

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 981

Criminal Sentencing

**SPONSOR(S):** Seiler

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1126

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N	Ferguson	Kramer
2) Criminal Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

---

**SUMMARY ANALYSIS**

Currently, the Criminal Punishment Code provides for enhanced penalties for enumerated offenses committed against a law enforcement officer or other specified official as part of the Law Enforcement Protection Act. HB 981 adds the offense of attempted felony murder to the list of enumerated offenses. As a result of this bill, the lowest permissible sentence that can be imposed for the offense of attempted felony murder against a law enforcement officer or other specified official will be significantly increased.

This bill provides an effective date of October 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Safeguard Individual Liberty- This bill adds the offense of attempted felony murder to the Law Enforcement Protection Act. As a result, the lowest permissible sentence that can be imposed for the offense when committed against a law enforcement officer or other specified official will be significantly increased.

#### B. EFFECT OF PROPOSED CHANGES:

Section 775.0823, F.S., known as the Law Enforcement Protection Act, when read in conjunction with s. 921.0024, F.S., provides for enhancement penalties for violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.<sup>1</sup>

These violent offenses include: murder in the first degree, attempted murder in the first degree, murder in the second degree, attempted murder in the second degree, murder in the third degree, attempted murder in the third degree, manslaughter during the commission of a crime, kidnapping, aggravated battery, and aggravated assault.<sup>2</sup> Section 775.0823, F.S., provides that an adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld for any person charged with these offenses.

This bill amends section 775.0823, F.S., to include the offense of attempted felony murder.

The Criminal Punishment Code<sup>3</sup> applies to sentencing for felony offenses 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; the 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.

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. Attempted felony murder under s. 782.051(3), F.S., is an offense ranked in level 7 of the Criminal Punishment Code and would be assigned 56 sentence points under s. 921.0024(1)(a), F.S.; under s. 782.051(2), F.S., is an offense ranked in level 8 of the Criminal Punishment Code and would be assigned 74 sentence points; under s. 782.051(1), F.S., is an offense ranked in level 9 of the Criminal Punishment Code and would be assigned 92 sentence points.

The points are added in order to determine a subtotal. The subtotal is then multiplied by a sentencing multiplier if applicable. A sentencing multiplier applies if the primary offense is drug trafficking, a violation of the Law Enforcement Protection Act, grand theft of a motor vehicle, an offense related to a criminal street gang, or domestic violence in the presence of a child. This bill provides that the sentencing multiplier for attempted felony murder committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges is 2.5. The subtotal is then used to calculate the lowest permissible sentence that can be imposed.

---

<sup>1</sup> See *Matthews v. State*, 774 So.2d 1, 3 (2<sup>nd</sup> DCA 2000).

<sup>2</sup> Section 775.0823(1)-(10), F.S.

<sup>3</sup> Section 921.0022, F.S.

The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. Attempted felony murder is a first degree felony punishable by imprisonment for a term of years not exceeding life.<sup>4</sup>

Multiplying the subtotal points for attempted felony murder by 2.5 will have the effect of significantly increasing the lowest permissible sentence that can be imposed if the offense is committed against a law enforcement officer or other specified person.

Under the bill, for a conviction for the attempted felony murder offense set forth in s. 782.051(3), F.S., the multiplier will result in the lowest permissible sentence (assuming no prior record or victim injury points) increasing from 21 months to 84 months in prison; for a conviction under s. 782.051(2), F.S., increasing from 34.5 months to 117.75 months and for a conviction under 782.051(1), F.S., increasing from 48 months to 151 months.

#### C. SECTION DIRECTORY:

Section 1 amends 775.0823, F.S., providing that adjudication of guilt or imposition of sentence may not be withheld for an attempted felony murder committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 2 amends 921.0024, F.S., to provide for computing sentence points if the primary offense is a violation of 775.0823, F.S.

Section 3 amends 947.146, F.S., relating to inmates who are ineligible for control release; conforming cross-references to changes made by this act.

Section 4 provides an effective date of October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference has not met to determine the prison bed impact on the Department of Corrections.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

---

<sup>4</sup> Section 782.051(1), F.S.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**