

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1005 Murder of a Child 17 Years of Age or Younger

SPONSOR(S): Criminal Justice Subcommittee; Artiles and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1536

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|------------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 1 N, As CS | Cunningham | Cunningham |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

CS/HB 1005 creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged will be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S., (second degree murder) from a 1st degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S., (third degree murder) from a 2nd degree felony to a 1st degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill prohibits a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 782.066, F.S.

On April 4, 2011, the Criminal Justice Impact Conference determined that HB 1005 would have an insignificant prison bed impact on the Department of Corrections.

The bill is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

First Degree Murder

Section 782.04(1), F.S., defines first degree murder as the unlawful killing of a human being:

- When perpetrated from a premeditated design to effect the death of the person killed or any human being;
- When committed by a person engaged in the perpetration of, or in the attempt to perpetrate:
 - o Trafficking offense prohibited by s. 893.135(1), F.S.,
 - o Arson,
 - o Sexual battery,
 - o Robbery,
 - o Burglary,
 - o Kidnapping,
 - o Escape,
 - o Aggravated child abuse,
 - o Aggravated abuse of an elderly person or disabled adult,
 - o Aircraft piracy,
 - o Unlawful throwing, placing, or discharging of a destructive device or bomb,
 - o Carjacking,
 - o Home-invasion robbery,
 - o Aggravated stalking,
 - o Murder of another human being,
 - o Resisting an officer with violence to his or her person,
 - o Felony that is an act of terrorism¹ or is in furtherance of an act of terrorism; or
- Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user.

First degree murder is a capital felony punishable by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S.,² results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

Second Degree Murder

Section 782.04(2), F.S., provides that it is second degree murder to unlawfully kill a human being when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual.

¹ Section 782.04(5), F.S., defines “terrorism” as an activity that 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 involves a violation of s. 815.06; and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

² Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based.

Second degree murder, as provided in s. 782.04(2), F.S., is a 1st degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

Third Degree Murder

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- 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,
- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism,

Third degree murder is a 2nd degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Effect of the Bill

CS/HB 1005 creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged will be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S., (second degree murder) from a 1st degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S., (third degree murder) from a 2nd degree felony to a 1st degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill provides that notwithstanding s. 948.01, F.S.,³ the court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation.

³ Section 948.01(2), F.S., provides that if it appears to the court upon a hearing of the matter that a defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt. In either case, the court shall stay and withhold the imposition of sentence upon the defendant and shall place a felony defendant upon probation.

B. SECTION DIRECTORY:

Section 1. Creates s. 782.066, F.S., relating to murder; child 17 years of age or younger.

Section 2. The bill is effective October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On April 4, 2011, the Criminal Justice Impact Conference determined that HB 1005 would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 6, 2011, the Criminal Justice Subcommittee adopted one amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment removed a redundant provision that reclassified the offense of second degree murder, as provided in s. 782.04(3), F.S., from a 1st degree felony to a 1st degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

This analysis is drafted to the Committee Substitute.