

A bill to be entitled

An act relating to criminal sentencing; amending s. 775.0823, F.S.; providing that adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld for an attempted felony murder committed against a law enforcement officer, correctional officer, state attorney, assistant state attorney, justice, or judge; amending s. 921.0024, F.S., relating to the worksheet for the Criminal Punishment Code; providing for computing sentence points if the primary offense is a violation of s. 775.0823, F.S.; amending s. 947.146, F.S., relating to inmates who are ineligible for control release; conforming cross-references to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.0823, Florida Statutes, is amended to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.--The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a

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29 court described in Art. V of the State Constitution, which
30 offense arises out of or in the scope of the officer's duty as a
31 law enforcement or correctional officer, the state attorney's or
32 assistant state attorney's duty as a prosecutor or investigator,
33 or the justice's or judge's duty as a judicial officer, as
34 follows:

35 (1) For murder in the first degree as described in s.
36 782.04(1), if the death sentence is not imposed, a sentence of
37 imprisonment for life without eligibility for release.

38 (2) For attempted murder in the first degree as described
39 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
40 or s. 775.084.

41 (3) For attempted felony murder as described in s.
42 782.051(1), (2), or (3), a sentence pursuant to s. 775.082, s.
43 775.083, or s. 775.084.

44 (4)~~(3)~~ For murder in the second degree as described in s.
45 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
46 775.083, or s. 775.084.

47 (5)~~(4)~~ For attempted murder in the second degree as
48 described in s. 782.04(2) and (3), a sentence pursuant to s.
49 775.082, s. 775.083, or s. 775.084.

50 (6)~~(5)~~ For murder in the third degree as described in s.
51 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.
52 775.084.

53 (7)~~(6)~~ For attempted murder in the third degree as
54 described in s. 782.04(4), a sentence pursuant to s. 775.082, s.
55 775.083, or s. 775.084.

56 (8)~~(7)~~ For manslaughter as described in s. 782.07 during

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57 | the commission of a crime, a sentence pursuant to s. 775.082, s.
58 | 775.083, or s. 775.084.

59 | (9)~~(8)~~ For kidnapping as described in s. 787.01, a
60 | sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

61 | (10)~~(9)~~ For aggravated battery as described in s. 784.045,
62 | a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

63 | (11)~~(10)~~ For aggravated assault as described in s.
64 | 784.021, a sentence pursuant to s. 775.082, s. 775.083, or s.
65 | 775.084.

66 |
67 | Notwithstanding the provisions of s. 948.01, with respect to any
68 | person who is found to have violated this section, adjudication
69 | of guilt or imposition of sentence shall not be suspended,
70 | deferred, or withheld.

71 | Section 2. Paragraph (b) of subsection (1) of section
72 | 921.0024, Florida Statutes, is amended to read:

73 | 921.0024 Criminal Punishment Code; worksheet computations;
74 | scoresheets.--

75 | (1)

76 | (b) WORKSHEET KEY:

77 |
78 | Legal status points are assessed when any form of legal status
79 | existed at the time the offender committed an offense before the
80 | court for sentencing. Four (4) sentence points are assessed for
81 | an offender's legal status.

82 |
83 | Community sanction violation points are assessed when a
84 | community sanction violation is before the court for sentencing.

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85 Six (6) sentence points are assessed for each community sanction
86 violation, and each successive community sanction violation;
87 however, if the community sanction violation includes a new
88 felony conviction before the sentencing court, twelve (12)
89 community sanction violation points are assessed for such
90 violation, and for each successive community sanction violation
91 involving a new felony conviction. Multiple counts of community
92 sanction violations before the sentencing court shall not be a
93 basis for multiplying the assessment of community sanction
94 violation points.

95
96 Prior serious felony points: If the offender has a primary
97 offense or any additional offense ranked in level 8, level 9, or
98 level 10, and one or more prior serious felonies, a single
99 assessment of 30 points shall be added. For purposes of this
100 section, a prior serious felony is an offense in the offender's
101 prior record that is ranked in level 8, level 9, or level 10
102 under s. 921.0022 or s. 921.0023 and for which the offender is
103 serving a sentence of confinement, supervision, or other
104 sanction or for which the offender's date of release from
105 confinement, supervision, or other sanction, whichever is later,
106 is within 3 years before the date the primary offense or any
107 additional offense was committed.

108
109 Prior capital felony points: If the offender has one or more
110 prior capital felonies in the offender's criminal record, points
111 shall be added to the subtotal sentence points of the offender
112 equal to twice the number of points the offender receives for

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113 the primary offense and any additional offense. A prior capital
 114 felony in the offender's criminal record is a previous capital
 115 felony offense for which the offender has entered a plea of nolo
 116 contendere or guilty or has been found guilty; or a felony in
 117 another jurisdiction which is a capital felony in that
 118 jurisdiction, or would be a capital felony if the offense were
 119 committed in this state.

120
 121 Possession of a firearm, semiautomatic firearm, or machine gun:
 122 If the offender is convicted of committing or attempting to
 123 commit any felony other than those enumerated in s. 775.087(2)
 124 while having in his or her possession: a firearm as defined in
 125 s. 790.001(6), an additional 18 sentence points are assessed; or
 126 if the offender is convicted of committing or attempting to
 127 commit any felony other than those enumerated in s. 775.087(3)
 128 while having in his or her possession a semiautomatic firearm as
 129 defined in s. 775.087(3) or a machine gun as defined in s.
 130 790.001(9), an additional 25 sentence points are assessed.

131
 132 Sentencing multipliers:

133
 134 Drug trafficking: If the primary offense is drug trafficking
 135 under s. 893.135, the subtotal sentence points are multiplied,
 136 at the discretion of the court, for a level 7 or level 8
 137 offense, by 1.5. The state attorney may move the sentencing
 138 court to reduce or suspend the sentence of a person convicted of
 139 a level 7 or level 8 offense, if the offender provides
 140 substantial assistance as described in s. 893.135(4).

141
 142 Law enforcement protection: If the primary offense is a
 143 violation of the Law Enforcement Protection Act under s.
 144 775.0823(2), (3), or (4), the subtotal sentence points are
 145 multiplied by 2.5. If the primary offense is a violation of s.
 146 775.0823~~(3)~~, ~~(4)~~, (5), (6), (7), ~~or (8)~~, or (9), the subtotal
 147 sentence points are multiplied by 2.0. If the primary offense is
 148 a violation of s. 784.07(3) or s. 775.0875(1), or of the Law
 149 Enforcement Protection Act under s. 775.0823~~(9)~~ ~~or (10)~~ or (11),
 150 the subtotal sentence points are multiplied by 1.5.

151
 152 Grand theft of a motor vehicle: If the primary offense is grand
 153 theft of the third degree involving a motor vehicle and in the
 154 offender's prior record, there are three or more grand thefts of
 155 the third degree involving a motor vehicle, the subtotal
 156 sentence points are multiplied by 1.5.

157
 158 Offense related to a criminal street gang: If the offender is
 159 convicted of the primary offense and committed that offense for
 160 the purpose of benefiting, promoting, or furthering the
 161 interests of a criminal street gang as prohibited under s.
 162 874.04, the subtotal sentence points are multiplied by 1.5.

163
 164 Domestic violence in the presence of a child: If the offender is
 165 convicted of the primary offense and the primary offense is a
 166 crime of domestic violence, as defined in s. 741.28, which was
 167 committed in the presence of a child under 16 years of age who
 168 is a family or household member as defined in s. 741.28(3) with

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169 the victim or perpetrator, the subtotal sentence points are
170 multiplied by 1.5.

171 Section 3. Subsection (3) of section 947.146, Florida
172 Statutes, is amended to read:

173 947.146 Control Release Authority.--

174 (3) Within 120 days prior to the date the state
175 correctional system is projected pursuant to s. 216.136 to
176 exceed 99 percent of total capacity, the authority shall
177 determine eligibility for and establish a control release date
178 for an appropriate number of parole ineligible inmates committed
179 to the department and incarcerated within the state who have
180 been determined by the authority to be eligible for
181 discretionary early release pursuant to this section. In
182 establishing control release dates, it is the intent of the
183 Legislature that the authority prioritize consideration of
184 eligible inmates closest to their tentative release date. The
185 authority shall rely upon commitment data on the offender
186 information system maintained by the department to initially
187 identify inmates who are to be reviewed for control release
188 consideration. The authority may use a method of objective risk
189 assessment in determining if an eligible inmate should be
190 released. Such assessment shall be a part of the department's
191 management information system. However, the authority shall have
192 sole responsibility for determining control release eligibility,
193 establishing a control release date, and effectuating the
194 release of a sufficient number of inmates to maintain the inmate
195 population between 99 percent and 100 percent of total capacity.
196 Inmates who are ineligible for control release are inmates who

197 are parole eligible or inmates who:

198 (a) Are serving a sentence that includes a mandatory
199 minimum provision for a capital offense or drug trafficking
200 offense and have not served the number of days equal to the
201 mandatory minimum term less any jail-time credit awarded by the
202 court;

203 (b) Are serving the mandatory minimum portion of a
204 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

205 (c) Are convicted, or have been previously convicted, of
206 committing or attempting to commit sexual battery, incest, or
207 any of the following lewd or indecent assaults or acts:
208 masturbating in public; exposing the sexual organs in a
209 perverted manner; or nonconsensual handling or fondling of the
210 sexual organs of another person;

211 (d) Are convicted, or have been previously convicted, of
212 committing or attempting to commit assault, aggravated assault,
213 battery, or aggravated battery, and a sex act was attempted or
214 completed during commission of such offense;

215 (e) Are convicted, or have been previously convicted, of
216 committing or attempting to commit kidnapping, burglary, or
217 murder, and the offense was committed with the intent to commit
218 sexual battery or a sex act was attempted or completed during
219 commission of the offense;

220 (f) Are convicted, or have been previously convicted, of
221 committing or attempting to commit false imprisonment upon a
222 child under the age of 13 and, in the course of committing the
223 offense, the inmate committed aggravated child abuse, sexual
224 battery against the child, or a lewd or lascivious offense

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225 committed upon or in the presence of a person less than 16 years
 226 of age;

227 (g) Are sentenced, have previously been sentenced, or have
 228 been sentenced at any time under s. 775.084, or have been
 229 sentenced at any time in another jurisdiction as a habitual
 230 offender;

231 (h) Are convicted, or have been previously convicted, of
 232 committing or attempting to commit assault, aggravated assault,
 233 battery, aggravated battery, kidnapping, manslaughter, or murder
 234 against an officer as defined in s. 943.10(1), (2), (3), (6),
 235 (7), (8), or (9); against a state attorney or assistant state
 236 attorney; or against a justice or judge of a court described in
 237 Art. V of the State Constitution; or against an officer, judge,
 238 or state attorney employed in a comparable position by any other
 239 jurisdiction; ~~or~~

240 (i) Are convicted, or have been previously convicted, of
 241 committing or attempting to commit murder in the first, second,
 242 or third degree under s. 782.04(1), (2), (3), or (4), or have
 243 ever been convicted of any degree of murder or attempted murder
 244 in another jurisdiction;

245 (j) Are convicted, or have been previously convicted, of
 246 DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or
 247 have been sentenced at any time, as a habitual offender for such
 248 offense, or have been sentenced at any time in another
 249 jurisdiction as a habitual offender for such offense;

250 (k)1. Are serving a sentence for an offense committed on
 251 or after January 1, 1994, for a violation of the Law Enforcement
 252 Protection Act under s. 775.0823(2), (3), (4), ~~or~~ (5), or (6),

253 and the subtotal of the offender's sentence points is multiplied
 254 pursuant to former s. 921.0014 or s. 921.0024;

255 2. Are serving a sentence for an offense committed on or
 256 after October 1, 1995, for a violation of the Law Enforcement
 257 Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7), ~~or~~
 258 (8), or (9), and the subtotal of the offender's sentence points
 259 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

260 (l) Are serving a sentence for an offense committed on or
 261 after January 1, 1994, for possession of a firearm,
 262 semiautomatic firearm, or machine gun in which additional points
 263 are added to the subtotal of the offender's sentence points
 264 pursuant to former s. 921.0014 or s. 921.0024; or

265 (m) Are convicted, or have been previously convicted, of
 266 committing or attempting to commit manslaughter, kidnapping,
 267 robbery, carjacking, home-invasion robbery, or a burglary under
 268 s. 810.02(2).

269
 270 In making control release eligibility determinations under this
 271 subsection, the authority may rely on any document leading to or
 272 generated during the course of the criminal proceedings,
 273 including, but not limited to, any presentence or postsentence
 274 investigation or any information contained in arrest reports
 275 relating to circumstances of the offense.

276 Section 4. This act shall take effect October 1, 2006.