

STORAGE NAME: h4233z.cp
DATE: May 13, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
FINAL 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 YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

Became law without the Governor's signature on June 17, 1998. See, Chapter 98-417, Laws of Florida.

II. 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 crime 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 crime of murder to the list of serious felonies.**

Currently, Section 782.071, F.S. (vehicular homicide), punishes the negligent killing of **a human being** by the operation of a motor vehicle in a reckless manner likely to cause the death of, or great bodily harm to, another. **The bill designates "a viable fetus" as a potential victim of the offense.**

The bill directs the Commission on the Administration of Justice (JAC) to conduct a study to evaluate whether the elimination of post-conviction proceedings will reduce delays in execution of a death sentence.

The bill directs the Correctional Privatization Commission (CPC) to use \$100,000 from the General Revenue Fund to develop two invitations to bid on prison construction.

The bill's effective date is October 1, 1998.

III. 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 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 (the armed robber's) 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,
- Car jacking,
- 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)**

Vehicular Homicide

Section 782.071, F.S., proscribes:

- 1) The killing of a **human being**,
- 2) caused by the operation of a motor vehicle by the defendant,
- 3) in a reckless manner likely to cause death or great bodily harm.

The offense is punished as a **third-degree felony** with an offense severity ranking of level seven, unless the perpetrator fails to give information or render aid. In this circumstance, the offense is punished as a second-degree felony with an offense severity ranking of level eight.

The law will not allow a conviction if the victim is a 9-month-old fetus -- even one day before birth.

Manslaughter

A **similar law**, Section **782.07** (Manslaughter), proscribes the killing of a "human being" through culpable negligence. The law **does not protect an unborn quick child** because an unborn quick child is not a "human being" according to case law. See **State v. McCall, 458 So. 2d 875 (Fla. 2d DCA 1984)**. This offense is punishable as a second-degree felony (up to 15-year in prison & \$10,000 fine).

Intentional Killing of an Unborn Quick Child

Another **similar law**, Section **782.09** (Intentional Killing of an Unborn Quick Child), proscribes the willful killing of **an unborn quick child** (defined below), by any injury to the mother which would be murder if it resulted in her death. The law **does not protect an unborn quick child** who dies in an automobile accident because the law is directed at intentional conduct, only. This offense is punishable as a second-degree felony (up to 15-years in prison & \$10,000 fine).

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.

Vehicular Homicide of a Viable Fetus

The bill amends the vehicular homicide statute to punish the negligent killing of “**a viable fetus by any injury to the mother caused by the [criminally negligent] operation of a motor vehicle. . . .**” For example, if a woman’s pregnancy is terminated as the result of a criminally negligent automobile accident, the defendant could be convicted of vehicular homicide the same as if he had killed the pregnant woman.

Criminal negligence is defined by the Florida Standard Jury Instructions as “more than a failure to use ordinary care.” The operation of the motor vehicle must be “in a reckless manner likely to cause the death of or great bodily harm to another person.”

The bill specifies that “**a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.**”

The bill further specifies that “[a] right of action for civil damages shall exist ... for all deaths described in this section.” Thus, **the bill effectively amends the wrongful death statute (s. 768.19, F.S.) to allow claims for the death of unborn children, for the first time.**

Study Authorized

The bill directs the Commission on the Administration of Justice to conduct a study to evaluate whether the elimination of post-conviction proceedings will reduce delays in execution of a death sentence. The Commission shall also review prior judicial and legislative attempts to reduce delays and whether those delays have increased in the last 10 years. The report shall be submitted to the Speaker of the House, the President of the Senate, and the minority leaders in the House and Senate by December 1, 1998.

Bids for Prison Construction Authorized

An amendment to this penalty-related bill repeals certain portions of the proviso language in the Appropriations bill (HB 4201, Specific Appropriation 589) that authorizes the construction and operation of 1,497 private adult prison beds and 350 private youthful offender prison beds.

- Eliminates the discretion provided in the original proviso which permitted the 1,497 beds to be at *one or more sites*. HB 4233 requires the 1,497 beds to be at one site.
- Eliminates the requirement that the construction and operations contracts be awarded separately for both the 1,497-bed and the 350-bed facilities. The original proviso required the Invitations to Bid for the facilities to be awarded for the *designing, acquiring and construction only*. HB 4233 requires that the Invitations to Bid to be for the designing, acquiring, constructing and operating of the facilities.
- Eliminates the requirement that the Correctional Privatization Commission (CPC) execute a contract with the lowest cost responsive vendor for the construction of the 350-bed facility *subject to the funding to be provided by the Legislature during 1999 regular legislative session*. The original proviso prohibited a *bid* from being awarded that would exceed \$8,950,000 and required the CPC to submit a request for construction funding consistent with the *bid* from the successful vendor. HB 4233 provides specific legislative authorization for both the construction and operations contract and prohibits the *contract* from being awarded for a project with capital outlay costs exceeding \$8,950,000. This repeal of the proviso language in the budget eliminates the necessity of CPC to receive legislative authorization in 1999 prior to the *contract* award.

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: Amends s. 782.071, vehicular homicide, to include a viable fetus as a potential victim of the offense.

Section 10: Amends s. 921.0022 by adding the term "viable fetus" to the description of the offense in the Offense Severity Ranking Chart.

Section 11: Incorporates the bill by reference.

Section 12: Directs the JAC to conduct the study on expediting death sentences.

Section 13: Provides legislative intent that the provisions of the bill are severable in case any one portion of the bill is ruled unconstitutional.

Section 14: Directs the CPC to use \$100,000 to develop two bids for prison construction.

Section 15: Provides an effective date.

IV. 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 met to consider the felony murder provisions of this bill on April 9, 1998, and determined they presented an insignificant fiscal impact.

V. 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 state tax shared with counties and municipalities.

COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed the Committee on Crime and Punishment on April 14, 1998, by unanimous vote, with no amendments. The provisions involving vehicular homicide, the JAC and the CPC were added on floor of the House and Senate.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Jamie Spivey

J. Willis Renuart

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FINAL RESEARCH PREPARED BY COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Jamie Spivey

J. Willis Renuart