

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

The Criminal Punishment Code 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; 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 Criminal Punishment Code provides that the sentencing points which are used to calculate the lowest permissible sentence which can be imposed must be multiplied by 1.5, 2.0 or 2.5, depending on the offense, when a specified offense is committed against a law enforcement officer, correctional officer, state attorney or judge.

Section 775.0823, F.S. contains a list of specified offenses including murder, kidnapping and aggravated battery for which a multiplier must be applied when the offense is committed against a law enforcement officer, correctional officer, state attorney or judge. HB 409 amends this section to include the offense of "attempted felony murder" for which a 2.5 multiplier must be applied. The bill also increases the multiplier for the offense of second degree murder from 2.0 to 2.5.

This will have the effect of increasing the lowest permissible sentence which must be imposed for the offenses of attempted felony murder and second degree murder when the offense is committed against a law enforcement officer, correctional officer, state attorney or judge. In conformity with current law, the bill will prohibit a judge from withholding adjudication of guilt for the offense of attempted felony murder when the offense is committed against a law enforcement officer or other specified official.

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:

Section 775.0823, F.S. provides that when a person is found to have violated one of a list of ten enumerated violent offenses committed against a law enforcement officer, correctional officer, state attorney, assistant state attorney, justice, or judges, they are to be adjudicated guilty (rather than adjudication withheld) and sentenced for the offense. 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

The bill adds attempted felony murder pursuant 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....

(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....

(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 attempting to perpetrate such felony commits a felony of the second degree....

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.

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.

³ §921.0022, 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

The Criminal Punishment Code provides that the sentencing points which are used to calculate the lowest permissible sentence must be multiplied by 1.5, 2.0 or 2.5, depending on the offense, when an offense listed in section 775.0823, F.S. (first, second, and third degree murder, attempted first, second, and third degree murder, manslaughter, kidnapping, aggravated battery, and aggravated assault) is committed against a law enforcement officer, correctional officer, state attorney or judge.

HB 409 amends section 775.0823, F.S. to include the offense of “attempted felony murder” for which a 2.5 multiplier must be applied. Currently, there is no multiplier for the offense of attempted felony murder committed against a law enforcement officer or other specified official. The bill also increases the multiplier for the offense of second degree murder⁷ against a law enforcement officer or other specified official from 2.0 to 2.5.

Under the Criminal Punishment Code the permissible sentencing ranges for attempted felony murder against a law enforcement officer or other specified official with the multiplier of 2.5 as required 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

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,
- (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.

§782.051(3)	1.75 to 15 years	7 to 15 years
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The change in the multiplier for the offense of second degree murder on a law enforcement officer or other specified official from 2.0 to 2.5 has the following effect on the permissible sentencing range for the offense:

Second Degree Murder (w/ 240 victim injury points for death) ⁸	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

C. SECTION DIRECTORY:

Section 1. Amends s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices or judges.

Section 2. Amends s. 921.0024, F.S., relating to the worksheet for the Criminal Punishment Code.

Section 3. Amends s. 947.146, F.S. relating to Control Release Authority.

Section 4. Provides effective date of October 1, 2007.

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.

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:

⁸ 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.

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirement 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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES