

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 76-B

SPONSOR: Criminal Justice Committee and Senators Brown-Waite and Smith

SUBJECT: Sentencing

DATE: October 24, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 76-B reclassifies the misdemeanor or felony degree of offenses that facilitate or further the commission of any act of terrorism. The CS ranks the reclassified offenses.

The CS amends s. 882.04, F.S., for the purpose of amending the felony murder provisions that constitute murder in the first degree and murder in the second degree for the purpose of adding as qualify offenses any felony which is an act of terrorism or is in furtherance of an act of terrorism. Consistent with those amendments 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 which is an act of terrorism or is in furtherance of an act of terrorism.

The CS substantially amends s. 859.01, F.S., to redefine the first degree felony offense as applying to a person who introduces, adds, or mingles any poison, bacteria, virus, or chemical compound with food, drink, or medicine with the intent to kill or injure another person, or willfully poisons, or introduces, adds, or mingles any bacteria, virus, or chemical compound in any spring, well, or reservoir of water with such intent.

This CS creates s. 775.31, Florida Statutes.

II. Present Situation:

A. Terrorism

Florida law has no specific crimes for terrorism. The law does not enhance penalties or reclassify the misdemeanor or felony degree of offenses that facilitate or further an act of terrorism.

There is presently no state definition of the term “terrorism.” One federal definition of an “act of terrorism” in 18 U.S.C. s. 3077 describes that act as follows:

- (1) "act of terrorism" means an activity that -
 - (A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and
 - (B) appears to be intended -
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by assassination or kidnapping. . . .

Recent federal legislation amends 18 U.S.C s. 2331 to create a definition of “domestic terrorism” that is almost identical to the definition of “act of terrorism” in 18 U.S.C. s. 3077. This legislation adds “mass destruction” to unlawful acts that affect the conduct of government. *See e.g.*, H.R.2975, the “USA Act of 2001” (107th Congress).

B. Reclassification

Current law presently provides for numerous reclassification statutes. For example, the hate crimes law, the masked felon law and the multiple sexual perpetrators law are all reclassification statutes.

C. Felony Murder

The purpose of the felony murder provisions of s. 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) (citation omitted).

Some cases indicate that the felony murder statute accomplishes its purpose of protecting the public by deterring the commission of felonies. However, emphasizing the deterrent effect of the statute gives those who perpetrate felonies too much credit for reflective thought. Another, more realistic, view is to focus on the punitive aspect of the statute and conclude that the felony murder law is result-oriented in its enhancement of punishment for dangerous conduct connected with a felony that causes the death of another.

State v. Williams, 26 Fla. L. Weekly D391a, page 2 (Fla. 4th DCA, February 7, 2001) (footnote omitted).

There are three degrees of felony murder. *McEver v. State*, 352 So.2d 1213 (Fla. 2d DCA 1977). Pursuant to s. 782.04(1)(a)2., F.S., first degree felony murder, which is a capital felony punishable by death or life imprisonment, 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 offenses described in that section (e.g., capital trafficking, sexual battery, and robbery).

Felony murder does not require a premeditated design or specific intent to kill. *See e.g., Williams v. State*, 540 So.2d 188, 189, n. 3. (Fla. 1989) (" . . . [W]here the evidence shows a killing committed by someone perpetrating or attempting to perpetrate one of the enumerated felonies in the felony murder statute, premeditation is presumed as a matter of law. ").

. . . [W]hen a person is killed during the commission of certain felonies, the felon is said to have the intent to commit the death--even if the killing was unintended. The felony murder doctrine also imputes intent for deaths caused by co-felons and police.

State v. Gray, 654 So.2d 552, 553 (Fla. 1995).

The criminal intent that must be established for purposes of felony murder is "the mental element required to convict on the underlying felony." *Gurganus v. State*, 451 So.2d 817, 822 (Fla. 1984). "First degree felony murder operates by imputing the necessary state of mind to constitute premeditated murder if the elements of felony murder are shown." *Williams v. State, supra, at 189, n.3.*

A further principle regarding the felony murder doctrine is that "[t]he 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." *Allen v. State*, 690 So. 2d 1332, 1334 (Fla. 2d DCA 1997). To obtain a felony murder conviction, "the element of causation, i.e. that the homicide was committed in the perpetration of the felony, must be established." *Id.*

The three gradations of felony murder all make use of the following language: "engaged in the perpetration of . . . any felony." In *Jefferson v. State*, 128 So.2d 1326, 136 (Fla. 1961), the Florida Supreme Court stated that "[i]t is a homicide committed during the perpetration of a felony, if the homicide is part of the res gestae of the felony." "Res gestae" means "things done." *Black's Law Dictionary* 1173 (5th ed. 1979). The term is very difficult to define with precision. In the context of felony murder, one court has described res gestae "as embrac[ing] not only the actual facts of the transaction and the circumstances surrounding it, but the matter immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence." *State v. Fouquette*, 221 P.2d 404, 416-17 (Nev. 1950).

In deciding whether a killing falls under the felony murder provisions of the homicide statute, more recent Florida Supreme Court cases have focused on a " 'break in the chain of circumstances' between the killing and the underlying felony." *State v. Williams, supra*, at page 3, quoting *Parker, supra*, at 376.

To find what the supreme court calls "a break in the chain of circumstances" between the killing and the underlying felony, courts focus on the time, distance, and causal relationship between the underlying felony and the killing. *See Parker*, 570 So.2d at 1051. "Neither the passage of time nor separation in space from the felonious act to the killing precludes a felony murder conviction when it can be said . . . that the killing is a predictable result of the felonious transaction." *Mills [v. State]*, 407 So.2d 218, 221 (Fla. 3rd DCA 1981)].

Id.

In order to find a defendant guilty of first degree felony murder, the state must prove the following:

- ▶ The victim's death.
- ▶ The victim's death occurred as a consequence of and while the defendant was engaged in the commission of any enumerated felony in s. 775.082(1)(a)1., F.S., attempting to commit any such felony, or escaping (or defendant's accomplice was escaping) from the immediate scene of any such felony.
- ▶ The victim was killed by the defendant, or the victim was killed by a person other than the defendant but that person and the defendant were principals in the commission of any of the enumerated felonies.

Pursuant to s. 782.04(3), F.S., second degree felony murder, which is a first degree felony punishable by up to life in prison, is the killing of a person during the perpetration of, or attempted perpetration of, any enumerated felonies in that section (almost identical to the enumerated felonies in felonies discussed for first degree felony murder).

Second degree felony murder "requires that the killing be performed by a nonprincipal."
Williams v. State, supra, at 188.

The second degree felony murder statute . . . operates under a different scheme [than the first degree felony statute]; it imputes the act necessary to constitute second degree murder. The necessary elements of second degree murder include a homicide committed by the defendant or an accomplice, whereas the second degree felony murder statute addresses a homicide committed by someone other than the defendant or his accomplice. . . .

Id. at 189, n. 3.

In order to find a defendant guilty of second degree felony murder, the state must prove the following:

- ▶ The victim's death.
- ▶ The victim's death occurred as a consequence of and while the defendant was engaged in the commission of any enumerated felony in s. 782.04(3), F.S., attempting to commit any such felony, or escaping (or defendant's accomplice was escaping) from the immediate scene of any such felony.
- ▶ The victim was not killed by the defendant but the defendant knowingly aided, abetted, counseled, hired or otherwise procured the commission of one of the enumerated list of felonies.

- ▶ The person who actually killed the victim was not involved in the commission of or the attempt to commit the crime alleged.

Pursuant to s. 782.04(4), F.S., third degree felony murder, which is a second degree felony punishable by up to 15 years in prison, 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 enumerated in s. 782.04 (1)(a)2. or (3), F.S.

D. Poisoning Food, Drink or Medicine

Section 859.01, F.S., provides that it is a first degree felony for a person to mingle any poison with food, drink, or medicine with intent to kill or injure another person, or willfully poison any spring, well, or reservoir of water with such intent.

III. Effect of Proposed Changes:

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

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
2. A misdemeanor of the first degree is reclassified to a felony of the third degree, ranked in level 2 of the Criminal Punishment Code offense severity ranking chart.
3. A felony of the third degree is reclassified to a felony of the second degree.
4. A felony of the second degree is reclassified to a felony of the first degree.
5. 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 felony offense that is reclassified is ranked one level above the ranking under ss. 921.0012, 921.0013, 921.0022 or 921.0023, F.S., of the offense committed.

The CS defines the term “terrorism.” The definition is patterned after the federal definition in 18 U.S.C s. 3077. The substantive differences between the definition in the legislation and the federal definition are that the state definition adds violent acts or acts dangerous to human life which are violations of state or federal law; and that appear to be intended to *injure* a civilian population; or affect the conduct of government through *destruction of property* or *murder*.

The CS amends s. 882.04, F.S., for the purpose of amending the felony murder provisions that constitute murder in the first degree and murder in the second degree for the purpose of adding as qualify offenses any felony which is an act of terrorism or is in furtherance of an act of terrorism. Consistent with those amendments 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 which is an act of terrorism or is in furtherance of an act of terrorism.

This section of the CS also includes the same definition of the term “terrorism” that was included in the previous section creating a reclassification statute.

The CS substantially amends s. 859.01, F.S., to redefine the first degree felony offense as applying to a person who introduces, adds, or mingles any poison, bacteria, virus, or chemical compound with food, drink, or medicine with the intent to kill or injure another person, or willfully poisons, or introduces, adds, or mingles any bacteria, virus, or chemical compound in any spring, well, or reservoir of water with such intent.

The CS takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An analysis of the fiscal impact of this CS was not available when this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
