

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 667 Murder

**SPONSOR(S):** Criminal Justice Subcommittee; Corcoran and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 316.1935(4)(b), F.S., provided below, establishes the crime of “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:

(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.

Currently, a person who commits aggravated fleeing or eluding with serious bodily injury or death can be charged with third degree murder. Because “aggravated fleeing or eluding with serious bodily injury or death” is not included in the list of offenses contained in the first and second degree murder statutes, a person who commits such offense could not be charged with first or second degree murder.

The bill names the act the “Deputy John C. Mecklenburg Act,” and amends s. 782.04, F.S., to add “aggravated fleeing or eluding with serious bodily injury or death” to the lists of offenses contained in the first, second, and third degree murder statutes. As a result, when a death occurs as a result of aggravated fleeing or eluding with serious bodily injury or death, a person could be charged with either first or second degree murder but would no longer be able to be charged with third degree murder. The bill also makes conforming changes to the offense severity ranking chart.

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of the bill, as amended by the Criminal Justice Subcommittee. However, it is likely that this bill, as amended, will 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. Fleeing or eluding is generally a third degree felony,<sup>1</sup> and occurs when the operator of any vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully refuses or fails to stop the vehicle in compliance with such order or, having stopped in knowing compliance with such order, willfully flees in an attempt to elude the officer.

The penalty for fleeing or eluding is enhanced in certain instances. For example, it is a second degree felony<sup>2</sup> for a person to flee or elude a law enforcement officer who is in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated, if during the course of the fleeing or eluding the person drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property.<sup>3</sup> This act becomes a first degree felony<sup>4</sup>, with a three-year minimum mandatory sentence if the person causes serious bodily injury or death to another person.<sup>5</sup>

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.<sup>6</sup>
- (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.<sup>7</sup> 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.<sup>8</sup>

##### **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,

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<sup>1</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> 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.

<sup>3</sup> Section 316.1935(3)(a), F.S.

<sup>4</sup> 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.

<sup>5</sup> Section 316.1935(3)(b), F.S.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> The court is authorized to impose a greater sentence as authorized by law. Section 316.1935(4)(b), F.S.

- 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.

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.,<sup>9</sup> 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. Currently, a person who commits aggravated fleeing or eluding with serious bodily injury or death could not be charged with first degree murder since the offense is not contained in the above list.

### **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. Currently, a person who commits

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<sup>9</sup> 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.

aggravated fleeing or eluding with serious bodily injury or death could not be charged with second degree murder since the offense is not contained in the above list.

### **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 second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine. Currently, a person who commits aggravated fleeing or eluding with serious bodily injury or death could be charged with third degree murder since the offense is not contained in the above list.

### **Effect of the Bill**

The bill names the act the “Deputy John C. Mecklenburg Act,” and adds “aggravated fleeing or eluding with serious bodily injury or death” to the lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S. As a result, when a death occurs as a result of aggravated fleeing or eluding with serious bodily injury or death, a person could be charged with either first or second degree murder but would no longer be able to be charged with third degree murder. 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); and
- Section 947.146, F.S. (Control Release Authority).

#### **B. SECTION DIRECTORY:**

Section 1. Cites the act the “Deputy John C. Mecklenburg Act.”

Section 2. Amends s. 782.04, F.S., relating to murder.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. 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 5. Reenacts s. 782.051, F.S., relating to attempted felony murder.

Section 6. Reenacts s. 782.065, F.S., relating to murder; law enforcement officer.

Section 7. Reenacts s. 947.146, F.S., relating to Control Release Authority.

Section 8. 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 revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of the bill, as amended by the Criminal Justice Subcommittee. However, based on CJIC's December 14, 2012, determination that the bill, as originally filed, would have an insignificant prison bed impact, it is likely that the bill, as amended, will 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:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 17, 2012, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment names the act the "Deputy John C. Mecklenburg Act," and adds "aggravated fleeing or eluding with serious bodily injury or death" to the lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.