

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 312

SPONSOR: Senator Campbell

SUBJECT: Unlawful Killing of a Human Being

DATE: March 2, 2000 REVISED: 03/15/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 312 amends the murder statute so that when a person is killed in the perpetration of, or attempted perpetration of, resisting an officer with violence, that person can be prosecuted for first degree or second degree felony murder (depending on who actually committed the murder).

This bill substantially amends s. 782.04, F.S., and reenacts ss. 775.0823(1-6), 782.051, 903.133, 921.0022(3)(h-j), and 947.146(3)(i), F.S.

II. Present Situation:

A. First Degree Felony Murder

There are three degrees of felony murder. *McEver v. State*, 352 So.2d 1213 (Fla. 2d DCA 1977). Section 782.04(1)(a)2., F.S., provides that first degree felony murder, which is a capital felony punishable by death or life imprisonment, is the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any of a list of offenses described in that section (e.g., capital trafficking, sexual battery, and robbery).

Felony murder does not require a premeditated design or specific intent to kill. *See e.g., Williams v. State*, 540 So.2d 188, 189 n. 3. (Fla. 1989) (“ . . . [W]here the evidence shows a killing committed by someone perpetrating or attempting to perpetrate one of the enumerated felonies in the felony murder statute, premeditation is presumed as a matter of law.”).

. . . [W]hen a person is killed during the commission of certain felonies, the felon is said to have the intent to commit the death--even if the killing was unintended. The felony murder doctrine also imputes intent for deaths caused by co-felons and police.

State v. Gray, 654 So.2d 552, 553 (Fla. 1995).

The criminal intent which must be established for purposes of felony murder is “the mental element required to convict on the underlying felony.” *Gurganus v. State*, 451 So.2d 817, 822 (Fla. 1984).

A further principle regarding the felony murder doctrine is that “[t]he fact that an incidental death occurs in conjunction with a felony does not in itself make the perpetrator of the felony guilty of felony murder.” *Allen v. State*, 690 So. 2d 1332, 1334 (Fla. 2d DCA 1997). To obtain a felony murder conviction, “the element of causation, i.e. that the homicide was committed in the perpetration of the felony, must be established.” *Id.*

“First degree felony murder operates by imputing the necessary *state of mind* to constitute premeditated murder if the elements of felony murder are shown.” *Williams, supra*, at 189, n.3.

In order to find a defendant guilty of first degree felony murder, the state must prove the following:

- The victim’s death.
- The victim’s death occurred as a consequence of and while the defendant was engaged in the commission of any enumerated felony in s. 775.082(1)(a)1., F.S., attempting to commit any such felony, or escaping (or defendant’s accomplice was escaping) from the immediate scene of any such felony.
- The victim was killed by the defendant, or the victim was killed by a person other than the defendant but that person and the defendant were principals in the commission of any of the enumerated felonies.

Section 782.04(3), F.S., provides that second degree felony murder, which is a first degree felony punishable by up to life in prison, is the killing of a person during the perpetration of, or attempted perpetration of, any enumerated felonies in that section (almost identical to the enumerated felonies in felonies discussed for first degree felony murder).

Second degree felony murder “requires that the killing be performed by a nonprincipal.” *Williams, supra*, at 188.

The second degree felony murder statute . . . operates under a different scheme [than the first degree felony statute]; it imputes the *act* necessary to constitute second degree murder. The necessary elements of second degree murder include a homicide committed by the defendant or an accomplice, whereas the second degree felony murder statute addresses a homicide committed by someone other than the defendant or his accomplice. . . .

Id. at 189 n. 3.

In order to find a defendant guilty of second degree felony murder, the state must prove the following:

- The victim's death.
- The victim's death occurred as a consequence of and while the defendant was engaged in the commission of any enumerated felony in s. 782.04(3), F.S., attempting to commit any such felony, or escaping (or defendant's accomplice was escaping) from the immediate scene of any such felony.
- The victim was not killed by the defendant but the defendant knowingly aided, abetted, counseled, hired or otherwise procured the commission of one of the enumerated list of felonies.
- The person who actually killed the victim was not involved in the commission of or the attempt to commit the crime alleged.

Section 782.04(4), F.S., provides that third degree felony murder, which is a second degree felony punishable by up to 15 years in prison, is the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration or in the attempt to perpetrate any felony other than those enumerated in s. 782.04 (1)(a)2. or (3), F.S.

B. Resisting Officer with Violence

Section 843.01, F.S., provides that whoever knowingly and willfully resists, obstructs, or opposes any officer in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer is guilty of a third degree felony.

The term "officer" encompasses law enforcement officers, correctional officers, correctional and county probation officers, auxiliary law enforcement officers, members of the Parole Commission, personnel or representatives of the Department of Law Enforcement, and any other person legally authorized to execute process. *See also* s. 943.10, F.S.

Regarding the mental element of the crime,

[t]he statute's plain language reveals that no heightened or particularized, i.e., no specific intent is required for the commission of this crime, only a general intent to "knowingly and willfully" impede an officer in the performance of his or her duties. In fact the statute is similar in format to the statute defining arson, which we held to be a general intent crime.

Frey v. State, 708 So.2d 918, 919 (Fla. 1998).

III. Effect of Proposed Changes:

Unless the prosecutor can prove first degree murder (premeditated design) or second degree murder for a murder committed in the perpetration of, or attempted perpetration of, resisting an officer with violence, the prosecutor's sole choice for prosecuting this act under the current homicide statute, s. 782.04, F.S., is third degree felony murder. The offense of resisting an officer

with violence is not enumerated in the first degree and second degree felony murder provisions of the homicide statute and therefore would fall under the catch-all third degree felony murder provision, which applies to felony offenses not enumerated in the former provisions.

Senate Bill 312 amends s. 782.04, F.S., to add the offense of resisting an officer to the list of enumerated offenses in the first degree and second degree felony murder provisions. In conformance with these changes, the bill amends the third degree felony murder provision to add the offense of resisting an officer with violence to the list of enumerated offenses exempt from this provision because they are listed as enumerated felonies in the first and second degree felony murder provisions.

The practical effect of the bill is that a prosecutor could prosecute an unlawful killing committed during the perpetration of, or attempted perpetration of, resisting an officer with violence as a first degree or second degree felony murder (depending on who actually committed the murder) rather than a third degree felony murder.

Conviction for first degree or second degree felony murder would likely result in considerably greater penalties being imposed than conviction for third degree felony murder. The difference, in terms of potential maximum penalties, is the difference between 15 years imprisonment (third degree felony murder) and life imprisonment (second degree felony murder and first degree felony murder) or the death penalty (first degree felony murder).

The bill provides for an effective date of October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Senate Bill 312 is almost identical to CS/HB 375, which the Criminal Justice Estimating Conference estimated will have an insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Amends the description of the offense included in the felony murder provisions of the homicide statute.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
