



**House  
Legislative  
Analysis  
Section**

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## EXPAND FELONY MURDER

Senate Bill 210 (Substitute H-2)  
First Analysis (3-3-94)

Sponsor: Senator Jon Cisky  
Senate Committee: Judiciary  
House Committee: Judiciary

### ***THE APPARENT PROBLEM:***

Roughly speaking, a "felony murder" is one which occurs in connection with the commission of a felony. Under Section 316 of the Michigan Penal Code, a murder committed in conjunction with any of several specified felonies is a first degree murder, and thus to be punished with life in prison without parole. The felony murder statute covers arson, first- and second-degree criminal sexual conduct, robbery, breaking and entering a dwelling, larceny of any kind, extortion, and kidnapping. Many people believe this list falls short of what the law should consider to be felony murder, and have urged that it be expanded to include murders that occurred in the course of the perpetration or attempted perpetration of first-degree child abuse, major controlled substances offenses, and murder of police and corrections officers.

### ***THE CONTENT OF THE BILL:***

The bill would amend the felony murder statute contained in the Michigan Penal Code to expand the list of offenses to which the statute applies (the statute elevates murder committed in perpetrating or attempting to perpetrate any of these offenses to first degree murder). The bill would add murder committed in connection with first-degree child abuse or a major controlled substance offense, and murder of a peace or corrections officer who was lawfully performing his or her duties and who the offender knew to be a peace or corrections officer.

The penal code defines first-degree child abuse as knowingly or intentionally causing serious physical or serious mental harm to someone under 18 years of age. "Serious physical harm" is something that constitutes substantial bodily disfigurement, or seriously impairs the function of a body organ or limb. "Serious mental harm" is something that is not necessarily permanent, but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly

impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. First-degree child abuse is a felony punishable by up to 15 years in prison.

A major controlled substances offense would be manufacture, delivery, possession, or possession with intent to deliver 50 grams or more of narcotics or cocaine, and would include conspiracy to commit any of these offenses.

The bill would take effect October 1, 1994.

MCL 750.316

### ***HOUSE COMMITTEE ACTION:***

The House Judiciary Committee adopted a substitute bill that differed from the Senate-passed version in limiting the bill's application to major controlled substances violations, rather than applying the felony murder statute to all felony violations of the controlled substances portion of the Public Health Code.

### ***FISCAL IMPLICATIONS:***

With regard to the Senate version of the bill, the Senate Fiscal Agency said that the bill would have an indeterminate impact on state government. The costs to the state would depend on the number of individuals tried and convicted of a murder committed during the commission or attempted commission of the crimes specified by the bill. (2-24-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would punish people who committed certain murders, although not necessarily first-

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degree murders, with life in prison without parole. Killing a child in the course of beating that child, taking the life of an officer protecting the public welfare, or committing murder while engaging in drug dealing all warrant the most severe punishment. In addition, by elevating murders committed in connection with the enumerated offenses from second-degree murder to first-degree murder, the bill should serve to deter at least some of those who might otherwise act on their violent urges; if even one life was saved this way, it would be well worth the additional expense to the public of incarcerating others for life without parole instead of merely for second-degree murder.

***Response:***

It would be misguided to think that the bill would have any deterrent effect. Acts of violence are not prevented by the length of a prison term that may be imposed or even by the prospect of capital punishment.

***Against:***

The bill is unnecessary. Those who commit a crime covered by the bill likely would be prosecuted for second-degree murder and would be punished severely. According to corrections department data, of the 228 people committed for second-degree murder in 1991, 140 were sentenced to a minimum term of over 15 years. Offenses covered by the bill likely engender even longer terms, probably life, as the underlying offense would be one that would be particularly abhorrent. And, although people sentenced to life (as opposed to life without parole) are eligible for parole after serving only 15 years, in practice parole is rare for someone sentenced to a life term.

***Response:***

While strong punishments are now available for the offenses in question, the bill would ensure that a person who committed a murder covered by the bill would never be released from prison.

***Against:***

The bill raises concerns about how it might affect people who may not be directly responsible for the death of another. For example, if a battered wife failed to prevent her husband from fatally beating their child, would she be subject to prosecution for first-degree murder under the bill?

***Response:***

The bill focuses on first-degree child abuse, which does not address omissions, but rather deliberate actions that caused serious harm to a child. Thus, presumably, a person would have to have

participated in a child's beating to be prosecuted for first-degree murder under the bill. Further, in the 1980 case of People v. Aaron (409 Mich 672), the supreme court held that in order to convict a person of murder, it must be shown that he or she acted "with intent to kill or to inflict great bodily harm or with a wanton and willful disregard of the likelihood that the natural tendency of his [or her] behavior is to cause death or great bodily harm." The court further held that the element of malice must always be submitted to the jury. Thus, the law offers sufficient protection for people who arguably may not be culpable for murder; the bill simply elevates second-degree murder to first-degree murder for certain particularly grave offenses.

***POSITIONS:***

The Department of State Police supports the bill. (3-2-94)

The Prosecuting Attorneys Association of Michigan supports the bill. (3-1-94)

The Michigan Council on Crime and Delinquency opposes the bill. (3-2-94)