# 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: Judiciary Committee

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| BILL: | CS/SB 730 |
| INTRODUCER: | Criminal Justice Committee and Senator Lynn |
| SUBJECT: | Accessories to Crime |
| DATE: | March 28, 2006 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cellon | Cannon | CJ | **Fav/CS** |
| 2. | Chinn | Maclure | JU | **Favorable** |
| 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

A person who is accused of being an accessory after the fact can be described as one who assists a principal or an accessory before the commission of a crime or gives the offender any other aid, with the intent of avoiding or escaping detection, arrest, trial, or punishment.[1] To prove a prima facie case of accessory after the fact, the state must prove that:

1) A felony was committed by an offender[2];
2) After the alleged felony was committed, the defendant[3] maintained, assisted, or gave any other aid to the offender;

[1] See s. 777.03, F.S.

[2] The "offender" is the person who the accessory after the fact is charged with aiding.

3) At that time the defendant knew that the offender had committed the alleged felony;
4) The defendant did so with the intent that the offender avoid or escape detection, arrest, trial, or punishment; and
5) The defendant was not related to the offender by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother, or sister.[4]

***Underlying Crime***

For a defendant to be charged as an accessory after the fact, there must be an underlying crime committed by an offender. The offender need not be found guilty for an accessory to be prosecuted. In the absence of a finding of guilt, however, the state must prove in the trial of the accessory, beyond a reasonable doubt, that the offender committed the crime with which the defendant is charged as being an accessory.[5] An example of how this might prove relevant is in a case where the offender dies in the commission of the crime, and the state can prove that the offender would have been guilty of the crime if he had survived to be prosecuted. In this scenario, the defendant could be tried as an accessory after the fact even though the principal/offender was never charged with the crime. The defendant would be 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.[6]

***Aid to Offender***

A defendant charged with accessory after the fact must have maintained, assisted, or given any other aid to the offender who committed the underlying crime. This requires an overt act on the part of the defendant—not just failing to report a felony to authorities.[7, 8] The type of overt act that would subject someone to prosecution for being an accessory is less clear, but "denying knowledge of the whereabouts" of an offender and "concealing her identity by falsely identifying her as another person" have been cited as possible support for a conviction for accessory after the fact.[9]

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[3] The "defendant" is the person who is charged with aiding the offender.
[4] *Bowen v. State*, 868 So. 2d 541, 544 (Fla. 2d DCA 2003) (quoting itself in a previous opinion in *Bowen v. State*, 791 So. 2d 44, 50 (Fla. 2d DCA 2001), which referenced to Fla. Std. Jury Inst. (Crim.) 73). An example of a standard jury form that includes the elements of the crime of accessory after the fact is available at http://www.floridasupremecourt.org/jury_instructions/chapters/entireversion/onlinejurryinstructions.pdf, p. 40.
[5] *Bowen v. State*, 791 So. 2d at 50.
[6] Section 777.03(2), F.S.
[7] *Bowen*, 791 So. 2d at 52.
[8] The common law crime of "misprision of a felony" for failing to report a felony to authorities is not recognized in the state of Florida, despite s. 775.01, F.S., which provides for the retention of English common law on crimes. Misprision of a felony was, at common law, "the bare failure of a person with knowledge of the commission of a felony to bring the crime to the attention of the proper authorities." *Holland v. State*, 302 So. 2d 806, 807 (Fla. 2d DCA 1974).
[9] *See Bowen*, 791 So. 2d at 53 (quoting *State v. Taylor*, 283 So. 2d 882 (Fla. 4th DCA 1973)). In *Bowen*, the court agreed with a finding in *Taylor* that "certain falsehoods told to an officer seeking information, which go beyond merely disavowing knowledge or refusing to cooperate with an investigation, may support a conviction for accessory after the fact."

***Knowledge***

To be an accessory after the fact, the defendant must also have knowledge of the underlying crime; the defendant's mere suspicion that a crime has been committed is not enough.[10] It is not necessary for the defendant to be an eyewitness to the crime, but the defendant must know or be provided sufficiently reliable information of facts that would give a reasonable person a sufficient basis for believing the offender committed the crime.[11] Since the Legislature amended s. 777.303, F.S., in 1995, the severity of the crime of the accessory after the fact has been linked to the severity of the underlying crime, for the offense of the accessory is charged at one degree below the charge of the underlying crime.[12] Thus, to prove the level of the offense for which the accessory should be charged, the state must present evidence of the specific crime of which the accessory is charged with having knowledge.[13] The accessory's knowledge of the crime must encompass the significant elements of that crime.[14]

***Intent***

At the time the accessory committed an overt act to aid the offender of the crime, the defendant must have done so with the intent that the offender avoid or escape detection, arrest, trial, or punishment. An action undertaken to protect the accessory's personal safety or for other personal reasons,[15] but without the intent to assist the offender, will not support a conviction for accessory after the fact.[16] The type of aid given to the offender often provides circumstantial or indirect evidence showing whether the defendant intended to aid the offender—the greater the aid and the greater potential it had to assist the offender, the more likely it was done with the required intent for the crime of accessory.[17]

***Relationship to Offender***

The current statute provides immunity to prosecution as an accessory after the fact for any person standing in the relation of "husband or wife, parent or grandparent, child or grandchild, brother or sister, by *consanguinity* or *affinity* to the offender…." (Emphasis added.) 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.[18] In a prosecution the state must establish that the accessory does not fall under one of the familial exceptions created in statute—even if the defendant does not argue the presence of a familial relationship.[19]

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[10] *See id*. at 51 (citing *State v. Gardner*, 814 P. 2d 458 (N.M. App. 1991)).
[11] *Id*.
[12] Section 13, ch. 95-184, L.O.F.
[13] *Bowen*, 791 So. 2d at 51.
[14] *Id*. at 52 (citing *United States v. Graves*, 143 F. 3d 1185 (9th Cir. 1998), holding that a defendant could not be charged as an accessory after the fact to felon in possession of firearm unless he knew the principal was a felon).
[15] *Helms v. State*, 349 So. 2d 726 (Fla. 4th DCA 1977) (holding that evidence that defendant purchased drugs he knew were stolen, and thus helped thieves dispose of it, was not sufficient proof of accessory after the fact for theft).
[16] *Bowen*, 791 So. 2d at 53.
[17] *Id*.
[18] 421 So. 2d 62, 64 (Fla. 4th DCA 1982). 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.
[19] *Carrillo v. State*, 463 So. 2d 450, 451 (Fla. 2d DCA 1985).

Immunity from prosecution under the accessory after the fact statute is not provided to all family members of the offender. In *State v. CH*, the court addressed an equal protection challenge of s. 777.03, F.S. (1981), based upon the fact that the statute provides immunity for some relatives but not for others.[20] The court found a rational basis for the Legislature's decision to limit immunity to certain family members, explaining that:

> 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 by conferring immunity so that these individuals need never choose between love of family and obedience to the law.[21]

Further, the court noted that the immunity created by s. 777.03, F.S., does not involve a fundamental familial right, and absent the Legislature's enactment of this statute, "no one could maintain that there is a constitutionally protected right to hide or give other assistance to a fugitive simply because of the blood or marital relationship."[22]

***Exception to Familial Immunity – Child Abuse***

Subsection (1)(b) of s. 777.03, F.S., was enacted in 1999 as part of the Kayla McKean Child Protection Act.[23] This legislation specifically carved out an exception to familial immunity from prosecution as an accessory for cases involving child abuse, child neglect, aggravated child abuse, or 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.

## III. Effect of Proposed Changes:

The bill limits the current familial immunity from prosecution as an accessory after the fact so that immunity is only provided in the case of a family member committing a third degree felony.

Regardless of the familial relation, if the offender committed a capital, life, first, or second degree felony, and the statutory requirements are met (underlying crime, knowledge of crime, maintaining, assisting or aiding, and intent), 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."

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[20] 421 So. 2d 62, 64 (Fla. 4th DCA 1982).
[21] *Id. at* 65.
[22] *Id*.
[23] Section 15, ch. 99-168, L.O.F.

## 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.

## VIII. Summary of Amendments:

None.