

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 Judiciary Committee

BILL: CS/SB 92
INTRODUCER: Judiciary Committee and Senator Villalobos
SUBJECT: Persons Injured by Crime/Medical Treatment
DATE: January 24, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Treadwell	Maclure	JU	Fav/CS
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="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 creates two new felony offenses when a person takes custody of or exercises control over someone he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury. It would be a third-degree felony if the victim's medical condition worsens as a result of the deprivation of medical care. It would be a second-degree felony under the bill if the deprivation of medical care results in the victim's death.

This bill creates section 843.21, Florida Statutes.

II. Present Situation:

In 2003, Frank Pacheco was assaulted by a group of men and sustained serious injuries during an alleged attempted drug deal by Pacheco and his companion. After the assault, the attackers allegedly put Pacheco in the back of a car and forced Pacheco's companion to drive away, preventing Pacheco from receiving immediate medical care. The prosecutor in the case stated that "the wounds Pacheco suffered from the beating were not life-threatening, but they became

so after he was shoved into the car and not taken directly to the hospital.”¹ Pacheco died as a result of the injuries he sustained.

Potential Criminal Liability

The crime of first-degree felony murder is the unlawful killing of a human being by a person engaged in the commission of or in the attempt to perpetrate a statutorily enumerated felony.² In order to be convicted of this crime, it is not necessary that the accused person personally perform the killing.³ If an injured crime victim dies as a result of deprivation of medical care, and the perpetrator was engaged in the commission or attempt to commit one of the enumerated felonies, the perpetrator could be charged with felony murder.

In addition to felony murder, a perpetrator may be guilty of manslaughter if the victim has died, the death was caused by the act, there was procurement or culpable negligence of the defendant, and the killing was not justified or excusable homicide.⁴ Manslaughter by culpable negligence does not include the element of criminal intent.⁵ Thus, a perpetrator who was culpably negligent in failing to secure or otherwise delaying or preventing medical care for an injured crime victim could be charged with manslaughter if the absence of medical care was the cause of the crime victim’s death.

Potential Civil Liability

Generally, in Florida, “[n]o common law duty exists, absent a special relationship, for one person to come to the aid of another.”⁶ However, if the individual actually created the danger there is a duty to take action on behalf of another.⁷ It is possible that a perpetrator, such as the one denoted in the Pacheco case, arguably would owe a legal duty to an injured victim to secure medical care and may be liable for civil damages.

III. Effect of Proposed Changes:

The bill creates s. 843.21, F.S., making it a crime for a person, who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity, to deprive that

¹ Tristram Korten, “How to Get Away with Murder,” *Miami News Times*, March 24, 2005, available at <http://www.miaminewtimes.com/2005-03-24/news/how-to-get-away-with-murder/5>.

² Section 782.04, F.S. The statutorily enumerated felonies that serve as the predicate for first-degree felony murder are: any trafficking offense prohibited by the Florida Statutes, arson, sexual battery, robbery, burglary, kidnapping, escape, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, carjacking, home-invasion robbery, aggravated stalking, murder of another human being, resisting an officer with violence, and a felony that is an act of terrorism or is in furtherance of an act of terrorism. Section 782.04(1)(a), F.S.

³ *Cave v. State*, 476 So. 2d 180 (Fla. 1985).

⁴ *Hodges v. State*, 661 So. 2d 107, 109 (Fla. 3d DCA 1995); see s. 782.07, F.S.

⁵ *Pitts v. State*, 182 So. 234 (Fla. 1938).

⁶ *Laskey v. Martin County Sheriff's Dept.*, 708 So. 2d 1013, 1014 (Fla. 4th DCA 1998).

⁷ *Thompson v. Baniqued*, 741 So. 2d 629, 631 (Fla. 1st DCA 1999). Similarly, the Restatement (Second) of Torts s. 314 (1965) provides that: “[t]he fact that the actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him a duty to take such action.” However, the Restatement (Second) of Torts ss. 314A and B recognize that exceptions exist when there is a special relationship between individuals or when the actor actually creates the danger.

person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury. The bill would make such crime a third-degree felony⁸ if the victim's medical condition worsens as a result of the deprivation of medical care. It would be a second-degree felony⁹ if the deprivation of medical care results in the victim's death.

This bill provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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 reviewed this bill on January 17, 2007, and determined that there would be an insignificant prison-bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁹ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

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 Judiciary on January 23, 2008:

The committee substitute changes the short title to the “Pastora Pacheco Aid to Victims Act” from the “Frank Pacheco Aid to Victims Act.”

- B. **Amendments:**

None.