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BILL

ANALYSIS

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Senate Bill 409 (Substitute S-2 as reported)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

*(as passed by the Senate)*

Date Completed: 8-1-13

### **RATIONALE**

Under the Michigan Penal Code, a person is guilty of first-degree murder, which is punishable by life imprisonment without parole, if he or she murders an individual under specific circumstances. Generally, three situations qualify as first-degree murder. The first two are any willful, deliberate, and premeditated killing, and the murder of an on-duty peace officer or corrections officer. The third situation is commonly referred to as felony murder. Felony murder is a murder committed during the perpetration or attempted perpetration of a particular crime, which is commonly known as the predicate offense. Predicate offenses include robbery, first-degree child abuse, a major controlled substance offense, kidnapping, first-, second-, and third-degree criminal sexual conduct, torture, and aggravated stalking.

Felony murder is distinguished from premeditated murder because it does not include premeditation or actual intent to murder. Given the inherently dangerous nature and increased likelihood of harm stemming from an offense such as robbery, the felony murder rule holds the perpetrator of a predicate crime accountable for first-degree murder if someone is killed in connection with that crime. Historically, the reasons for the felony murder rule are understood to include deterrence of, and increased penalties for, violent crimes.

Some people believe that predicate offenses should include unlawful imprisonment. In early 2012, two Detroit-area women were shot and killed after being forced into the trunk of a vehicle at gunpoint. Although three of the five defendants were sentenced for first-degree murder, the facts of the case

evidently made the prosecution difficult. Absent premeditation, the prosecutor apparently had to rely on the predicate offense of torture to establish felony murder. It has been suggested that this case illustrates the need for Michigan's statutory felony murder rule to include unlawful imprisonment as a predicate offense.

### **CONTENT**

The bill would amend the Michigan Penal Code to include murder committed in the perpetration or attempted perpetration of unlawful imprisonment under Section 349b among the acts that constitute first-degree murder.

Under Section 349b, the crime of unlawful imprisonment is committed if a person knowingly restrains another person under any of the following circumstances:

- The person is restrained by means of a weapon or dangerous instrument.
- The restrained person was secretly confined.
- The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

The bill would take effect on October 1, 2013.

MCL 750.316

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate)*

### **Supporting Argument**

According to the Wayne County Prosecutor's Office and various media reports, in early 2012, five men abducted and killed two Detroit-area women. Evidently, the women were taken from their home in Hamtramck and forced into a car trunk at gunpoint, bound and gagged, driven to a nearby wooded area, and shot and killed. Their bodies were placed in shallow graves on Detroit's west side, and discovered about one month later. Ultimately, three of the men were sentenced for first-degree murder, and two were sentenced for second-degree murder.

The prosecutor's office indicated that the facts of this crime made it difficult to prosecute the men for first-degree murder. Proving premeditation is challenging when a specific timeline cannot be constructed, which evidently was the case here. Relying on charges of felony murder was also problematic given the circumstances: reportedly, there was no evidence of criminal sexual conduct, robbery, drugs, or stalking. Kidnapping requires intent to abduct a person for specific illegal purposes, such as committing rape or seeking ransom, but not murder. According to the prosecutor's office, it ultimately had to rely on the predicate crime of torture to successfully levy charges for first-degree murder, which was difficult and burdensome.

Expanding the list of predicate offenses to include unlawful imprisonment could assist prosecutors faced with cases like the abduction and murder discussed above. According to the Wayne County Prosecutor's Office, prosecuting that case would have been more efficient and had a higher likelihood of success if unlawful imprisonment had been a predicate offense. An unsuccessful prosecution could have resulted in injustice for the victims and their families.

**Response:** The felony murder rule has been criticized by courts and others. Some have suggested that expanding the predicate offenses to include unlawful imprisonment--which can be a nonviolent crime--would conflict with a commonly understood goal of the felony murder rule: to punish and deter inherently dangerous

conduct. Including unlawful imprisonment as a trigger for felony murder could erode the purpose of the rule, and individual rights to due process, in exchange for reducing prosecutorial burdens.

Legislative Analyst: Glenn Steffens

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State government. There are no data to indicate how many offenders would be convicted of first-degree murder for committing murder while perpetrating unlawful imprisonment. In 2011, there were 133 dispositions for first-degree murder, including 33 for felony murder, and there were 160 dispositions for second-degree murder. Also in 2011, there were 77 dispositions for unlawful imprisonment. The potential fiscal impact would result from the possible overlap between those who would currently be convicted of second-degree murder and unlawful imprisonment, but, under the bill, instead would be convicted of first-degree murder due to the coinciding charge of unlawful imprisonment. This increase to first-degree murder would eliminate any possibility that the offender could be discharged or paroled, which could result in increased costs of incarceration for the State prison system.

Fiscal Analyst: Dan O'Connor

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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.