
HOUSE BILL 1407

State of Washington

58th Legislature

2003 Regular Session

By Representatives McMahan, Carrell, Talcott, Sump, Mielke, Bush, Woods, Ericksen, Bailey, Schoesler, Kristiansen, Cox, Benson, Schindler, Nixon, Condotta, Delvin, Ahern and Pearson

Read first time 01/24/2003. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to assault as a predicate for felony murder;
2 amending RCW 9A.32.050; creating a new section; and declaring an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the 1975
6 legislature unambiguously stated that any felony, including assault,
7 can be a predicate offense for felony murder. The intent was clear to
8 punish, under the applicable murder statutes, persons who commit a
9 homicide in the course and in furtherance of a felony. The legislature
10 reaffirms that original intent and further intends to endorse the
11 decisions of the supreme court over the past twenty-eight years
12 correctly interpreting "in furtherance of" as requiring the death to be
13 sufficiently close in time and proximity to the predicate felony. The
14 legislature does not agree with or accept the court's findings of
15 legislative intent in *State v. Andress*, Docket No. 71170-4 (October 24,
16 2002), and reasserts that assault has always been and still remains a
17 predicate offense for felony murder in the second degree under the
18 statute. To prevent a misconstruction of the legislature's original
19 intent and the law, the legislature finds in light of *State v. Andress*,

1 Docket No. 71170-4 (October 24, 2002), that it is necessary to add
2 language to RCW 9A.32.050 in order to make the original meaning of the
3 statute and the intent of the legislature as clear as possible. This
4 language is intended to be instructive in nature. The legislature
5 urges the supreme court to apply this interpretation retroactively to
6 July 1, 1976.

7 **Sec. 2.** RCW 9A.32.050 and 1975-'76 2nd ex.s. c 38 s 4 are each
8 amended to read as follows:

9 (1) A person is guilty of murder in the second degree when:

10 (a) With intent to cause the death of another person but without
11 premeditation, he or she causes the death of such person or of a third
12 person; or

13 (b) He or she commits or attempts to commit any felony, including
14 assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in
15 the course of and in furtherance of such crime or in immediate flight
16 therefrom, he or she, or another participant, causes the death of a
17 person other than one of the participants; except that in any
18 prosecution under this subdivision (1)(b) in which the defendant was
19 not the only participant in the underlying crime, if established by the
20 defendant by a preponderance of the evidence, it is a defense that the
21 defendant:

22 (i) Did not commit the homicidal act or in any way solicit,
23 request, command, importune, cause, or aid the commission thereof; and

24 (ii) Was not armed with a deadly weapon, or any instrument,
25 article, or substance readily capable of causing death or serious
26 physical injury; and

27 (iii) Had no reasonable grounds to believe that any other
28 participant was armed with such a weapon, instrument, article, or
29 substance; and

30 (iv) Had no reasonable grounds to believe that any other
31 participant intended to engage in conduct likely to result in death or
32 serious physical injury.

33 (2) Murder in the second degree is a class A felony.

34 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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