

STORAGE NAME: h4233.cp

DATE: April 2, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4233

RELATING TO: Felony Murder

SPONSOR(S): Rep. Stafford

COMPANION BILL(S): SB 524

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

First-degree felony murder is an offense which allows for a murder conviction, even where there is no evidence of premeditation, as long as the defendant or his accomplice killed a person during the commission of certain, serious felonies. **The bill adds the felony of murder to the list of serious felonies.**

Second-degree felony murder is an offense which allows for a murder conviction, as long as the killing occurred during the commission of certain, serious felonies and the person who actually killed the victim was not involved in the commission of the underlying offense. **The bill adds the felony of murder to the list of serious felonies.**

Third-degree felony murder is, also, an offense which allows for a murder conviction, regardless of whether the defendant is the person who committed the murder, as long as the killing occurred during the commission of **any** felony.

The effective date is October 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Felony Murder

The felony murder doctrine is a rule of criminal law which allows for murder convictions, even though evidence is lacking for certain key elements of the crime. The doctrine justifies itself on the basis that any person who commits, or who attempts to commit, certain violent or dangerous felonies should be held accountable for any murders resulting from the commission of that felony. For example, the armed robber who kills the store clerk because his gun accidentally discharged will be charged with felony murder (1st-degree murder) even though it was not premeditated. If the store clerk is killed not by the robber himself, but by his accomplice, the the robber may still be charged with felony murder (1st degree).

In the same situation, the armed robber could be charged with 2nd-degree murder, were the clerk to shoot and kill his accomplice. Finally, a person committing a less serious felony, an auto-theft for example, may be charged with 3rd-degree murder if he were to hit and kill a pedestrian during his attempt to elude the police.

Felonies Supporting Convictions For 1st-Degree or 2nd-Degree Murder

The felony murder laws are contained in s. 782.04(1)(a)2., 782.04(3) and 782.04(4), and list the felonies which support 1st-degree or 2nd-degree murder convictions, as follows:

- Trafficking offense prohibited by s. 893.135(1),
- 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,
- Distribution of certain illegal drugs which are determined to be the proximate cause of death.

Felonies Supporting Convictions For 3rd-Degree Murder

Any felony other than those required for 1st and 2nd-degree felony murder.

No Attempted Felony Murder

While Florida's felony murder statutes specifically permit a 1st or 2nd-degree murder conviction which occurs during the attempt of any one of the enumerated felonies, or a 3rd degree murder conviction which occurs during the attempt of any other felony, the felony murder rule will not support a conviction for an attempted murder. State v. Gray, 654 So. 2d 552 (Fla. 1995)

B. EFFECT OF PROPOSED CHANGES:

Murder Is Added To List Of Serious Felonies

"Murder of another human being" is added to the list of serious felonies which may be used to support a conviction for either 1st-degree or 2nd-degree murder. Thus, any attempt to murder another human being (the bill does not distinguish between 1st or 2nd degree murder) will be charged as felony murder when another person is killed during the commission of the attempt. This will be so even if the person who is actually killed is not killed by the person making the original attempt.

Multiple Murders

In cases involving multiple murders, the bill allows the state to charge the second and any subsequent murders as felony murders (1st-degree murder) because, under the bill, each would have been committed during the commission of the previous murder.

For example, a person who feels cheated at a card game draws a weapon and kills his companion in a sudden fit of rage (2nd-degree murder). Then, he kills a second or third member of the game, during the same fit of rage. The second and third murders could be charged as 1st-degree murders under the felony murder rule as proposed by the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 782.04, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends felony murder statutes by adding murder as an enumerated felony which will support a conviction for murder.

Section 2: Incorporates the bill by reference.

Section 3: Incorporates the bill by reference.

Section 4: Incorporates the bill by reference.

Section 5: Incorporates the bill by reference.

Section 6: Incorporates the bill by reference.

Section 7: Incorporates the bill by reference.

Section 8: Incorporates the bill by reference.

Section 9: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not considered this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 is inapplicable because the bill pertains to a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the stat tax shared with counties and municipalities.

COMMENTS:

None.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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