

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Murder

SPONSOR(S): Corcoran

TIED BILLS: None **IDEN./SIM. BILLS:** SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 316.1935(4), F.S., establishes the crimes of “aggravated fleeing or eluding” and “aggravated fleeing or eluding with serious bodily injury or death.” “Aggravated fleeing or eluding” is a second degree felony and occurs when the act causes injury to another person or causes damage to any property belonging to another person. “Aggravated fleeing or eluding with serious bodily injury or death” is a first degree felony and occurs when the act causes serious bodily injury or death to another person. The court is required to sentence any person convicted aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.). First degree murder is a capital felony.

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 a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.), by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such offense, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder. Second degree murder is a first degree felony punishable by life imprisonment or by up to 30 years imprisonment.

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 a variety of specifically listed offenses (e.g., arson, sexual battery, robbery, burglary, etc.). Third degree murder is a second degree felony punishable by up to 15 years imprisonment.

The bill adds “aggravated fleeing or eluding” to the above-described lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S. The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart.

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Aggravated Fleeing and Eluding

Section 316.1935, F.S., relates to fleeing or eluding law enforcement officers. Subsection (4) of the statute, provided below, establishes the crimes of “aggravated fleeing or eluding” and “aggravated fleeing or eluding with serious bodily injury or death.”

- (4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:
- (a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a second degree felony.¹
 - (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.² The court is required to sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.³

First Degree Murder

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

- 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,
- 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.

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³ The court is authorized to impose a greater sentence as authorized by law. Section 316.1935(4)(b), F.S.

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.,⁴ 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(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the following offenses 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 is guilty of second degree murder:

- 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,
- 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.

Second degree murder is a first 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,

⁴ 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.

- 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 second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Effect of the Bill

The bill adds “aggravated fleeing or eluding” to the lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S. The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart and reenacts the following statutes to incorporate changes made to s. 782.04, F.S.:

- Section 775.0823, F.S. (violent offenses committed against law enforcement and correctional officers, state attorneys, assistant state attorneys, justices, or judges)
- Section 782.051, F.S. (attempted felony murder)
- Section 782.065, F.S. (murder; law enforcement officer)
- Section 947.146, F.S. (Control Release Authority).

B. SECTION DIRECTORY:

Section 1. Amends s. 782.04, F.S., relating to murder.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3. Reenacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 4. Reenacts s. 782.051, F.S., relating to attempted felony murder.

Section 5. Reenacts s. 782.065, F.S., relating to murder; law enforcement officer.

Section 6. Reenacts s. 947.146, F.S., relating to Control Release Authority.

Section 7. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear why the bill adds "aggravated fleeing and eluding" to the various provisions of the murder statute rather than "aggravated fleeing or eluding with serious bodily injury or death."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES