

7.13 MURDER – RECLASSIFIED (BY VICTIM’S EMPLOYMENT AS LAW ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, ETC.)

§ 782.065, Fla. Stat.

In Ramroop v. State, 214 So. 3d 657 (Fla. 2017), the Florida Supreme Court held that § 782.065(2), Fla. Stat. is a reclassification statute that creates a substantive offense. Accordingly, the trial judge should add the three elements below to the elements section of the appropriate Murder crime (See Instruction 7.2, 7.3, 7.4, 7.5, or 7.6).

(Victim) was a [law enforcement officer] [part-time law enforcement officer] [auxiliary law enforcement officer] [correctional officer] [part-time correctional officer] [auxiliary correctional officer] [correctional probation officer] [part-time correctional probation officer] [auxiliary correctional probation officer].

(Defendant) knew that (victim) was a [law enforcement officer] [part-time law enforcement officer] [auxiliary law enforcement officer] [correctional officer] [part-time correctional officer] [auxiliary correctional officer] [correctional probation officer] [part-time correctional probation officer] [auxiliary correctional probation officer].

(Victim) was engaged in the lawful performance of a legal duty.

Definitions. § 943.10, Fla. Stat. Give as applicable.

“Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the State or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

“Employing agency” means any agency or unit of government or any municipality or the State or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the State or county for the operation and maintenance of a nonjuvenile detention facility.

“Correctional officer” means any person who is appointed or employed full time by the State or any political subdivision thereof, or by any private entity which has contracted with the State or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.

“Correctional probation officer” means a person who is employed full time by the State whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties

include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

“Part-time law enforcement officer” means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State.

“Part-time correctional officer” means any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

“Auxiliary law enforcement officer” means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

“Auxiliary correctional officer” means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

Lesser Included Offenses

FIRST DEGREE PREMEDITATED MURDER RECLASSIFIED — 782.04(1)(a) and 782.065

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
First Degree Premeditated Murder		782.04(1)(a)	7.2
Second Degree Murder – Reclassified		782.04(2) and 782.065	7.4 and 7.13
Second Degree Murder		782.04(2)	7.4
Manslaughter		782.07	7.7
	Second Degree (Felony) Murder – Reclassified	782.04(3) and 782.065	7.5 and 7.13
	Second Degree (Felony) Murder	782.04(3)	7.5
	Attempted Felony Murder - Reclassified	782.051(1) and 782.065	6.3 and 6.7
	Attempted Felony Murder	782.051(1)	6.3
	Attempted Premeditated Murder - Reclassified	782.041(1), 777.04, and 782.065	6.2 and 6.7
	Attempted Premeditated Murder	782.04(1) and 777.04	6.7
	Attempted Second Degree Murder - Reclassified	782.04(2), 777.04, and 782.065	6.4 and 6.7
	Attempted Second Degree Murder	782.04(2), 777.04	6.4
	Attempted Felony Murder- Reclassified	782.05(2) and 782.065	6.3 and 6.7
	Attempted Felony Murder	782.051(2)	6.3
	Third Degree Felony Murder - Reclassified	782.04(4) and 782.065	7.6 and 7.13
	Third Degree Felony Murder	782.04(4)	7.6
	Vehicular Homicide	782.071	7.5
	Attempted Felony Murder - Reclassified	782.051(3) and 782.065	6.3(a) and 6.7
	Attempted Felony Murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4
	Attempted Manslaughter by Act	782.07 and 777.04	6.6
	Felony battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Culpable Negligence	784.05(2)	8.9
	Culpable Negligence		8.9
	Assault	784.011	8.1

Comments

The reclassification in § 782.065, Fla. Stat., does not apply to the lesser included offense of Manslaughter.

This instruction was adopted in 2018.