

STORAGE NAME: s0008Ca.sec.doc
DATE: December 4, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SECURITY, SELECT
ANALYSIS**

BILL #: SB 8-C
RELATING TO: Sentencing/Act of Terrorism
SPONSOR(S): Senator(s) Brown-Waite and others

TIED BILL(S):

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

- (1) SECURITY, SELECT YEAS 11 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill enhances penalties for acts of terrorism.

It defines the term "terrorism" and reclassifies, to the next highest degree, the misdemeanor or felony degree of offenses that facilitate or further the commission of any act of terrorism.

The bill amends the felony murder provisions that constitute murder in the first degree and murder in the second degree by adding to the list of qualifying offenses any felony that is an act of terrorism or is in furtherance of an act of terrorism. Concomitantly, the list of offenses that do not constitute murder in the third degree (i.e., the offenses listed in the previous felony murder provisions) is amended to include any felony that is an act of terrorism or is in furtherance of an act of terrorism.

The fiscal impact of this bill is indeterminate.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill does not support the principle of Less Government because the state has the ability to incarcerate a criminal for a longer period.

B. PRESENT SITUATION:

Terrorism: Definition and Reclassification

Florida law does not currently define terrorism, and thus criminal acts that may constitute terrorism are not reclassified.

Florida currently has numerous statutes that reclassify criminal offenses. For example, the hate crimes law, the masked felon law, the multiple sexual perpetrators law, and the possession or use of a weapon or firearm during the commission of certain felonies are all reclassification statutes.

Felony Murder

The purpose of the felony murder provision of § 782.04, F.S., "is to protect the public from inherently dangerous situations caused by the commission of the felony." *Parker v. State*, 641 So.2d 369, 376 (Fla. 1994). Felony murder provisions generally operate to elevate the sentence of a killing that occurs during the course of a felony or attempted felony.

There are three degrees of felony murder.

- First-degree felony murder, which is a capital felony punishable by death or life imprisonment, is the unlawful killing committed by a person engaged in the perpetration of, or the attempt to perpetrate, any of the following felonies set forth in § 782.04(1)(a)2, F.S.: trafficking offenses under § 893.135(1), arson, sexual battery, robbery, burglary, kidnapping, escape, aggravated abuse of a child, elderly person or disabled adult, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, carjacking, home-invasion robbery, aggravated stalking, murder of another human being or resisting an officer with violence.
- Second-degree felony murder is a killing committed by a person other than the person engaged in the perpetration of, or attempted perpetration of, a felony from any listed felonies in § 782.04(3), F.S. (same offenses listed above under first-degree felony murder). This crime is a first-degree felony.

- Third-degree felony murder is a killing committed by a person who did not plan to cause death and is engaged in the course of a felony or attempted felony other than unlawful distribution of certain controlled substances under conditions where the drug is proven to be the proximate cause of the death of the user and those offenses enumerated under the first- and second-degree felony murder statute.

C. EFFECT OF PROPOSED CHANGES:

The bill defines "terrorism" as an activity that:

- Involves a violent act or an act dangerous to human life that is a violation of the criminal laws of Florida or federal law; or
- Involves a violation of s. 815.06 (offenses against computer users); and
- Is intended to:
 - Intimidate, injure, or coerce a civilian population; or
 - Influence the policy of a government by intimidation or coercion; or
 - Affect the conduct of government through destruction of property, assassination, murder, or kidnapping, or aircraft piracy.

This definition, which is included in sections one and two of the bill, is patterned after the federal definition of terrorism in Title 18 U.S.C. § 3077 and the new definition of "domestic terrorism" found in the USA PATRIOT Act that was signed into law on October 26, 2001. See Title 18 U.S.C. § 2331.

The bill reclassifies the misdemeanor or felony degree of offenses that facilitate or further the commission of any act of terrorism. The offenses are reclassified in the following manner:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree and a felony of the first degree punishable by a term of imprisonment not exceeding life are reclassified to life felonies.

A first-degree misdemeanor that is reclassified under this section is ranked in level 2 of the offense severity-ranking chart. A felony offense that is reclassified is ranked one level above the ranking under §§ 921.0022 or 921.0023, F.S., of the offense committed.

The bill amends § 782.04, F.S., the felony murder provisions, to add as qualifying offenses, for first and second-degree felony murder, any felony that is an act of terrorism or is in furtherance of an act of terrorism. Concomitantly, the list of offenses that do not constitute felony murder in the third degree (i.e., the offenses listed in the previous felony murder provisions) is amended to include any felony that is an act of terrorism or is in furtherance of an act of terrorism.

The bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

STORAGE NAME: s0008Ca.sec.doc

DATE: December 4, 2001

PAGE: 5

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

Staff Director:

Randy Havlicak

Thomas Randle/Richard Hixson