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DATE: March 5, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 375

RELATING TO: Unlawful Killing of Human Being

SPONSOR(S): Representative(s) Seiler

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3) HEALTHY COMMUNITIES
 - (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 enumerated felony offenses contained in s. 782.04(1)(a)2, F.S. Second degree murder occurs when a person is killed during the perpetration of any of the enumerated felony offenses by a person who was not involved in the commission 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 in the list constitutes third degree murder.

HB 375 adds the offense of resisting a law enforcement officer with violence to his or her person to the list of enumerated offenses. Thus, the bill allows for prosecution for either first degree or second degree felony murder (depending on who actually did the killing) rather than for third degree felony 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"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

First Degree Felony Murder

There are two types of first degree murder. One is known as premeditated murder and the other is known as 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 offenses:

- a. Drug trafficking offenses 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.

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. 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

The death occurred as a consequence and while the defendant was attempting to commit one of the above list of enumerated felonies, or

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. The defendant was the person who actually killed the victim or

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.

See Fla. Std. Jury Instr. (Crim.) 96-97

In order to convict for first degree felony murder, it is not necessary for the state to prove that the defendant had a premeditated design or intent to kill. First degree felony murder is a capital felony, punishable by death or life imprisonment. s.s. 782.04(1), 775.082(1), F.S.

Second Degree Felony Murder

There are two types of second degree murder. One is defined as the “unlawful killing of a human being when perpetrated by an act imminently dangerous to another and evincing a depraved mind regardless of human life.” s. 782.04(2), F.S. The other is second degree felony murder which occurs when a person is killed during the perpetration of or during the attempt to perpetrate any of the above enumerated felonies by a person who was not involved in the perpetration of the felony. s. 782.04(3), F.S.

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. The death occurred as a consequence of and while one of the list of enumerated felonies was being committed or

The death occurred as a consequence of and while there was an attempt to commit one of an enumerated list of crimes or

The death occurred as a consequence of and while there was an escape from the immediate scene of one of the enumerated list of crimes.

3. The 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.

The following examples illustrate the difference between first degree and second degree felony murder. If a defendant commits a robbery and during the course of the robbery, either the defendant or an accomplice kills a victim, both the defendant and his accomplice could be charged with first degree felony murder. On the other hand, 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 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.

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.

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 (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 currently not one of the list of enumerated offenses for first or second degree felony murder, if a defendant kills a person while resisting an officer with violence, the offense is third degree felony murder, punishable by up to fifteen years in prison.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 782.04, F.S., to add the offense of resisting a law enforcement 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 (depending on who actually does the killing), 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 bill 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 or an accomplice.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 782.04, F.S. to add resisting a law enforcement officer with violence to his or her person to the list of felonies in felony murder statute.

Section 2: Reenacts s. 775.0823, F.S.

Section 3: Reenacts s. 782.051, F.S.

Section 4: Reenacts s. 903.133, F.S.

Section 5: Reenacts s. 921.0022, F.S.

Section 6: Reenacts s. 947.146, F.S.

Section 7: Provides effective date of October 1, 2001.

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:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

It is expected that the sponsor will offer an amendment which will change 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 s. 843.01, F.S. which prohibits resisting an officer with violence to his or her person.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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