

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 430 (as enrolled)  
Sponsor: Senator Bill Bullard, Jr.  
Committee: Judiciary

Date Completed: 5-3-99

### **RATIONALE**

Under the Michigan Penal Code's "felony murder" provision, murder committed in the perpetration or attempt of certain listed felonies constitutes first-degree murder, which requires a sentence of life in prison without possibility of parole. The listed offenses include: arson; first-, second-, and third-degree criminal sexual conduct; first-degree child abuse; a major controlled substance offense; robbery; breaking and entering of a dwelling; first- and second-degree home invasion; larceny of any kind; extortion; and kidnapping. Some people believe that, due to its serious and violent nature, carjacking should be included in the list of felony murder offenses. The felony of carjacking, which was created in the Penal Code by Public Act 191 of 1994, occurs when a person, by force or violence, by threat of force or violence, or by putting another in fear, robs, steals, or takes a motor vehicle from another person, in the presence of that individual, a passenger, or any other person who is in lawful possession of the vehicle. Carjacking is punishable by imprisonment for life or for any term of years.

### **CONTENT**

The bill would amend the Michigan Penal Code to include carjacking in the Code's felony murder provision.

MCL 750.316

### **BACKGROUND**

The Michigan Penal Code's felony murder provision is considerably different from the original common law felony murder doctrine, which appears to have arisen in 16th century England. In very general terms, the rule applied whenever someone committed a deliberate act of violence against a third party, and a person who was not intended to die was killed. At that time, nearly all felonies were punishable by death, so it mattered little whether the defendant was hanged for robbery or for the killing that occurred during the robbery. In the 19th century, English courts made efforts to restrict the application of the rule, and England abolished it altogether in 1957.

In the United States, although only a few states have abolished the rule, its scope has been narrowed by judicial and legislative limitations. In 1980, the Michigan Supreme Court addressed the issue of whether the common law felony murder rule survived in this State (*People v Aaron*, 409 Mich 672). The Court found that the rule did still exist, but should be abolished. Under the common law rule, the malice necessary to prove murder could be found from the intent to commit the underlying felony alone. The Penal Code, however, raises an already *established* murder to the first-degree level for the purpose of elevating the *punishment* that may be imposed. That is, before the penalty for first-degree murder can be applied, the prosecutor must prove that a murder occurred, which means that the defendant acted with malice.

In abolishing the common law rule, the Court made it clear that the intent to commit the underlying felony is not sufficient to establish the "malice aforethought" required to prove murder. The Court stated, "...we hold today that malice is the intention to kill, the intention to do great bodily harm, or the wanton and willful disregard of the likelihood that the natural tendency of defendant's behavior is to cause death or great bodily harm. We further hold that malice is an essential element of any murder, as that term is judicially defined, whether the murder occurs in the perpetration of a felony or otherwise."

The Court also stated that abrogation of the common law rule does not make it irrelevant that a death occurred in the course of a felony. "A jury can properly *infer* malice from evidence that a defendant intentionally set in motion a force likely to cause death or great bodily harm... [O]ur first-degree murder statute continues to elevate to first-degree murder a *murder* which is committed in the perpetration or attempted perpetration of one of the enumerated felonies." (Emphasis in original.)

### **ARGUMENTS**

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate

*Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Carjacking is a violent and intrusive offense whose maximum penalty of imprisonment for life reflects the crime's seriousness. An incident that took place in 1995 in Oakland County demonstrates the potential danger of carjacking and the propriety of including carjacking as a felony murder offense. Apparently, four individuals attacked the driver of a vehicle, fatally shot him, put his body in the back of the car, and drove around with the body for several days. Reportedly, two of the perpetrators already have been convicted of first-degree murder, one has been indicted by a grand jury and will be tried, and the fourth might escape prosecution.

The stiffest possible punishment that can be imposed under Michigan law is imprisonment for life without possibility of parole. This penalty applies to premeditated murder, as well as murder committed during the course of the felony murder offenses. By adding carjacking to those offenses, the bill would ensure that a murder committed during that offense could be treated as severely as possible under the law. Including carjacking in the felony murder provision could make it easier to obtain a first-degree murder conviction, since the jury could infer the necessary malice from the circumstances surrounding the commission of the carjacking.

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

The bill could result in increased costs to the State. To the extent that offenders who commit a murder during the commission of carjacking are currently convicted of a felony other than first-degree murder, and receive a prison sentence other than life in prison, and who under the bill would receive a life sentence as required by the first-degree murder statute, the cost of incarceration would increase. Carjacking has a maximum sentence of life. In 1997, there were 106 offenders committed to State prison for carjacking with an average minimum sentence of 4.8 years. None of the 106 offenders was sentenced to a minimum life sentence, and there are no data to indicate how many of these commitments involved murder in the commission of the crime. However, according to the Uniform Crime Report, in 1996 and 1997, one murder each year involved motor vehicle theft.

Assuming that one commitment a year was for carjacking resulting in death and the offender was sentenced under the first-degree murder statute, assuming that the offender otherwise would be sentenced under the carjacking statute to five years in prison, and assuming that a life sentence is 50 years of incarceration, given that the average cost of

incarceration is \$22,000 per year, the cost to incarcerate the offender would increase \$990,000.

Fiscal Analyst: K. Firestone

#### A9900\430a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.