

By Senator Oelrich

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1 A bill to be entitled
2 An act relating to murder; amending s. 782.04, F.S.;
3 providing that murder in the first degree includes the
4 unlawful killing of a human being which resulted from
5 the unlawful distribution of methadone by a person
6 aged 18 or older when such drug is proven to be the
7 proximate cause of the death of the user; providing
8 penalties; reenacting ss. 775.0823(1) and (2),
9 782.065(1), 921.0022(3)(i), and 947.146(3)(i), F.S.,
10 relating to violent offenses committed against law
11 enforcement officers, correctional officers, state
12 attorneys, assistant state attorneys, justices, or
13 judges, murder of law enforcement officer, the
14 Criminal Punishment Code offense severity ranking
15 chart, and the Control Release Authority,
16 respectively, to incorporate the amendment to s.
17 782.04, F.S., in references thereto; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Paragraph (a) of subsection (1) of section
23 782.04, Florida Statutes, is amended to read:

24 782.04 Murder.—

25 (1)(a) The unlawful killing of a human being:

26 1. When perpetrated from a premeditated design to effect
27 the death of the person killed or any human being;

28 2. When committed by a person engaged in the perpetration
29 of, or in the attempt to perpetrate, any:

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- 30 a. Trafficking offense prohibited by s. 893.135(1),
31 b. Arson,
32 c. Sexual battery,
33 d. Robbery,
34 e. Burglary,
35 f. Kidnapping,
36 g. Escape,
37 h. Aggravated child abuse,
38 i. Aggravated abuse of an elderly person or disabled adult,
39 j. Aircraft piracy,
40 k. Unlawful throwing, placing, or discharging of a
41 destructive device or bomb,
42 l. Carjacking,
43 m. Home-invasion robbery,
44 n. Aggravated stalking,
45 o. Murder of another human being,
46 p. Resisting an officer with violence to his or her person,
47 q. Felony that is an act of terrorism or is in furtherance
48 of an act of terrorism; or
49 3. Which resulted from the unlawful distribution of any
50 substance controlled under s. 893.03(1), cocaine as described in
51 s. 893.03(2)(a)4., ~~or~~ opium or any synthetic or natural salt,
52 compound, derivative, or preparation of opium, or methadone by a
53 person 18 years of age or older, when such drug is proven to be
54 the proximate cause of the death of the user,
55
56 is murder in the first degree and constitutes a capital felony,
57 punishable as provided in s. 775.082.
58 Section 2. For the purpose of incorporating the amendment

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59 made by this act to section 782.04, Florida Statutes, in
60 references thereto, subsections (1) and (2) of section 775.0823,
61 Florida Statutes, are reenacted to read:

62 775.0823 Violent offenses committed against law enforcement
63 officers, correctional officers, state attorneys, assistant
64 state attorneys, justices, or judges.—The Legislature does
65 hereby provide for an increase and certainty of penalty for any
66 person convicted of a violent offense against any law
67 enforcement or correctional officer, as defined in s. 943.10(1),
68 (2), (3), (6), (7), (8), or (9); against any state attorney
69 elected pursuant to s. 27.01 or assistant state attorney
70 appointed under s. 27.181; or against any justice or judge of a
71 court described in Art. V of the State Constitution, which
72 offense arises out of or in the scope of the officer's duty as a
73 law enforcement or correctional officer, the state attorney's or
74 assistant state attorney's duty as a prosecutor or investigator,
75 or the justice's or judge's duty as a judicial officer, as
76 follows:

77 (1) For murder in the first degree as described in s.
78 782.04(1), if the death sentence is not imposed, a sentence of
79 imprisonment for life without eligibility for release.

80 (2) For attempted murder in the first degree as described
81 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
82 or s. 775.084.

83

84 Notwithstanding the provisions of s. 948.01, with respect to any
85 person who is found to have violated this section, adjudication
86 of guilt or imposition of sentence shall not be suspended,
87 deferred, or withheld.

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88 Section 3. For the purpose of incorporating the amendment
 89 made by this act to section 782.04, Florida Statutes, in a
 90 reference thereto, subsection (1) of section 782.065, Florida
 91 Statutes, is reenacted to read:

92 782.065 Murder; law enforcement officer.—Notwithstanding
 93 ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a
 94 defendant shall be sentenced to life imprisonment without
 95 eligibility for release upon findings by the trier of fact that,
 96 beyond a reasonable doubt:

97 (1) The defendant committed murder in the first degree in
 98 violation of s. 782.04(1) and a death sentence was not imposed;
 99 murder in the second or third degree in violation of s.
 100 782.04(2), (3), or (4); attempted murder in the first or second
 101 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
 102 felony murder in violation of s. 782.051; and

103 Section 4. For the purpose of incorporating the amendment
 104 made by this act to section 782.04, Florida Statutes, in a
 105 reference thereto, paragraph (i) of subsection (3) of section
 106 921.0022, Florida Statutes, is reenacted to read:

107 921.0022 Criminal Punishment Code; offense severity ranking
 108 chart.—

109 (3) OFFENSE SEVERITY RANKING CHART

110 (i) LEVEL 9

Florida	Felony	Description
Statute	Degree	Description
316.193(3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.

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113 327.35(3)(c)3.b. 1st BUI manslaughter; failing to render aid
or give information.

114 409.920(2)(b)1.c. 1st Medicaid provider fraud; \$50,000 or
more.

115 499.0051(9) 1st Knowing sale or purchase of contraband
prescription drugs resulting in great
bodily harm.

116 560.123(8)(b)3. 1st Failure to report currency or payment
instruments totaling or exceeding
\$100,000 by money transmitter.

117 560.125(5)(c) 1st Money transmitter business by
unauthorized person, currency, or
payment instruments totaling or
exceeding \$100,000.

118 655.50(10)(b)3. 1st Failure to report financial transactions
totaling or exceeding \$100,000 by
financial institution.

119 775.0844 1st Aggravated white collar crime.

120 782.04(1) 1st Attempt, conspire, or solicit to commit
premeditated murder.

782.04(3) 1st,PBL Accomplice to murder in connection with

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arson, sexual battery, robbery,
burglary, and other specified felonies.

121

782.051(1) 1st Attempted felony murder while
perpetrating or attempting to perpetrate
a felony enumerated in s. 782.04(3).

122

782.07(2) 1st Aggravated manslaughter of an elderly
person or disabled adult.

123

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or
as a shield or hostage.

124

787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or
facilitate commission of any felony.

125

787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere with
performance of any governmental or
political function.

126

787.02(3)(a) 1st False imprisonment; child under age 13;
perpetrator also commits aggravated
child abuse, sexual battery, or lewd or
lascivious battery, molestation,
conduct, or exhibition.

127

790.161 1st Attempted capital destructive device
offense.

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129	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
130	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
131	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
132	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
133	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
134	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
135	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
136	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly

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weapon.

137

812.135 (2) (b) 1st Home-invasion robbery with weapon.

138

817.568 (7) 2nd, PBL Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.

139

827.03 (2) 1st Aggravated child abuse.

140

847.0145 (1) 1st Selling, or otherwise transferring custody or control, of a minor.

141

847.0145 (2) 1st Purchasing, or otherwise obtaining custody or control, of a minor.

142

859.01 1st Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.

143

893.135 1st Attempted capital trafficking offense.

144

893.135 (1) (a) 3. 1st Trafficking in cannabis, more than 10,000 lbs.

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146	893.135(1)(b)1.c. 1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
147	893.135(1)(c)1.c. 1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
148	893.135(1)(d)1.c. 1st	Trafficking in phencyclidine, more than 400 grams.
149	893.135(1)(e)1.c. 1st	Trafficking in methaqualone, more than 25 kilograms.
150	893.135(1)(f)1.c. 1st	Trafficking in amphetamine, more than 200 grams.
151	893.135(1)(h)1.c. 1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
152	893.135(1)(j)1.c. 1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
153	893.135(1)(k)2.c. 1st	Trafficking in Phenethylamines, 400 grams or more.
154	896.101(5)(c) 1st	Money laundering, financial instruments totaling or exceeding \$100,000.
	896.104(4)(a)3. 1st	Structuring transactions to evade reporting or registration requirements,

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financial transactions totaling or
exceeding \$100,000.

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156 Section 5. For the purpose of incorporating the amendment
157 made by this act to section 782.04, Florida Statutes, in a
158 reference thereto, paragraph (i) of subsection (3) of section
159 947.146, Florida Statutes, is reenacted to read:

160 947.146 Control Release Authority.—

161 (3) Within 120 days prior to the date the state
162 correctional system is projected pursuant to s. 216.136 to
163 exceed 99 percent of total capacity, the authority shall
164 determine eligibility for and establish a control release date
165 for an appropriate number of parole ineligible inmates committed
166 to the department and incarcerated within the state who have
167 been determined by the authority to be eligible for
168 discretionary early release pursuant to this section. In
169 establishing control release dates, it is the intent of the
170 Legislature that the authority prioritize consideration of
171 eligible inmates closest to their tentative release date. The
172 authority shall rely upon commitment data on the offender
173 information system maintained by the department to initially
174 identify inmates who are to be reviewed for control release
175 consideration. The authority may use a method of objective risk
176 assessment in determining if an eligible inmate should be
177 released. Such assessment shall be a part of the department's
178 management information system. However, the authority shall have
179 sole responsibility for determining control release eligibility,
180 establishing a control release date, and effectuating the
181 release of a sufficient number of inmates to maintain the inmate

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182 population between 99 percent and 100 percent of total capacity.
183 Inmates who are ineligible for control release are inmates who
184 are parole eligible or inmates who:

185 (i) Are convicted, or have been previously convicted, of
186 committing or attempting to commit murder in the first, second,
187 or third degree under s. 782.04(1), (2), (3), or (4), or have
188 ever been convicted of any degree of murder or attempted murder
189 in another jurisdiction;

190

191 In making control release eligibility determinations under this
192 subsection, the authority may rely on any document leading to or
193 generated during the course of the criminal proceedings,
194 including, but not limited to, any presentence or postsentence
195 investigation or any information contained in arrest reports
196 relating to circumstances of the offense.

197 Section 6. This act shall take effect October 1, 2010.