

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 872

INTRODUCER: Criminal Justice Committee and Senator Fasano

SUBJECT: Murder

DATE: January 25, 2012 REVISED: _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill expands what constitutes first, second, and third degree murder to include the unlawful killing of a human being when the defendant commits aggravated fleeing or eluding and that act causes serious bodily injury or death to another. It also makes certain conforming changes to the Offense Severity Ranking Chart.

This bill substantially amends sections 782.04 and 921.0022 of the Florida Statutes. It also reenacts the following statutes to incorporate changes made to section 782.04, Florida Statutes: section 775.0823 (violent offenses committed against law enforcement and correctional officers, state attorneys, assistant state attorneys, justices, or judges); section 782.051, (attempted felony murder); section 782.065, (murder; law enforcement officer); and section 947.146, (Control Release Authority), Florida Statutes.

II. Present Situation:

Section 316.1935(4), F.S., sets forth the crimes of aggravated fleeing or eluding and aggravated fleeing or eluding with serious bodily injury or death.

Aggravated fleeing or eluding is a second degree felony and occurs when the act causes injury to another person or causes damage to any property belonging to another person.

Aggravated fleeing or eluding with serious bodily injury or death is a first degree felony and occurs when the act causes serious bodily injury or death to another person.

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.). First degree murder is a capital felony.

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.), by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such offense, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder. Second degree murder is a first degree felony punishable by life imprisonment or by up to 30 years imprisonment.

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than a variety of specifically listed offenses (e.g., arson, sexual battery, robbery, burglary, etc.). Third degree murder is a second degree felony punishable by up to 15 years imprisonment.

First Degree Murder

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- 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 to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

First degree murder is a capital offense, punishable by death or life in prison.

Second Degree Murder

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the following offenses by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- 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 to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Second degree murder is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

Third Degree Murder

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- 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,

- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Aggravated Fleeing and Eluding

Section 316.1935, F.S., proscribes the act of fleeing or eluding a law enforcement officer. Subsection (4) of the statute, provided below, establishes the crimes of aggravated fleeing or eluding and aggravated fleeing or eluding with serious bodily injury or death.

(4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:

- (a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a second degree felony.¹
- (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.²

The court is required to sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill adds aggravated fleeing or eluding when that act causes serious bodily injury or death to another to the above-described lists of murder offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S.

The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart.

The effective date of the bill is October 1, 2012.

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:

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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 January 25, 2012:

The bill as amended limits the expansion of what constitutes first, second, and third degree murder to aggravated fleeing or eluding when a person is unlawfully leaving or attempting to leave the scene of a crash and that act causes serious bodily injury or death. Before the amendment, the bill included all acts of aggravated fleeing or eluding.

- B. **Amendments:**

None.

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