

# 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.)

---

Prepared By: Criminal Justice Committee

---

BILL: CS/SB 730

INTRODUCER: Criminal Justice Committee and Senator Lynn

SUBJECT: Accessories to Crime

DATE: February 9, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

## I. Summary:

The bill amends the current law with regard to immunity extended to family members from prosecution as an accessory after the fact in certain felony cases. The bill removes this immunity except as to third degree felonies committed by the offender/family member. In all other cases, a family member of the offender may be prosecuted as an accessory after the fact, provided the statutory criteria are met. There must be knowledge of the commission of the crime by the family member, and maintaining, assisting or aiding the offender with the intent that the offender escape detection, arrest, trial, or punishment.

This bill substantially amends section 777.03, 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:**

The bill leaves untouched the current familial immunity from prosecution as an accessory after the fact only in the case of a family member committing a third degree felony.

---

<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.

Regardless of the familial relation, if the offender committed a capital, life, first, or second degree felony, and the statutory requirements are met (maintaining or assisting or aiding, and knowledge of the commission of the crime), any person, including a family member, can be charged as an accessory after the fact. This amendment to current law is effected in the newly-created paragraph (c) of subsection 777.03(1), F.S.

The bill also amends existing law to strike what appears to be the superfluous language in paragraph (b) of subsection 777.03 (1), F.S., “regardless of the relation to the offender.”

#### **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, except for third degree felonies, requiring the family member to make 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:**

The bill was discussed by the Criminal Justice Estimating Conference on January 9, 2006, and is expected to have an insignificant impact on the prison system.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

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

---

## **VIII. Summary of Amendments:**

None.

---

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

---