



397030

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/AD/2R

.

03/03/2016 12:46 PM

.

.

---

Senator Flores moved the following:

**Senate Amendment (with title amendment)**

Delete lines 238 - 696

and insert:

Section 5. Subsections (1), (3), and (4) of section 782.04, Florida Statutes, are amended to read:

782.04 Murder.—

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

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

2. When committed by a person engaged in the perpetration



397030

12 of, or in the attempt to perpetrate, any:  
13       a. Trafficking offense prohibited by s. 893.135(1),  
14       b. Arson,  
15       c. Sexual battery,  
16       d. Robbery,  
17       e. Burglary,  
18       f. Kidnapping,  
19       g. Escape,  
20       h. Aggravated child abuse,  
21       i. Aggravated abuse of an elderly person or disabled adult,  
22       j. Aircraft piracy,  
23       k. Unlawful throwing, placing, or discharging of a  
24 destructive device or bomb,  
25       l. Carjacking,  
26       m. Home-invasion robbery,  
27       n. Aggravated stalking,  
28       o. Murder of another human being,  
29       p. Resisting an officer with violence to his or her person,  
30       q. Aggravated fleeing or eluding with serious bodily injury  
31 or death,  
32       r. Felony that is an act of terrorism or is in furtherance  
33 of an act of terrorism, ~~or~~  
34       s. Human trafficking, or  
35       3. Which resulted from the unlawful distribution of any  
36 substance controlled under s. 893.03(1), cocaine as described in  
37 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
38 compound, derivative, or preparation of opium, or methadone by a  
39 person 18 years of age or older, when such drug is proven to be  
40 the proximate cause of the death of the user,



397030

41  
42 is murder in the first degree and constitutes a capital felony,  
43 punishable as provided in s. 775.082.

44 (b) In all cases under this section, the procedure set  
45 forth in s. 921.141 shall be followed in order to determine  
46 sentence of death or life imprisonment.

47 (3) When a human being is killed during the perpetration  
48 of, or during the attempt to perpetrate, any:

49 (a) Trafficking offense prohibited by s. 893.135(1),

50 (b) Arson,

51 (c) Sexual battery,

52 (d) Robbery,

53 (e) Burglary,

54 (f) Kidnapping,

55 (g) Escape,

56 (h) Aggravated child abuse,

57 (i) Aggravated abuse of an elderly person or disabled  
58 adult,

59 (j) Aircraft piracy,

60 (k) Unlawful throwing, placing, or discharging of a  
61 destructive device or bomb,

62 (l) Carjacking,

63 (m) Home-invasion robbery,

64 (n) Aggravated stalking,

65 (o) Murder of another human being,

66 (p) Aggravated fleeing or eluding with serious bodily  
67 injury or death,

68 (q) Resisting an officer with violence to his or her  
69 person, ~~or~~



397030

70 (r) Felony that is an act of terrorism or is in furtherance  
71 of an act of terrorism, or

72 (s) Human trafficking,

73

74 by a person other than the person engaged in the perpetration of  
75 or in the attempt to perpetrate such felony, the person

76 perpetrating or attempting to perpetrate such felony commits  
77 murder in the second degree, which constitutes a felony of the  
78 first degree, punishable by imprisonment for a term of years not  
79 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
80 775.084.

81 (4) The unlawful killing of a human being, when perpetrated  
82 without any design to effect death, by a person engaged in the  
83 perpetration of, or in the attempt to perpetrate, any felony  
84 other than any:

85 (a) Trafficking offense prohibited by s. 893.135(1),

86 (b) Arson,

87 (c) Sexual battery,

88 (d) Robbery,

89 (e) Burglary,

90 (f) Kidnapping,

91 (g) Escape,

92 (h) Aggravated child abuse,

93 (i) Aggravated abuse of an elderly person or disabled  
94 adult,

95 (j) Aircraft piracy,

96 (k) Unlawful throwing, placing, or discharging of a  
97 destructive device or bomb,

98 (l) Unlawful distribution of any substance controlled under



397030

99 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or  
100 opium or any synthetic or natural salt, compound, derivative, or  
101 preparation of opium by a person 18 years of age or older, when  
102 such drug is proven to be the proximate cause of the death of  
103 the user,

104 (m) Carjacking,

105 (n) Home-invasion robbery,

106 (o) Aggravated stalking,

107 (p) Murder of another human being,

108 (q) Aggravated fleeing or eluding with serious bodily  
109 injury or death,

110 (r) Resisting an officer with violence to his or her  
111 person, ~~or~~

112 (s) Felony that is an act of terrorism or is in furtherance  
113 of an act of terrorism, or

114 (t) Human trafficking,

115

116 is murder in the third degree and constitutes a felony of the  
117 second degree, punishable as provided in s. 775.082, s. 775.083,  
118 or s. 775.084.

119 Section 6. Subsection (10) is added to section 787.06,  
120 Florida Statutes, to read:

121 787.06 Human trafficking.—

122 (10) A victim's lack of chastity or the willingness or  
123 consent of a victim is not a defense to prosecution under this  
124 section if the victim was under 18 years of age at the time of  
125 the offense.

126 Section 7. Section 794.022, Florida Statutes, is amended to  
127 read:



397030

128 794.022 Rules of evidence.-

129 (1) The testimony of the victim need not be corroborated in  
130 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

131 (2) Specific instances of prior consensual sexual activity  
132 between the victim and any person other than the offender may  
133 ~~shall~~ not be admitted into evidence in a prosecution under s.  
134 787.06, s. 794.011, or s. 800.04. However, such evidence may be  
135 admitted if it is first established to the court in a proceeding  
136 in camera that such evidence may prove that the defendant was  
137 not the source of the semen, pregnancy, injury, or disease; or,  
138 when consent by the victim is at issue, such evidence may be  
139 admitted if it is first established to the court in a proceeding  
140 in camera that such evidence tends to establish a pattern of  
141 conduct or behavior on the part of the victim which is so  
142 similar to the conduct or behavior in the case that it is  
143 relevant to the issue of consent.

144 (3) Notwithstanding any other provision of law, reputation  
145 evidence relating to a victim's prior sexual conduct or evidence  
146 presented for the purpose of showing that manner of dress of the  
147 victim at the time of the offense incited the sexual battery may  
148 ~~shall~~ not be admitted into evidence in a prosecution under s.  
149 787.06, s. 794.011, or s. 800.04.

150 (4) When consent of the victim is a defense to prosecution  
151 under s. 787.06, s. 794.011, or s. 800.04, evidence of the  
152 victim's mental incapacity or defect is admissible to prove that  
153 the consent was not intelligent, knowing, or voluntary; and the  
154 court shall instruct the jury accordingly.

155 (5) An offender's use of a prophylactic device, or a  
156 victim's request that an offender use a prophylactic device, is



397030

157 not, by itself, relevant to either the issue of whether or not  
158 the offense was committed or the issue of whether or not the  
159 victim consented.

160

161 ===== T I T L E A M E N D M E N T =====

162 And the title is amended as follows:

163 Delete lines 16 - 37

164 and insert:

165 upon or in the presence of a child; amending s.  
166 782.04, F.S.; including human trafficking as an  
167 underlying felony offense to support a felony murder  
168 conviction; amending s. 787.06, F.S.; prohibiting  
169 certain defenses to prosecution under certain  
170 circumstances; amending s. 794.022, F.S.; including  
171 human trafficking and lewd and lascivious offenses in  
172 the rules of evidence applicable to sexually-related  
173 offenses;