	895.03(2)	1st	Acquire or maintain through
2			racketeering activity any
3			interest in or control of any
4			enterprise or real property.
5	895.03(3)	1st	Conduct or participate in any
6			enterprise through pattern of
7			racketeering activity.
8			(i) LEVEL 9
9	316.193		
10	(3)(c)3.b.	1st	DUI manslaughter; failing to
11			render aid or give information.
12	782.04(1)	1st	Attempt, conspire, or solicit to
13			commit premeditated murder.
14	782.04(3)	1st,PBL	Accomplice to murder in
15			connection with arson, sexual
16			battery, robbery, burglary, and
17			other specified felonies.
18	782.051(1)	1st	Attempted felony murder while
19			perpetrating or attempting to
20			perpetrate a felony enumerated in
21			s. 782.04(3).
22	782.07(2)	1st	Aggravated manslaughter of an
23			elderly person or disabled adult.
24	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
25			reward or as a shield or hostage.
26	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
27			or facilitate commission of any
28			felony.
29	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
30			interfere with performance of any
31			governmental or political

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1			function.
2	787.02(3)(a)	1st	False imprisonment; child under
3			age 13; perpetrator also commits
4			aggravated child abuse, sexual
5			battery, or lewd or lascivious
6			battery, molestation, conduct, or
7			exhibition.
8	790.161	1st	Attempted capital destructive
9			device offense.
10	794.011(2)	1st	Attempted sexual battery; victim
11			less than 12 years of age.
12	794.011(2)	Life	Sexual battery; offender younger
13			than 18 years and commits sexual
14			battery on a person less than 12
15			years.
16	794.011(4)	1st	Sexual battery; victim 12 years
17			or older, certain circumstances.
18	794.011(8)(b)	1st	Sexual battery; engage in sexual
19			conduct with minor 12 to 18 years
20			by person in familial or
21			custodial authority.
22	800.04(5)(b)	1st	Lewd or lascivious molestation;
23			victim less than 12 years;
24			offender 18 years or older.
25	812.13(2)(a)	1st,PBL	Robbery with firearm or other
26			deadly weapon.
27	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
28			deadly weapon.
29	827.03(2)	1st	Aggravated child abuse.
30	847.0145(1)	1st	Selling, or otherwise
31			transferring custody or control,

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1			of a minor.
2	847.0145(2)	1st	Purchasing, or otherwise
3			obtaining custody or control, of
4			a minor.
5	859.01	1st	Poisoning food, drink, medicine,
6			or water with intent to kill or
7			injure another person.
8	893.135	1st	Attempted capital trafficking
9			offense.
10	893.135(1)(a)3.	1st	Trafficking in cannabis, more
11			than 10,000 lbs.
12	893.135		
13	(1)(b)1.c.	1st	Trafficking in cocaine, more than
14			400 grams, less than 150
15			kilograms.
16	893.135		
17	(1)(c)1.c.	1st	Trafficking in illegal drugs,
18			more than 28 grams, less than 30
19			kilograms.
20	893.135		
21	(1)(d)1.c.	1st	Trafficking in phencyclidine,
22			more than 400 grams.
23	893.135		
24	(1)(e)1.c.	1st	Trafficking in methaqualone, more
25			than 25 kilograms.
26	893.135		
27	(1)(f)1.c.	1st	Trafficking in amphetamine, more
28			than 200 grams.
29			(j) LEVEL 10
30	782.04(2)	1st,PBL	Unlawful killing of human; act is
31			homicide, unpremeditated.

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1 787.01(1)(a)3. 1st,PBL Kidnapping; inflict bodily harm
2 upon or terrorize victim.
3 787.01(3)(a) Life Kidnapping; child under age 13,
4 perpetrator also commits
5 aggravated child abuse, sexual
6 battery, or lewd or lascivious
7 battery, molestation, conduct, or
8 exhibition.
9 782.07(3) 1st Aggravated manslaughter of a
10 child.
11 794.011(3) Life Sexual battery; victim 12 years
12 or older, offender uses or
13 threatens to use deadly weapon or
14 physical force to cause serious
15 injury.
16 876.32 1st Treason against the state.
17 947.146 Control Release Authority.--
18 (3) Within 120 days prior to the date the state
19 correctional system is projected pursuant to s. 216.136 to
20 exceed 99 percent of total capacity, the authority shall
21 determine eligibility for and establish a control release date
22 for an appropriate number of parole ineligible inmates
23 committed to the department and incarcerated within the state
24 who have been determined by the authority to be eligible for
25 discretionary early release pursuant to this section. In
26 establishing control release dates, it is the intent of the
27 Legislature that the authority prioritize consideration of
28 eligible inmates closest to their tentative release date. The
29 authority shall rely upon commitment data on the offender
30 information system maintained by the department to initially
31 identify inmates who are to be reviewed for control release

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1 consideration. The authority may use a method of objective
 2 risk assessment in determining if an eligible inmate should be
 3 released. Such assessment shall be a part of the department's
 4 management information system. However, the authority shall
 5 have sole responsibility for determining control release
 6 eligibility, establishing a control release date, and
 7 effectuating the release of a sufficient number of inmates to
 8 maintain the inmate population between 99 percent and 100
 9 percent of total capacity. Inmates who are ineligible for
 10 control release are inmates who are parole eligible or inmates
 11 who:

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

17
 18 In making control release eligibility determinations under
 19 this subsection, the authority may rely on any document
 20 leading to or generated during the course of the criminal
 21 proceedings, including, but not limited to, any presentence or
 22 postsentence investigation or any information contained in
 23 arrest reports relating to circumstances of the offense.

24
 25
 26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 1, lines 1-24,
 29 remove from the title of the bill: all of said lines
 30
 31 and insert in lieu thereof:

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A bill to be entitled
An act relating to criminal justice; creating
s. 790.166, F.S.; prohibiting the unlawful
manufacture, possession, sale, delivery,
display, use, or attempted or threatened use of
a weapon of mass destruction; prohibiting
unlawful conspiring to use such weapon;
prohibiting making such weapon readily
accessible to others; providing a first degree
felony penalty for violation; providing that
violation which results in death is a capital
felony; prohibiting the unlawful manufacture,
possession, sale, delivery, display, use, or
attempted or threatened use of a hoax weapon of
mass destruction; prohibiting unlawful
conspiring to use such weapon; prohibiting
making such weapon readily accessible to
others; providing a second degree felony
penalty for violation; providing definitions
for purposes of the act; providing
nonapplicability of the act; amending s.
921.0022, F.S.; providing for ranking of
violations on the offense severity ranking
chart; amending s. 782.04, F.S.; making it a
capital felony to commit the unlawful killing
of a human being while perpetrating or
attempting to perpetrate the act of resisting
an officer with violence to his or her person;
providing penalties for specified murders
involving the perpetration of or the attempt to
perpetrate the act of resisting an officer with

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1 violence to his or her person; reenacting ss.
2 775.0823(1), (2), (3), (4), (5), and (6),
3 782.051, 903.133, 921.0022(3)(h), (i), and (j),
4 and 947.146(3)(i), F.S., relating to violent
5 offenses committed against law enforcement
6 officers, correctional officers, state
7 attorneys, assistant state attorneys, justices,
8 or judges, attempted felony murder, bail on
9 appeal prohibited for certain felony
10 convictions, Criminal Punishment Code offense
11 severity ranking chart, Control Release
12 Authority; providing effective dates.

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