

# 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: SB 142  
 SPONSOR: Senator Lynn  
 SUBJECT: Jason A. Gucwa Act  
 DATE: April 5, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill eliminates immunity from criminal prosecution for an accessory after the fact currently extended to certain family members of a felony offender.

This bill substantially amends section 777.03, and reenacts a paragraph of section 921.0022, of the Florida Statutes.

**II. Present Situation:**

***Accessory After the Fact***

Current law provides for immunity from prosecution for accessory after the fact for certain family members of a felony offender:

(1)(a) Any person *not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender*, who maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a felony or been accessory thereto before the fact, with intent that the offender avoids or escapes detection, arrest, trial or punishment, is an accessory after the fact.

(b) Any person, *regardless of the relation to the offender*, who maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that the offender had committed the offense of child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age, or had been accessory thereto before the fact, with the intent

that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact unless the court finds that the person is a victim of domestic violence.<sup>1</sup>

Accessory is charged at one level below the felony offense committed by the offender who is aided by the accessory. For example, if the felony offense committed by the offender is a capital felony, the accessory can be charged with a first degree felony.<sup>2</sup>

Subsection (1)(b) of s. 777.03, F.S., was enacted in 1999 as part of the Kayla McKean Child Protection Act. This legislation specifically carved out exceptions to the familial immunity from prosecution as an accessory in cases of child abuse, child neglect, aggravated child abuse, aggravated manslaughter or murder of a child (under 18 years). The immunity is still valid if the court finds that the person acting as an accessory is a victim of domestic violence. Presumably this change was made because of a policy decision that children deserve protection by the adults in their lives who are capable of protecting them from abuse at the hands of other adults.

### ***Judicial Interpretation***

In *State v. C.H.*, the court defined consanguinity as a blood relation and affinity as a marital relation, interpreting s. 777.03, F.S., to include in-laws and step-relatives. The court recognized these definitions as clear enough so that people of common understanding and intelligence need not guess at their meaning, thereby saving the statute from a void for vagueness challenge to its constitutionality.<sup>3</sup>

The court also found that s. 777.03, F.S. (1981), demonstrated a substantial and reasonable relationship to the promotion and preservation of the family structure, thereby satisfying equal protection under the constitution. The court further stated:

The statute represents a legislatively determined balance between two competing societal interests. The first is society's interest in apprehending suspected offenders. The second is society's interest in safeguarding the family unit from unnecessary fractional pressures. Section 777.03, F.S., achieves a balance between these two goals by restricting its application to a select group of family members and conferring immunity so that these individuals need never choose between love of family and obedience to the law.<sup>4</sup>

### **III. Effect of Proposed Changes:**

Senate Bill 142 removes from current law immunity from prosecution for accessory after the fact for certain family members of a felony offender. This policy shift makes it possible for any relative of the offender, including parents, grandparents, siblings, children, or grandchildren to be charged with a violation of the criminal law if that relative "maintains or assists ... or gives the offender any other aid, knowing that the offender had committed a felony..."

The bill is named the "Jason A. Gucwa Act." Jason Anthony Gucwa, 29, was murdered in March of 2003 in Flagler County. Investigators from the Flagler County Sheriff's Office, Daytona

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<sup>1</sup> s. 777.03(1), F.S., (Emphasis added)

<sup>2</sup> s. 777.03(2), F.S.

<sup>3</sup> 421 So.2d 62, 64 (Fla. 4th DCA, 1982).

<sup>4</sup> *Id at 65.*

Beach Police Department, Florida Department of Law Enforcement, and State Attorney's Office are continuing to look for Stephen and Wursula Workman as persons of interest in the case. Stephen Workman's mother's home was searched twice for possible evidence linking him and his wife to the crime. Stephen Workman's mother is believed by law enforcement to have materially assisted both her son and his wife flee from prosecution.

**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:

The bill would directly impact a family, a member of which has committed any felony violation of the law, requiring the family member to make hard choices in certain cases between being a de facto arm of local law enforcement in an investigation of the relative/offender or being prosecuted as a law violator themselves.

C. Government Sector Impact:

This bill was reviewed on February 16, 2004, by the Criminal Justice Impact Conference. It was determined that the bill would have insignificant impact on Florida's prison population.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Criminal Justice:

The amendment to the bill grants immunity from prosecution, in subsection (1)(a) of s. 777.03, F.S, for the crime of accessory, to a child under the age of eighteen at the time of the commission of the underlying felony offense, regardless of the child's relation to the offender.

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

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