

# 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: CS/SB 188

SPONSOR: Criminal Justice Committee and Senators Smith and Wise

SUBJECT: Manslaughter of Law Enforcement Officer or Firefighter

DATE: January 9, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 188 creates the criminal offense of aggravated manslaughter where the death of a law enforcement officer, firefighter, emergency medical technician or paramedic is the result of culpable negligence, and the victim is performing duties that are within the course of his or her employment. The act is named in memory of Gainesville Police Officer, Scott Baird.

This bill substantially amends section 782.07, Florida Statutes.

**II. Present Situation:**

Manslaughter is generally defined in s. 782.07(1), F.S., as the killing of a human being by the act, procurement, or culpable negligence of another, where the act is not excusable or not without lawful justification under ch. 776, F.S. Manslaughter is punishable as a second degree felony, which could result in a prison sentence of up to 15 years.

Manslaughter may be either the result of an intentional act, the intentional procurement of another's act, or culpable negligence. The crime of manslaughter is ranked as a Level 7 offense in the severity ranking chart of the Criminal Punishment Code which applies to felonies committed on or after October 1, 1998. s. 921.0022(3)(g), F.S.

**Justifiable or Excusable Homicide**

Under certain limited circumstances the killing of another may be considered justifiable under ch. 776, F.S. Generally a person is justified in using deadly force only if he or she reasonably believes such force is necessary to prevent his or her own death or great bodily harm or to prevent the imminent commission of a forcible felony. ss. 776.012, 776.031, F.S.

The meaning of the term “forcible felony” is defined in s. 776.08, F.S., as “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.”

### **Manslaughter by act of Culpable Negligence**

Culpable negligence is explained to juries by Florida judges based on the Florida Standard Jury Instructions in Criminal Cases, as follows:

I will now define ‘culpable negligence’ for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury. *Fla. Std. Jury Instr. (Crim.)*

This definition is derived from Florida case law.

### **Aggravated Manslaughter**

In 1996 the manslaughter statute was amended to add the crimes of aggravated manslaughter of an elderly or disabled person and aggravated manslaughter of a child, where the death is caused by culpable negligence, in subsections (2) and (3) of s. 782.07, F.S. Aggravated manslaughter is punishable as a first degree felony, which carries a potential prison sentence of up to 30 years.

The terms “elderly or disabled person” and “child” are defined in the related abuse and neglect statutes, ss. 825.101 and 827.01, F.S., respectively.

In the Criminal Punishment Code, which applies to felony offenses committed on or after October 1, 1998, aggravated manslaughter of an elderly or disabled person is ranked as a Level 9 offense in the Severity Ranking Chart. s. 921.0022(3)(i), F.S. Aggravated manslaughter of a child is ranked as a Level 10 offense. s. 921.0022(3)(j), F.S.

Section 921.0024, F.S., sets forth the method by which a sentencing score computation is made on the Criminal Punishment Code worksheet as a means of determining the lowest permissible

sentence. Section 921.0024(1)(b), F.S., provides for a point total enhancement where the crime committed is a crime of violence against a law enforcement officer. Where the crime is manslaughter as described in s. 782.07, F.S., the subtotal points are to be multiplied by 2.

### III. Effect of Proposed Changes:

The bill would add the crime of aggravated manslaughter by culpable negligence of a law enforcement officer, firefighter, emergency medical technician or paramedic to the manslaughter statute, and would make it a first degree felony punishable by up to fifteen years in prison. The victim must be performing duties that are within the course of his or her duties at the time of the crime. The offense is not ranked in the Criminal Punishment Code Severity ranking chart by the provisions of the bill, therefore it would be scored as a Level 7 offense. The point total enhancement explained above should apply where the aggravated manslaughter by culpable negligence resulted in the death of a law enforcement officer. s. 921.0024(1)(b), F.S.

The bill refers to s. 943.10(14), F.S., for the definition of “law enforcement officer,” which states:

“Officer” means any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer.

The term “firefighter,” as defined in s. 112.191, F.S., is adopted by reference in the bill. Section 112.191 (1)(b), F.S. states:

The term “firefighter” means any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified pursuant to s. 633.35, and who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter.

By reference to s. 401.23, F.S., the definitions of “paramedic” and “emergency medical technician,” for purposes of the bill, are provided as follows:

“Paramedic” means a person who is certified by the department (Department of Health) to perform basic and advanced life support .

“Emergency medical technician” means a person who is certified by the department (Department of Health) to perform basic life support.

### 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 Estimating Conference has not considered the potential impact of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.