

STORAGE NAME: h0105Ba.sec.doc
DATE: October 29, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SELECT COMMITTEE ON SECURITY
ANALYSIS**

BILL #: HB 105-B
RELATING TO: Sentencing
SPONSOR(S): Representative(s) Goodlette & others

TIED BILL(S):

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

- (1) SELECT COMMITTEE ON SECURITY YEAS 11 NAYS 0
 - (2)
 - (3)
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 - (5)
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I. SUMMARY:

This bill enhances penalties for acts of terrorism.

It defines the term "terrorism" and reclassifies, to the next highest degree, the misdemeanor or felony degree of offenses that facilitate or further the commission of any act of terrorism.

The bill amends the felony murder provisions that constitute murder in the first degree and murder in the second degree by adding to the list of qualifying offenses any felony that is an act of terrorism or is in furtherance of an act of terrorism. Concomitantly, the list of offenses that do not constitute murder in the third degree (i.e., the offenses listed in the previous felony murder provisions) is amended to include any felony that is an act of terrorism or is in furtherance of an act of terrorism.

The fiscal impact of this bill is indeterminate.

The bill takes effect upon becoming law.

The bill has been amended. Please refer to Section VI, Amendments or Committee Substitute Changes.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

This bill does not support the principle of Less Government because the state has the ability to incarcerate a criminal for a longer period of time.

B. PRESENT SITUATION

Terrorism: Definition and Reclassification

Florida law does not currently define terrorism, and thus criminal acts that may constitute terrorism are not reclassified.

Florida currently has numerous reclassification statutes. For example, the hate crimes law, the masked felon law, the multiple sexual perpetrators law, and the possession or use of a weapon or firearm during the commission of certain felonies are all reclassification statutes.

Felony Murder

The felony murder provisions of § 782.04, F.S., the homicide statute, “is to protect the public from inherently dangerous situations caused by the commission of the felony.” *Parker v. State*, 641 So.2d 369, 376 (Fla. 1994). Felony murder provisions generally operate to elevate the sentence of a killing that occurs during the course of a felony or attempted felony.

There are three degrees of felony murder.

- First degree felony murder, which is a capital felony punishable by death or life imprisonment, is the unlawful killing committed by a person engaged in the perpetration of, or the attempt to perpetrate, any felony from a list of offenses described in § 82.04(1)(a)2, F.S.
- Second degree felony murder is a killing committed by a person other than the person engaged in the perpetration of, or attempted perpetration of, a felony from any listed felonies in § 782.04(3), F.S.

- Third degree felony murder is a killing committed by a person who did not plan to cause death and is engaged in the course of a felony or attempted felony other than those enumerated in § 782.04 (1)(a)2 or (3), F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill defines “terrorism” as an activity that :

- Involves a violent act or act dangerous to human life that is a violation of the criminal laws of this state or of the United States; and
- Appears to be intended to:
 - Intimidate, injure, or coerce a civilian population;
 - Influence the policy of a government by intimidation or coercion; or
 - Affect the conduct of government through destruction of property, assassination, murder, or kidnapping.

This definition, which is included in both sections of the bill, is patterned after the federal definition in Title 18 U.S.C. § 3077.

The bill reclassifies the misdemeanor or felony degree of offenses that facilitate or further the commission of any act of terrorism. The offenses are reclassified in the following manner:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the first degree and a felony of the first degree punishable by a term of imprisonment not exceeding life are reclassified to life felonies.

A first degree misdemeanor that is reclassified under this section is ranked in level 2 of the offense severity-ranking chart. A felony offense that is reclassified is ranked one level above the ranking under §§ 921.0022 or 921.0023, F.S., of the offense committed.

The bill amends § 782.04, F.S., the felony murder provisions, to add as qualifying offenses, for first and second degree murder, any felony that is an act of terrorism or is in furtherance of an act of terrorism. Concomitantly, the list of offenses that do not constitute murder in the third degree (i.e., the offenses listed in the previous felony murder provisions) is amended to include any felony that is an act of terrorism or is in furtherance of an act of terrorism.

The bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill is indeterminate.

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:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Pursuant to Article VII, section 18, Florida Constitution, criminal laws are exempt from the requirements of section 18.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The penalty enhancement provision of the bill fails to address the enhancement of a second degree felony to a first degree felony if the criminal conduct facilitated or furthered the commission of any act of terrorism. This omission was corrected with the adoption of Amendment 1.

Amendment 2 clarifies the intent requirement in the definition of terrorism by eliminating the language "appears to be intended to." This language is replaced with "is intended to." The amendment also adds the offense of aircraft piracy to the list of criminal offenses in subsection (2)(c), which qualify the conduct as terrorism if it is designed to affect the conduct of government.

Both of these amendments were adopted at the October 29, 2001 committee meeting and are traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

Randy L. Havlicak

Tom Randle/Richard Hixson