

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 370

INTRODUCER: Senators Hooper and Book

SUBJECT: Offenses Against Firefighters

DATE: November 1, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Erickson | Jones | CJ | Pre-meeting |
| 2. | | | GO | |
| 3. | | | RC | |

I. Summary:

SB 370 amends s. 782.065, F.S., to require that a defendant be sentenced to life imprisonment without eligibility for release if the victim of the defendant’s offense is a firefighter and the offense committed by the defendant is:

- First degree murder and a death sentence was not imposed;
- Second or third degree murder;
- Attempted first degree murder involving “premeditated design”;
- Attempted second degree murder involving an “imminently dangerous” act evincing a “depraved mind”; or
- Attempted felony murder in violation of s. 782.051, F.S.

The Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

II. Present Situation:

Definition of “Firefighter”

Section 633.102(9), F.S., defines a “firefighter” as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the State Fire Marshal under s. 633.408, F.S.

Data on On-Duty Firefighter Fatalities from Violent Acts

Based on information from the U.S. Fire Administration and the National Fire Protection Association, there appears to be at least 25 firefighter fatalities by gunshot in the United States from 1986 to 2019 (the most recent year for which such information could be obtained). These are not self-inflicted gunshot fatalities.¹

Life Imprisonment for Murder of a Law Enforcement Officer and other Specified Officers

Section 782.065, F.S., requires that a defendant be sentenced to life imprisonment without eligibility for early release² upon findings by the trier of fact that, beyond a reasonable doubt:

- The defendant committed:
 - First degree murder in violation of s. 782.04(1), F.S., and a death sentence was not imposed;
 - Second or third degree murder in violation of s. 782.04(2), (3), or (4), F.S.;
 - Attempted first or second degree murder in violation of s. 782.04(1)(a)1. or (2), F.S.; or
 - Attempted felony murder in violation of s. 782.051, F.S.; and
- The victim of any of these described offenses was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer as those terms are defined in s. 943.10, F.S., engaged in the lawful performance of a legal duty.

First Degree Murder

Section 782.04(1)(a)1., F.S., punishes the unlawful killing of a human being when perpetrated from premeditated design to effect the death of the person killed or any human being.

Section 782.04(1)(a)2., F.S., punishes the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

- Drug trafficking,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,

¹ Information on firefighter fatalities by gunshot in the United States for 1986 to 2002: Hank Przybylowicz, Line of Duty Research Service, cited at p. 23 in *Firefighter Fatalities in the United States in 2002*, FA-260 (July 2003), U.S. Fire Administration, available at <https://www.usfa.fema.gov/downloads/pdf/publications/fa-260.pdf> (last visited on Oct. 26, 2021). Information on firefighter fatalities by gunshot in the United States for 2002-2018: U.S. Fire Administration reports on firefighter fatalities in the United States for 2002-2018, available at https://www.usfa.fema.gov/data/statistics/ff_fatalities_reports.html (last visited on Oct. 26, 2021). Information on firefighter fatalities by gunshot in the United States for 2019: Rita F. Fahy, Jay T. Petrillo and Joseph L. Molis, *Firefighter Fatalities in the US – 2019* (July 2020), National Fire Protection Association, available at <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osFFF.pdf> (last visited on Oct. 26, 2021). The U.S. Fire Administration data and National Fire Protection Association data in their fatality reports are not broken down by states.

² Section 944.275(4)(f), F.S., also mandates that prisoners sentenced to life imprisonment be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

- 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,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person,
- Aggravated fleeing or eluding with serious bodily injury or death,
- Felony that is an act of terrorism or is in furtherance of an act of terrorism, or
- Human trafficking.

Section 782.04(1)(a)3., F.S., punishes the unlawful killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older of any Schedule I controlled substance, cocaine, specified opiates or opioids, fentanyl and specified fentanyl derivatives, and analogs of any of these controlled substances.

First degree murder is a capital felony, punishable by death or life imprisonment.³

Second Degree Murder

Section 782.04(2), F.S., punishes the unlawful killing of 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.

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the same felony offenses previously described for first degree murder in violation of s. 782.04(1)(a)2., F.S., excluding human trafficking, by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits second degree murder.

Second degree murder is a first degree felony punishable by a term of years not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.⁴

Third Degree Murder

Section 782.04(4), F.S., punishes 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

³ Section 782.082, F.S.

⁴ Generally, a first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by a term of years not exceeding life, and a person convicted under s. 782.04, F.S., of a first degree felony punishable by a term of years not exceeding life may be punished by a term equal to life imprisonment if the judge conducts a sentence hearing in accordance with s. 921.1401, F.S., and finds that such sentence is appropriate. Section 775.082, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

to perpetrate, any felony other than any of the felony offenses previously described for first degree murder in violation of s. 782.04(1)(a)2., F.S., excluding human trafficking.

Third degree murder is a second degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.⁵

Criminal Attempt

Unless otherwise provided by law, s. 777.04(4)(b)-(d), F.S., determines the felony degree of criminal attempt when the offense attempted is a capital felony, first degree felony, or second degree felony. If the offense attempted is a:

- Capital felony, the offense of criminal attempt is a first degree felony;
- First degree felony, the offense of criminal attempt is a second degree felony; and
- Second degree felony, the offense of criminal attempt is a third degree felony.

Attempted Felony Murder

Section 782.051(1), F.S., provides that any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3), F.S., and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a first degree felony, punishable by imprisonment for a term of years not exceeding life, or as provided in ss. 775.082, 775.083, or 775.084, F.S.⁶

Section 782.051(2), F.S., provides that any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3), F.S., and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a first degree felony.⁷

Section 782.051(3), F.S., provides that when a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in s. 782.04(3), F.S., by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a second degree felony.⁸

III. Effect of Proposed Changes:

The bill amends s. 782.065, F.S., to require that a defendant be sentenced to life imprisonment without eligibility for release if the victim of the defendant's offense is a firefighter and the offense committed by the defendant is:

- First degree murder (s. 782.04(1), F.S.) and a death sentence was not imposed;
- Second or third degree murder (s. 782.04(2), (3), or (4), F.S.);
- Attempted first degree murder involving "premeditated design" (s. 782.04(1)(a)1., F.S.);

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

⁶ See footnote 4.

⁷ *Id.*

⁸ See footnote 5.

- Attempted second degree murder involving an “imminently dangerous” act evincing a “depraved mind” (s. 782.04(2), F.S.); or
- Attempted felony murder (s. 782.051, F.S.).

The bill takes effect October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The EDR preliminarily estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).⁹

⁹ The EDR’s estimate is on file with the Senate Committee on Criminal Justice.

The EDR provided the following additional information regarding the bill:

Per ... [Department of Corrections (DOC)], in FY 18-19, 923 offenders were admitted to prison for committing murder. There were 722 offenders admitted to prison in FY 19-20 and 463 offenders admitted to prison in FY 20-21. Due to data limitations, the number of offenders in this group who are eligible for such enhancements is not known. Average sentence length was 292.9 months (24.4 years) in FY 18-19, and one offender was admitted to prison for manslaughter of law enforcement/EMT/firefighter (16 years). Average sentence length was 294.4 months (24.5 years) in FY 19-20 and 232.1 months (19.3 years) in FY 20-21. Per ... [Federal Bureau of Investigation (FBI)], in CY 2018, 4 law enforcement officers were feloniously killed in Florida. There were no law enforcement officers feloniously killed in Florida in CY 2019. While it is not known how many offenders currently receive this enhanced penalty, nor is it known how many additional offenders would receive this enhancement under the amended bill, the rarity of murder and the long sentences associated with such an offense would likely prevent a significant impact on prison beds from occurring.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 782.065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *Id.*