**BILL #:**     HB 409         Criminal Sentencing
**SPONSOR(S):** Garcia
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 566

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Homeland Security & Public Safety | 8 Y, 0 N | Ladd | Kramer |
| 2) Safety & Security Council | | | |
| 3) Policy & Budget Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

HB 409 expands §775.0823, F.S., (Law Enforcement Protection Act) to include "attempted felony murder" among the enumerated offenses subject to mandatory adjudication of guilt and imposition of an enhanced sentence when committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

The bill also provides for enhanced sentencing for second degree murder when the offense is committed against law enforcement.

The bill provides October 1, 2007 as the effective date.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**
**STORAGE NAME**:    h0409a.HSPS.doc
**DATE**:        3/21/2007

**FULL ANALYSIS**

**I.  SUBSTANTIVE ANALYSIS**

A.  HOUSE PRINCIPLES ANALYSIS:

**Promote personal responsibility:**  the bill increases personal accountability by increasing the sanctions for attempted felony murder and second degree murder.

B.  EFFECT OF PROPOSED CHANGES:

The Current Situation

Section 775.0823, F.S. (2006) states that when a person is found to have violated the ten enumerated violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, and judges, they are to be adjudicated guilty (rather than adjudication withheld) and sentenced accordingly.  The sentence is not to be suspended, deferred, or withheld.

The enumerated offenses are first, second, and third degree murder, attempted first, second, and third degree murder, manslaughter, kidnapping, aggravated battery, and aggravated assault.[1]

Addition of Attempted Felony Murder to Law Enforcement Protection Act

The bill adds attempted felony murder pursuant §775.0823(3) to the list of enumerated offenses for which an adjudication of guilt must be entered and for which an adjudication of guilt cannot be suspended, deferred, or withheld when the offense is committed against a law enforcement officer.  Attempted felony murder is defined in §782.051, F.S. as:

> (1)  Any person who perpetrates or attempts to perpetrate any felony enumerated in §782.04(3), F.S.[2] and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree,…which is an offense ranked in level 9 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

> (2)  Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in §782.04(3), F.S. and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree,… which is an offense ranked in level 8 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

> (3)  When a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in §782.04(3), F.S., by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or

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[1] §775.823(1)-(10), F.S. (2006).

[2] Trafficking pursuant to §893.135(1), arson, sexual battery, robbery, burglary, kidnapping, escape, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, carjacking, home-invasion robbery, aggravated stalking, murder of another human being, resisting an officer with violence, felony that is an act of terrorism or is in furtherance of an act of terrorism.

attempting to perpetrate such felony commits a felony of the second degree,… which is an offense ranked in level 7 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

Criminal Punishment Code

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"[3] 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. 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 including whether the violation was against a law enforcement officer, as provided by §782.0823, F.S.

The points are added in order to determine the "lowest permissible sentence" for the offense. 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 the downward departure."[4] The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years.[5] However, if the lowest permissible sentence exceeds the statutory maximum sentence as provided in §775.082, F.S., the sentence required by the code must be imposed.[6]

Addition of Attempted Felony Murder and Murder in the Second Degree to Sentence Multiplier

The bill amends §921.0024, F.S. (2006) to provide a sentence point multiplier of 2.5 when attempted felony murder on a law enforcement officer or second degree murder on a law enforcement officer is the primary offense. Second degree murder[7] is currently subject to being multiplied by two.

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[3] §921.0022, F.S.
[4] §921.0026, F.S.
[5] §775.082, F.S.
[6] §921.0024(2), F.S. and Butler v. State, 838 So.2d 554, 556 (Fla. 2003).
[7] There are two statutes that are defined as "second degree murder." Section 782.04(2), F.S. (2006), is "the unlawful killing of a human being when perpetrated by an act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect death of any particular individual. Section 782.04(2) is a first degree felony and punishable up to life in prison.
§782.04(3), F.S., (2006) is defined as, "when a person is killed in the perpetration of, or in the attempt to perpetrate, any:
    (a) Trafficking offense prohibited by s. 893.135(1),
    (b) Arson,
    (c) Sexual battery,
    (d) Robbery,
    (e) Burglary,
    (f) Kidnapping,
    (g) Escape,
    (h) Aggravated child abuse,
    (i) Aggravated abuse of an elderly person or disabled adult,
    (j) Aircraft piracy,
    (k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
    (l) Carjacking,
    (m) Home-invasion robbery,

Currently, there is no enhancement (multiplier) if attempted felony murder is committed against a law enforcement officer. The only enhanced sentence currently available is pursuant to the career criminal statute, §775.084, F.S.

Under the Criminal Punishment Code the guidelines for attempted felony murder with the added enhancement under the law enforcement protection act of 2.5 provided by HB 409 are as follows:

| Attempted Felony Murder | Current Law | Effect of Bill |
|---|---|---|
| §782.051(1) | 5 years- life | 12.625 years- life |
| §782.051(2) | 2.875 to 30 years | 9.8125 to 30 years |
| §782.051(3) | 1.75 to 15 years | 7 to 15 years |

The amendment to second degree murder on a law enforcement officer changing the multiplier from 2.0 to 2.5 has the following effect on the sentencing guidelines:

| Second Degree Murder (w/ 240 victim injury points for death) | Current Law | Effect of Bill |
|---|---|---|
| §782.04(2) | 53.8 years- life | 53.8 years-life |
| §782.04(3) | 39.7 years- life | 50.1 years- life |

(Victim injury points are additional points factored into the final total of points that are the basis for the minimum sentencing pursuant to the criminal punishment code. Death of the victim adds an additional 240 points. Other amounts are assessed depending on the severity of the victim's injury.)

C.  SECTION DIRECTORY:

Section 1.  Adds "attempted felony murder" to list of enumerated offenses subject to the law enforcement protection act (§775.0823).

Section 2.  Amends the Criminal Punishment Code, §921.0024 (2006) to provide a 2.5 law enforcement protection multiplier to "attempted felony murder on a LEO" and "second degree murder on a law enforcement officer."

Section 3.  Renumbers §947.146, F.S., (2006), to adjust for the addition of "attempted felony murder" to enumerated list in §775.0823, F.S.

## II.  FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A.  FISCAL IMPACT ON STATE GOVERNMENT:

1.  Revenues: None.

2.  Expenditures: On February 16, 2007, The Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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(n) Aggravated stalking,
(o) Murder of another human being,
(p) Resisting an officer with violence to his or her person, or
(q) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony. §782.04(3), F.S. also constitutes a first degree felony, punishable by imprisonment for a term of years not exceeding life.

B.  FISCAL IMPACT ON LOCAL GOVERNMENTS:

   1.  Revenues:  None.


   2.  Expenditures: None.


C.  DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   None.

D.  FISCAL COMMENTS:
   See above.


## III.  COMMENTS

A.  CONSTITUTIONAL ISSUES:

   1. Applicability of Municipality/County Mandates Provision:
   This bill appears to be exempt from the requirement of Artice 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.


D.  STATEMENT OF THE SPONSOR
No statement submitted.

## IV.  AMENDMENTS/COUNCIL SUBSTITUTE CHANGES