

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1476

INTRODUCER: Senator Dean

SUBJECT: Murder of a Child 17 Years of Age or Younger

DATE: March 13, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

SB 1476 allows for “depraved mind” second degree murder and third degree felony murder to be reclassified for sentencing purposes if the victim is 17 years old or younger at the time of the crime. It is not necessary that the defendant know the age of the victim.

If the bill passes and becomes law it could result in much greater lengths of imprisonment in these particular cases.

This bill creates section 782.066 of the Florida Statutes within the homicide chapter.

**II. Present Situation:**

**Capital Murder**

Currently s. 776.04(1), F.S., punishes the following crimes as capital offenses:

- premeditated murder;
- felony murder<sup>1</sup> which is committed by a person engaged in another felony; and
- murder linked to the distribution of certain controlled substances when such drug is proven to be the proximate cause of the death of the drug user.

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<sup>1</sup> Felony murder occurs when a person is killed by the person engaged in the commission of one of the enumerated felonies in s. 782.04(2), F.S. It is not necessary to prove that the defendant had a design or intent to kill. The defendant’s state of mind with regard to the killing is immaterial. The death can even be accidental and still qualify as a felony murder. See *Adams v. State*, 341 So.2d 765 (Fla. 1997), *cert. den.*, 434 U.S. 878 (1977), *reh. den.*, 434 U.S. 977 (1977).

Capital offenses are punishable by death or life in prison without the possibility of parole.<sup>2</sup>

### **“Depraved Mind” Second Degree Murder**

Section 782.04(2), F.S., defines second degree murder as “the unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual.”<sup>3</sup> Second degree murder is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment.<sup>4</sup>

### **Second Degree Murder Felony Murder**

When a person is killed by someone *other than the one who is perpetrating* or attempting to perpetrate *one of the enumerated felonies* it is second degree felony murder.<sup>5</sup> The perpetrator of the enumerated felony commits second degree felony murder even if he or she is not the person who killed the victim. Second degree felony murder is a first degree felony punishable by a term of years not exceeding life in prison.<sup>6</sup>

### **Third Degree Felony Murder**

Third degree felony murder occurs when a person is killed, 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 of the enumerated felonies.<sup>7</sup> This is a second degree felony punishable by up to 15 years imprisonment.<sup>8</sup>

## **III. Effect of Proposed Changes:**

The bill creates a new section of the Florida Statutes that allows for two different “types” of murder to be reclassified for sentencing purposes if the victim is 17 years old or younger at the time of the crime. It is not necessary that the defendant know the age of the victim.

### **Second Degree “Depraved Mind” Murder Reclassified to Capital Murder**

If the murder victim is 17 or younger, the bill allows for the reclassification of “depraved mind” murder to be reclassified from a first degree felony to capital murder. The resulting sentence

<sup>2</sup> Section 782.04(1)(b), F.S., requires that: “In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment.”

<sup>3</sup> From *Light v. State*, 841 So.2d 623 (Fla.2nd Dist.,2003): “As explained in the standard jury instructions: “An act is ‘imminently dangerous to another and demonstrating a depraved mind’ if it is an act or series of acts that: (1) a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and (2) is done from ill will, hatred, spite or an evil intent and (3) is of such a nature that the act itself indicates an indifference to human life.” Fla. Std. Jury Instr. (Crim.) 98; *see also Duckett v. State*, 686 So.2d 662, 663 (Fla. 2d DCA 1996).”

<sup>4</sup> s. 784.04(2), F.S.

<sup>5</sup> s. 784.04(3), F.S.

<sup>6</sup> s. 784.04(3), F.S.

<sup>7</sup> s. 784.04(4), F.S.

<sup>8</sup> s. 775.082(3)(c), F.S.

could be elevated from a term of years not exceeding life imprisonment<sup>9</sup> to death or life in prison without the possibility of parole.<sup>10</sup>

This reclassification creates the potential for a death or life sentence for a crime that, while it *does* result in death, it *does not* require premeditation *nor* that the death occur during the commission of another felony (where the underlying felony “supplies” the malice aforethought<sup>11</sup>). If a death sentence were imposed it would be a significant departure from current law.

### **Third Degree Felony Murder Reclassified to a First Degree Felony**

This particular felony murder crime occurs during the commission of a felony but when perpetrated without any design to effect death. Third degree felony murder is punishable as a second degree felony offense.<sup>12</sup> It is reclassified for sentencing by the bill from a second degree felony to a first degree felony. The sentence for a second degree felony is up to 15 years imprisonment.<sup>13</sup> Under the provisions of the bill, when the victim is 17 years of age or younger a first degree felony sentence could be handed down which could result in up to 30 years in prison.<sup>14</sup>

The bill also provides that the sentence in these particular cases not be suspended nor deferred. The court must not withhold adjudication of guilt or imposition of sentence.

## **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.

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<sup>9</sup> s. 784.04(2), F.S.

<sup>10</sup> s. 782.04(1)(b), F.S.

<sup>11</sup> *Adams v. State*, 341 So.2d 765 (Fla. 1997), *cert. den.*, 434 U.S. 878 (1977), *reh. den.*, 434 U.S. 977 (1977).

<sup>12</sup> s. 782.04(4), F.S.

<sup>13</sup> s. 775.082(3)(c), F.S.

<sup>14</sup> s. 775.082(3)(b), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is not known at this time whether the bill will have a prison bed impact. The bill will be discussed at the next meeting of the Criminal Justice Impact Conference.

**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.)

None.

B. Amendments:

None.