

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 8-C

SPONSOR: Senators Brown-Waite and Smith

SUBJECT: Sentencing

DATE: November 27, 2001 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 8-C creates s. 775.31, F.S., which provides for the reclassification of the misdemeanor or felony degree of any criminal offense if the trier of fact finds that the commission of the felony or misdemeanor facilitated or furthered the commission of any act of terrorism. The bill directs how the reclassified offense is to be ranked. The bill defines the term “terrorism” for the purposes of s. 775.31, F.S.

The bill also amends s. 782.04, F.S., the murder statute, for the purpose of amending the felony murder provisions of that statute that constitute murder in the first or second degree. The amendments add any felony that is an act of terrorism or is in furtherance of an act of terrorism to those felony murder provisions.

This bill creates s. 775.31, F.S., and amends s. 782.04, F.S.

## II. Present Situation:

### A. Reclassification

Current law presently provides for numerous reclassification statutes. For example, the hate crimes law, the masked felon law and the multiple sexual perpetrators law are all reclassification statutes. Generally, a reclassification statute increases to the next, higher degree the misdemeanor or felony degree of a charged offense when the trier of fact (the jury or the judge at a bench trial) finds a statutorily-specified factor beyond a reasonable doubt. The reclassified offense is generally ranked one level above the ranking of the offense prior to reclassification, though sometimes a specific ranking is indicated for the reclassified offense.

## B. Definition of “Terrorism”

There is presently no state definition of the term “terrorism.”

Recent federal legislation amends 18 U.S.C s. 2331 to create a definition of “domestic terrorism.” *See e.g.*, Section 802, H.R. 2975, the “USA Act of 2001” (107th Congress). The definition of “domestic terrorism” in 18 U.S.C. s. 2331, as amended by the federal legislation is as follows:

- (5) the term ‘domestic terrorism’ means activities that—
- (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
  - (B) appear to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of government by mass destruction, assassination, or kidnapping; and
  - (C) occur primarily within the territorial jurisdiction of the United States.

The definition of “domestic terrorism” is similar, but not identical, to the definition of “act of terrorism” in Title 18 U.S.C. s. 3077:

- (1) “act of terrorism” means an activity that—
- (A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and
  - (B) appears to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of a government by assassination or kidnapping . . .

## C. Felony Murder

The purpose of the felony murder provisions of s. 782.04, F.S., the homicide statute, “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) (citation omitted).

Some cases indicate that the felony murder statute accomplishes its purpose of protecting the public by deterring the commission of felonies. However, emphasizing the deterrent effect of the statute gives those who perpetrate felonies too much credit for reflective thought. Another, more realistic, view is to focus on the punitive aspect of the statute and conclude that the felony murder law is result-oriented in its enhancement of punishment for dangerous conduct connected with a felony that causes the death of another.

*State v. Williams*, 26 Fla. L. Weekly D391a, page 2 (Fla. 4<sup>th</sup> DCA, February 7, 2001) (footnote omitted).

There are three degrees of felony murder. *McEver v. State*, 352 So.2d 1213 (Fla. 2d DCA 1977). Pursuant to s. 782.04(1)(a)2., F.S., 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 that 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). “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 v. State, supra, at 189, n.3.*

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.*

The three gradations of felony murder all make use of the following language: “engaged in the perpetration of . . . any felony.” In *Jefferson v. State*, 128 So.2d 1326, 136 (Fla. 1961), the Florida Supreme Court stated that “[i]t is a homicide committed during the perpetration of a felony, if the homicide is part of the res gestae of the felony.” “Res gestae” means “things done.” *Black’s Law Dictionary* 1173 (5<sup>th</sup> ed. 1979). The term is very difficult to define with precision. In the context of felony murder, one court has described res gestae “as embrac[ing] not only the actual facts of the transaction and the circumstances surrounding it, but the matter immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence.” *State v. Fouquette*, 221 P.2d 404, 416-17 (Nev. 1950).

In deciding whether a killing falls under the felony murder provisions of the homicide statute, more recent Florida Supreme Court cases have focused on a “ ‘break in the chain of

circumstances' between the killing and the underlying felony." *State v. Williams, supra*, at page 3, quoting *Parker, supra*, at 376.

To find what the supreme court calls "a break in the chain of circumstances" between the killing and the underlying felony, courts focus on the time, distance, and causal relationship between the underlying felony and the killing. *See Parker, 570 So.2d at 1051*. "Neither the passage of time nor separation in space from the felonious act to the killing precludes a felony murder conviction when it can be said . . . that the killing is a predictable result of the felonious transaction." *Mills [v. State, 407 So.2d 218, 221 (Fla. 3<sup>rd</sup> DCA 1981)]*.

*Id.*

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.

Pursuant to s. 782.04(3), F.S., 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 the felonies discussed for first degree felony murder).

Second degree felony murder "requires that the killing be performed by a nonprincipal." *Williams v. State, 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.

Pursuant to s. 782.04(4), F.S., 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.

### III. Effect of Proposed Changes:

Senate Bill 8-C creates s. 775.31, F.S., which provides for the reclassification of the misdemeanor or felony degree of any criminal offense if the trier of fact finds that the commission of the felony or misdemeanor facilitated or furthered the commission of any act of terrorism. The offenses are reclassified in the following manner:

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
2. A misdemeanor of the first degree is reclassified to a felony of the third degree.
3. A felony of the third degree is reclassified to a felony of the second degree.
4. A felony of the second degree is reclassified to a felony of the first degree.
5. 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 misdemeanor offense is ranked in level 2 of the Criminal Punishment Code offense severity ranking chart. A felony offense that is reclassified is ranked one level above the ranking specified in ss. 921.022 or 921.0023, F.S., of the offense committed.

The bill also defines the term "terrorism" for purposes of s. 775.31, F.S. The definition in the bill contains some of the same features of Title 18 U.S.C. s. 2331, as amended by Section 802, H.R. 2975, the "USA Act of 2001" (107th Congress) and Title 18 U.S.C. s. 3077, and some features that are unique to the definition in the bill.

The definition of "terrorism" in the bill is as follows:

**775.30 Terrorism; definition.**—As used in the Florida Criminal Code, the term "terrorism" means an activity that:

- (1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
- (b) Involves a violation of s. 815.06; and
- (2) Is intended to:
  - (a) Intimidate, injure, or coerce a civilian population;
  - (b) Influence the policy of a government by intimidation or coercion; or
  - (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Some of the substantial differences between the definition in the bill and the federal definitions are described in the following remarks.

To constitute “terrorism, the violent act or act dangerous to human life which is a federal criminal violation or Florida crime, the act must also have been *intended* for one of three specified purposes. In the federal sections, it is only necessary that the specified act *appear to be intended* for the specified purposes.

In addition to a violent act (Section 3077) or an act dangerous to human life (Sections 2331 and 3077) which is a criminal violation, the definition in the bill includes a violation of s. 815.06, F.S. (computer crimes). Apparently, this inclusion is to address cyberterrorism.

The specified act is an act of “domestic terrorism” (Section 2331) or an “act of terrorism” (Section 3077) if it appears to be intended to intimidate or coerce a civilian population. In the bill, the specified act is an act of “terrorism” if it is intended to intimidate, *injure*, or coerce a civilian population.

The specified act is also an act of “domestic terrorism” (Section 2331) or an “act of terrorism” (Section 3077) if it appears to be intended to affect the conduct of government by mass destruction (Section 2331), assassination (Sections 2331 and 3077), or kidnapping (*id.*). The definition in the bill does not include “mass destruction”; it includes destruction of property. Further, in addition to including assassination and kidnapping, the bill includes murder and aircraft piracy. Assassination is not a specific crime in Florida (the act would constitute murder), but it is a specific federal crime, and the definition in the bill includes violent acts that are federal crimes. *See* Title 18 U.S.C. s. 351 (Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault) and 18 U.S.C. s. 1751 (Presidential and Presidential staff assassination, kidnapping, and assault).

Under Section 2311, the relevant act must also “occur primarily within the territorial jurisdiction of the United States.” Section 3077 includes the specified act that “would be a criminal violation if committed within the jurisdiction of the United States or of any State. . . .” The definition in the bill does not include these provisions. It appears that the provision in Section 2311 is there to distinguish the definition of “domestic terrorism” in that section from the definition of “international terrorism” in that section. The provision in Section 3077 is relevant to that section, because Section 3077 appears in Chapter 204 of Part II of Title 18, which relates to rewards for information concerning terrorist acts and espionage. Neither provision is relevant to the state definition.

The bill also amends s. 782.04, F.S., the murder statute, for the purpose of amending the felony murder provisions of that statute that constitute murder in the first or second degree. The amendments add any felony that is an act of terrorism or is in furtherance of an act of terrorism to those felony murder provisions. The offense of murder in the third degree lists all of the offenses in the felony murder provisions that constitute murder in the first or second degree. These offenses do not constitute murder in the third degree. Consistent with the amendments to the felony murder provisions that constitute murder in the first or second degree, the bill amends the offense of murder in the third degree to exclude any felony that is an act of terrorism or is in furtherance of an act of terrorism.

**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:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of Senate Bill 8-C. A preliminary estimate provided by the Office of Economic and Demographic Research is that the bill is likely to have an insignificant impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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