

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1064

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Murder of Law Enforcement Officers

DATE: March 6, 2008

REVISED: _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

The bill provides a person shall be sentenced to life imprisonment without eligibility for release if the person is found beyond a reasonable doubt to have committed or attempted to commit murder in the first degree as described in s. 782.04(1), F.S., and a death sentence was not imposed, murder in the second or third degree as described in s. 782.04(2), (3), or (4), F.S., attempted murder in the first or second degree as described in s. 782.04(1)(a)1. or (2), F.S., or attempted felony murder as described in s. 782.051, F.S., when the victim of the offense is a law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer (defined terms) engaged in the lawful performance of a legal duty.

This bill creates section 782.065, Florida Statutes.

II. Present Situation:

Section 775.0823, F.S., the Law Enforcement Protection Act ("LEPA"), provides for penalties for specified violent offenses committed against any law enforcement or correctional officer, as

defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.;¹ against any state attorney elected pursuant to s. 27.01, F.S., or assistant state attorney appointed under s. 27.181, F.S.; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

- For first degree murder (s. 782.04(1), F.S.), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.
- For second or third degree murder (s. 782.04(2), (3), or (4), F.S.), attempted first, second or third degree murder (s. 782.04(1), (2), (3) and (4), F.S.),² attempted felony murder (s. 782.051, F.S.), manslaughter (s. 782.07, F.S.) during the commission of a crime, kidnapping (s. 787.01, F.S.), aggravated battery (s. 784.045, F.S.), and aggravated assault (s. 784.021, F.S.), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084, F.S.

A person found to have violated this statute cannot have adjudication of guilt or imposition of sentence suspended, deferred, or withheld.

LEPA, in conjunction with the Criminal Punishment Code, provides the following penalty ranges for the violent offenses previously described:

- 1st Degree Murder: Life without eligibility for release
- 2nd Degree Murder:
 - s. 782.04(2), F.S.: 53.875 years - life
 - s. 782.04(3), F.S.: 50.125 years – life
- 3rd Degree Murder: 22.5 years
- Attempted 1st Degree Murder: 12.625 years - 30 years
- Attempted 2nd Degree Murder:
 - s. 782.04(2), F.S.: 9.75 years - 15 years
 - s. 782.04(3), F.S.: 7.5 years - 15 years
- Attempted Felony Murder:
 - s. 782.051(1), F.S.: 12.625 years - life
 - s. 782.051(2), F.S.: 9.8125 years - 30 years
 - s. 782.051(3), F.S.: 7 - 15 years

Section 782.04, F.S., punishes murder in its various degrees. Section 782.04(1)(a)1. and (1)(a)2., F.S., punish, respectively, first degree murder ("premeditated" murder) and first degree felony murder. These offenses are capital felonies, punishable by death or life imprisonment. Section

¹ These subsections define, respectively, the terms "law enforcement officer," "correctional officer," "correctional probation officer," "part-time law enforcement officer," "part-time correctional officer," "auxiliary law enforcement officer," and "auxiliary correctional officer."

² These offenses include attempted felony murder offenses under s. 782.04(1)(a)2., (3) and (4), F.S. However, the Florida Supreme Court held in *State v. Gray*, 654 So.2d 552 (Fla.1995), that attempted felony murder under s. 782.04, F.S., is a non-existent crime. Therefore, although attempted felony murder offenses under s. 782.04, F.S., are referenced, the offenses are effectively nullities. The *Gray* decision does not affect attempted murder in the first degree under s. 782.04(1)(a)1., F.S., attempted murder in the second degree under s. 782.04(2), F.S., or attempted felony murder under s. 782.051, F.S., which was created to address the *Gray* decision.

782.04(2) and (3), F.S., punish, respectively, second degree murder (“imminently dangerous to another and evincing a depraved mind regardless of human life”) and second degree felony murder. These offenses are first degree felonies, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S. Section 782.04(4), F.S., punishes third degree felony murder. This offense is a second degree felony. The maximum penalty for a second degree felony is 15 years in state prison. Pursuant to s. 777.04, F.S., attempted murder in the first degree under s. 782.04(1)(a)1., F.S., is a first degree felony and attempted murder in the second degree under s. 782.04(2), F.S., is a second degree felony.³

Section 782.051, F.S., punishes attempted felony murder offenses,⁴ the elements and penalties of which are described as follow:

- Any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3), F.S. (third degree felony murder) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a first degree felony.
- Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3), F.S., and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a first degree felony.
- When a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in s. 782.04(3), F.S., by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a second degree felony.

Section 943.10(1), (6) and (8), F.S., define the following terms:

- “Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
- “Part-time law enforcement officer” means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.
- “Auxiliary law enforcement officer” means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement

³ *Id.*

⁴ *Id.*

officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

III. Effect of Proposed Changes:

The bill provides that, notwithstanding s. 775.082, F.S., s. 775.0823, F.S., s. 782.04, F.S., s. 782.051, F.S., or chapter 921, F.S., a person shall be sentenced to life imprisonment without eligibility for release⁵ if the person is found beyond a reasonable doubt⁶ to have committed or attempted to commit murder in the first degree as described in s. 782.04(1), F.S.,⁷ and a death sentence was not imposed, murder in the second or third degree as described in s. 782.04(2), (3), or (4), F.S., attempted murder in the first or second degree as described in s. 782.04(1)(a)1. or (2), F.S., or attempted felony murder as described in s. 782.051, F.S., when the victim of the offense is a law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer (defined in s. 943.10, F.S.) engaged in the lawful performance of a legal duty.

The bill appears to effectively supersede penalties in s. 775.0823, F.S., for the murder offenses specified in both the bill and s. 775.0823, F.S. However, s. 775.0823, F.S., would not be superseded for non-murder offenses (specified in that statute) that are committed against law enforcement officers or for any offense (murder or non-murder) in that statute that are committed against correctional officers, state attorneys, assistant state attorneys, justices, or judges.

The effective date of the bill is October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵ The words “without eligibility for release” would cover release by application of gain-time, parole, control release, conditional release, conditional medical release, etc. Early release by reason of pardon or executive clemency is not affected in that pardon and executive clemency are executive branch powers that the Legislature cannot prohibit. *See* Art. IV, s. 8, Fla. Const.

⁶ With the exception of murder in the first degree under s. 782.04(1), F.S., this life imprisonment penalty exceeds the maximum penalty provided for the specified offenses in s. 775.082. In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), the United States Supreme Court indicated that, under the Sixth Amendment of the United States Constitution, any fact (other than a prior conviction) that exposes a defendant to a sentence in excess of the relevant statutory maximum must be found by a jury, not a judge, and established beyond a reasonable doubt, not by a lesser standard of proof (such as “clear and convincing” evidence or a “preponderance” of the evidence). The inclusion of the “reasonable doubt” standard addresses *Apprendi/Blakely*.

⁷ Although under current law first degree murder is already punishable by imprisonment for life if a death sentence is not imposed, conditional medical release might be available for a defendant sentenced to life for this offense. By including this offense in the bill with the prohibition against eligibility for early release, conditional medical release would not apply to the offender.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that the bill has a potentially insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 5, 2008:

- Requires that findings necessary to the life imprisonment penalty provided by the bill be found beyond a reasonable doubt.
- Removes any reference to attempted felony murder offenses under s. 782.04, F.S. (consistent with a Florida Supreme Court decision that attempted felony murder under this statute is a non-existent crime).

B. Amendments:

None.