

FINAL BILL REPORT

SB 5001

C 3 L 03
Synopsis as Enacted

Brief Description: Revising the felony-murder statute.

Sponsors: Senators Zarelli, McCaslin, Kastama, T. Sheldon, Carlson, Esser and Sheahan.

Senate Committee on Judiciary

Background: A person is guilty of second degree felony murder when he commits or attempts to commit any felony, other than those enumerated in the first degree felony murder statute, and in the course of and in furtherance of the crime, he causes the death of a person other than an accomplice. The long-standing rule in Washington for felony murder in all instances has been that the intent to commit the felony is substituted for the premeditation of or intent to commit murder that would otherwise be necessary to establish murder.

For the past 27 years, Washington appellate courts have found assault as a predicate offense for second degree felony murder to be constitutional and appropriate. The Washington State Supreme Court recently ruled for the first time, in *State v. Andress*, Docket 71170-4 (2002), that "assault cannot serve as the predicate felony for second degree felony murder." The court found that an assault is never independent of a resulting homicide and, therefore, the "in furtherance of" language in the statute is meaningless in relation to assault, a strong indication that "the Legislature did not intend that assault should serve as a predicate felony for second degree murder." The court also found that, in some instances, using assault as a predicate offense would be unduly harsh. The court has agreed to reconsider its decision (pending).

Summary: The statute is clarified to reinforce the Legislature's original and continued intent that assault is a predicate offense for felony murder in the second degree. The Legislature urges the Supreme Court to apply this interpretation retroactively to July 1, 1976.

Votes on Final Passage:

Senate	49 0
House	95 1

Effective: February 12, 2003