

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 Committee on Criminal Justice

BILL: SB 1142

INTRODUCER: Senator Hooper

SUBJECT: Offenses Against Firefighters

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1142 amends s. 782.065, F.S., to require that a defendant be sentenced to life imprisonment without eligibility for release if the victim of the defendant’s offense is a firefighter and the offense committed by the defendant is:

- First degree murder and a death sentence was not imposed;
- Second or third degree murder;
- Attempted first degree murder involving “premeditated design”;
- Attempted second degree murder involving an “imminently dangerous” act evincing a “depraved mind”; or
- Attempted felony murder in violation of s. 782.051, F.S.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Definition of “Firefighter”

Section 633.102(9), F.S., defines a “firefighter” as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the State Fire Marshal under s. 633.408, F.S.

Data on On-Duty Firefighter Fatalities from Violent Acts

Data collected and reported by the National Fire Protection Association (NFPA) indicates that during the time period of 2012 through 2018 at least 12 firefighters were shot and killed while on-duty.¹

Life Imprisonment for Murder of a Law Enforcement Officer and other Specified Officers

Section 782.065, F.S., requires that a defendant be sentenced to life imprisonment without eligibility for early release² upon findings by the trier of fact that, beyond a reasonable doubt:

- The defendant committed:
 - Second or third degree murder in violation of s. 782.04(2), (3), or (4), F.S.,
 - Attempted first or second degree murder in violation of s. 782.04(1)(a)1. or (2), F.S., or
 - Attempted felony murder in violation of s. 782.051, F.S.; and
- The victim of any of these described offenses was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer engaged in the lawful performance of a legal duty.

First Degree Murder

Section 782.04(1)(a)1., F.S., punishes the unlawful killing of a human being when perpetrated from premeditated design to effect the death of the person killed or any human being.

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

- Drug trafficking,
- 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,

¹ Firefighter fatality data were obtained by staff of the Senate Committee on Criminal Justice by reviewing the NFPA's most recent report (2019) on firefighter fatalities and archived reports back to 2012. These reports are available at <https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/Firefighter-fatalities-in-the-United-States> (last visited on Jan. 14, 2020). According to the relevant reports, all of the 12 fatalities were due to gunshots (suicides were excluded from data reported in this analysis). The NFPA reports do not include state-specific data regarding on-duty firefighter fatalities due to violence, and staff did not find any office or organization that collects and reports Florida-specific data regarding such fatalities.

² Section 944.275(4)(f), F.S., also mandates that prisoners sentenced to life imprisonment be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person,
- Aggravated fleeing or eluding with serious bodily injury or death,
- Felony that is an act of terrorism or is in furtherance of an act of terrorism, or
- Human trafficking.

Section 782.04(1)(a)3., F.S., punishes the unlawful killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older of any Schedule I controlled substance, cocaine, specified opiates or opioids, fentanyl and specified fentanyl derivatives, and analogs of any of these controlled substances.

First degree murder is a capital felony, punishable by death or life imprisonment.³

Second Degree Murder

Section 782.04(2), F.S., punishes 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.

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 same felony offenses previously described for first degree murder in violation of s. 782.04(1)(a)2., F.S., excluding human trafficking, 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 commits second degree murder.

Second degree murder is a first degree felony punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.⁴

Third Degree Murder

Section 782.04(4), F.S., punishes 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 of the same felony offenses previously described for first degree murder in violation of s. 782.04(1)(a)2., F.S., excluding human trafficking.

³ Section 782.082, F.S.

⁴ Generally, a first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by a term of years not exceeding life, and a person convicted under s. 782.04, F.S., of a first degree felony punishable by a term of years not exceeding life may be punished by a term equal to life imprisonment if the judge conducts a sentence hearing in accordance with s. 921.1401, F.S., and finds that such sentence is appropriate. Section 775.082, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

Third degree murder is a second degree felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.⁵

Criminal Attempt

Unless otherwise provided by law, s. 777.04(4)(b)-(d), F.S., determines the felony degree of criminal attempt when the offense attempted is a capital felony, first degree felony, or second degree felony. If the offense attempted is a:

- Capital felony, the offense of criminal attempt is a first degree felony;
- First degree felony, the offense of criminal attempt is a second degree felony; and
- Second degree felony, the offense of criminal attempt is a third degree felony.

Attempted Felony Murder

Section 782.051(1), F.S., provides that any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3), F.S., and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a first degree felony, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.⁶

Section 782.051(2), F.S., provides that any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3), F.S., and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a first degree felony.⁷

Section 782.051(3), F.S., provides that when a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in s. 782.04(3), F.S., by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a second degree felony.⁸

III. Effect of Proposed Changes:

The bill amends s. 782.065, F.S., to require that a defendant be sentenced to life imprisonment without eligibility for release if the victim of the defendant's offense is a firefighter and the offense committed by the defendant is:

- First degree murder (s. 782.04(1), F.S.) and a death sentence was not imposed;
- Second or third degree murder (s. 782.04(2), (3), or (4), F.S.);
- Attempted first degree murder involving "premeditated design" (s. 782.04(1)(a)1., F.S.);
- Attempted second degree murder involving an "imminently dangerous" act evincing a "depraved mind" (s. 782.04(2), F.S.); or
- Attempted felony murder (s. 782.051, F.S.).

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

⁶ See footnote 4.

⁷ *Id.*

⁸ See footnote 5.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).⁹

⁹ The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, 923 offenders were admitted to prison for committing murder. Due to data limitations, the number of offenders in this group who are eligible for such enhancements is not known. Average sentence length was 292.9 months (24.4 years), and one offender was admitted to prison for manslaughter of law enforcement/EMT/firefighter (16 years). Per [Federal Bureau of Investigation], in CY 2018, 4 law enforcement officers were feloniously killed in Florida.

While it is not known how many offenders currently receive this enhanced penalty, nor is it known how many additional offenders would receive this enhancement under the amended bill, the rarity of murder and the long sentences associated with such an offense would likely prevent a significant impact on prison beds from occurring.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 782.065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁰ *Id.*