

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 71 Violent Offenses Committed Against Criminal Defense Attorneys

SPONSOR(S): Criminal Justice Subcommittee, Maney and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 384

FINAL HOUSE FLOOR ACTION: 109 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 71 passed the House on April 13, 2023, as CS/SB 384.

The Criminal Punishment Code applies to sentencing for felony offenses, except capital felonies, committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.

The Legislature has determined that an enhanced penalty should apply for certain violent offenses committed against specified professionals working in the criminal justice system. Section 775.0823, F.S., contains a list of specified offenses including murder, attempted murder, manslaughter, kidnapping, aggravated battery, and aggravated assault, for which a sentencing multiplier in s. 921.0024, F.S., must be applied when the offense is committed against a law enforcement officer, correctional officer, state attorney, assistant state attorney, or justice or judge, if such offense arises out of or in the scope of such person's official duties. The multipliers and corresponding offenses are as follows:

- Multiplier of 2.5: attempted first degree murder under s. 782.04(1), F.S.; attempted felony murder under s. 782.051, F.S.; and second degree murder under s. 782.04(2) and (3), F.S.
- Multiplier of 2.0: attempted second degree murder under s. 782.04(2) and (3), F.S.; third degree murder under s. 782.04(4), F.S.; attempted third degree murder under s. 782.04(4), F.S.; manslaughter committed during the commission of a crime under s. 782.07, F.S.; and kidnapping under s. 787.01, F.S.
- Multiplier of 1.5: aggravated battery under s. 784.045, F.S., and aggravated assault under s. 784.021, F.S.

On November 21, 2022, an attorney employed by the Office of Criminal Conflict and Civil Regional Counsel, First Region, was representing a defendant charged with a criminal offense at a trial in Alachua County. Without warning, the defendant repeatedly punched his attorney on the left side of his head, fracturing the attorney's skull. The defendant was subsequently charged with aggravated battery, a second degree felony. However, under current law, there is no sentencing enhancement for crimes committed against a defense attorney when such crime arises out of or in the scope of the defense attorney's duty as defense counsel, unlike other professionals working in the criminal justice system.

The bill amends s. 775.0823, F.S., to require a sentencing multiplier in s. 921.0024(1)(b), F.S., to be applied when computing the lowest permissible sentence when an enumerated violent offense is committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S., or a defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.

The bill may have a positive indeterminate impact on the number of prison beds by increasing the lowest permissible sentence for offenders who commit an enumerated violent offense against a public defender, regional counsel, court-appointed counsel, or defense attorney. Thus, offenders who commit such crimes against a public defender, regional counsel, court-appointed counsel, or a defense attorney would be subject to longer prison sentences than what is required under current law.

The bill was approved by the Governor on June 5, 2023, ch. 2023-190, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to sentencing for felony offenses, except capital felonies, committed on or after October 1, 1998.¹ Criminal offenses are ranked in the offense severity ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.² A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.³

The points are added in order to determine the "lowest permissible sentence" for the offense.⁴ A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are circumstances or factors that reasonably justify a downward departure.⁵ Absent such a downward departure, the permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense.⁶

Violent Offenses Against Specified Justice System Personnel

For specified offenses listed in s. 775.0823, F.S., the points used to determine the lowest permissible sentence under the Code must be multiplied by a sentencing multiplier in s. 921.0024(1)(b), F.S., of 1.5, 2.0, or 2.5, depending on the severity of the offense, when such an offense is committed against a law enforcement officer,⁷ correctional officer,⁸ state attorney,⁹ assistant state attorney,¹⁰ or justice or judge,¹¹ if the offense arises out of or in the scope of such person's official duties.¹² The multipliers and corresponding offenses are as follows:

| Multiplier | Crime |
|------------|---|
| 2.5 | <ul style="list-style-type: none">Attempted first degree murder: s. 782.04(1), F.S.Attempted felony murder: s. 782.051, F.S.Second degree murder: s. 782.04(2) and (3), F.S. |
| 2.0 | <ul style="list-style-type: none">Attempted second degree murder: s. 782.04(2) and (3), F.S.Third degree murder: s. 782.04(4), F.S.Attempted third degree murder: s. 782.04(4), F.S.Manslaughter committed during the commission of a crime: s. 782.07, F.S.Kidnapping: s. 787.01, F.S. |
| 1.5 | <ul style="list-style-type: none">Aggravated battery: s. 784.045, F.S.Aggravated assault: s. 784.021, F.S. |

Criminal Defense Attorneys

¹ S. 921.002, F.S.

² S. 921.0022, F.S.

³ S. 921.0024, F.S.

⁴ *Id.*

⁵ S. 921.0026, F.S.

⁶ S. 921.0024(2), F.S.

⁷ S. 943.10(1), (6), and (8), F.S.

⁸ S. 943.10(2), (3), (7), and (9), F.S.

⁹ S. 27.01, F.S.

¹⁰ S. 27.181, F.S.

¹¹ Art. V, ss. 3–6, Fla. Const.

¹² S. 921.0024(1)(b), F.S.

A defendant in a criminal case is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution.¹³ A person can either hire a private attorney or, in most circumstances, if a person cannot afford an attorney, the court must appoint one.¹⁴ In cases where counsel is appointed, a court is required to appoint the public defender or, if the public defender is unable to provide representation due to a conflict of interest, the Office of Criminal Conflict and Civil Regional Counsel.¹⁵

On November 21, 2022, an attorney employed by the Office of Criminal Conflict and Civil Regional Counsel, First Region, was representing a defendant charged with a criminal offense at a trial in Alachua County.¹⁶ Without warning, the defendant repeatedly punched his attorney on the left side of his head, fracturing the attorney's skull.¹⁷ The defendant was subsequently charged with aggravated battery,¹⁸ a second degree felony.¹⁹ Although the attorney was providing the defendant with constitutionally required representation, there is no law that provides for enhanced penalties for crimes committed against a defense attorney when such crime arises out of or in the scope of the defense attorney's duty as defense counsel, unlike other professionals working in the criminal justice system.

Effect of the Bill

The bill amends s. 775.0823, F.S., to require a sentencing multiplier in s. 921.0024(1)(b), F.S., to be applied when computing the lowest permissible sentence when an enumerated violent offense is committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S., or a defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel. Under the bill, the multipliers and offenses used in calculating the lowest permissible sentence for a violent offense committed against a defense attorney are as follows:

- Multiplier of 2.5
 - Attempted first degree murder: s. 782.04(1), F.S.
 - Attempted felony murder: s. 782.051, F.S.
 - Second degree murder: s. 782.04(2) and (3), F.S.
- Multiplier of 2.0
 - Attempted second degree murder: s. 782.04(2) and (3), F.S.
 - Third degree murder: s. 782.04(4), F.S.
 - Attempted third degree murder: s. 782.04(4), F.S.
 - Manslaughter committed during the commission of a crime: s. 782.07, F.S.
 - Kidnapping: s. 787.01, F.S.
- Multiplier of 1.5
 - Aggravated battery: s. 784.045, F.S.
 - Aggravated assault: s. 784.021, F.S.²⁰

¹³ See *Gideon v. Wainwright*, 372 U.S. 335 (1963) and Art. I, s. 16, Fla. Const.

¹⁴ S. 27.40, F.S.

¹⁵ S. 27.40(1), F.S.

¹⁶ Patrick R. Fargason, *Measure Would Provide More Protections for Defense Lawyers*, Fla. Bar News, (Jan. 4, 2023)

<https://www.floridabar.org/the-florida-bar-news/measure-would-provide-more-protections-for-defense-lawyers/> (last visited Mar. 14, 2023).

¹⁷ *Id.*

¹⁸ A person commits aggravated battery if he or she, in committing a battery, intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement. S. 784.045(1)(a)1., F.S.

¹⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

²⁰ Under current law, a person with no prior criminal history or other aggravating factors who is convicted of an aggravated battery, which is a Level 7 offense under the offense severity ranking chart in s. 921.0024(3), F.S., receives 56 sentencing points. Per the formula in s. 921.0024(2), F.S., the sentencing points are decreased by subtracting 28, and then further decreased by 25 percent, which equals 21. The final total equals a defendant's lowest permissible sentence in months, meaning the lowest permissible sentence for a defendant with no prior record or other aggravating factors who is convicted of aggravated battery is 21 months in prison. Under the bill, a person who commits an aggravated battery against a defense attorney would still receive an initial 56 points for committing a Level 7 offense, however this total would be increased by using the multiplier of 1.5 in s. 921.0024(1)(b), F.S., thus totaling 84 points.

The bill aligns the penalty for committing an enumerated violent offense against a defense attorney with the penalty for committing such an offense against similar professionals working in the criminal justice system, such as an assistant state attorney or judge.

The bill makes conforming changes to ss. 921.0024 and 947.146, F.S., to incorporate the expansion of s. 775.0823, F.S., to include a public defender, regional counsel, court-appointed counsel, or defense attorney in a criminal proceeding.

The effective date of this bill is July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on the number of prison beds by increasing the lowest permissible sentence for offenders who commit an enumerated violent offense against a public defender, regional counsel, court-appointed counsel, or defense attorney. Thus, offenders who commit such crimes against a public defender, regional counsel, court-appointed counsel, or a defense attorney would be subject to longer prison sentences than what is required under current law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

The 84 points are decreased by 28 and then further decreased by 25 percent, totaling a lowest permissible sentence of 42 months. Under the bill, the lowest permissible sentence for a defendant who commits an aggravated battery against a defense attorney is increased from 21 months to 42 months.