

HB 409

2007

1 A bill to be entitled

2 An act relating to criminal sentencing; amending s.
3 775.0823, F.S.; providing that adjudication of guilt or
4 imposition of sentence may not be suspended, deferred, or
5 withheld for an attempted felony murder committed against
6 a law enforcement officer, correctional officer, state
7 attorney, assistant state attorney, justice, or judge;
8 amending s. 921.0024, F.S., relating to the worksheet for
9 the Criminal Punishment Code; providing for computing
10 sentence points if the primary offense is a violation of
11 s. 775.0823, F.S.; amending s. 947.146, F.S., relating to
12 inmates who are ineligible for control release; conforming
13 cross-references to changes made by the act; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsections (3) through (10) of section
19 775.0823, Florida Statutes, are renumbered as subsections (4)
20 through (11), respectively, and a new subsection (3) is added to
21 that section to read:

22 775.0823 Violent offenses committed against law
23 enforcement officers, correctional officers, state attorneys,
24 assistant state attorneys, justices, or judges.--The Legislature
25 does hereby provide for an increase and certainty of penalty for
26 any person convicted of a violent offense against any law
27 enforcement or correctional officer, as defined in s. 943.10(1),
28 (2), (3), (6), (7), (8), or (9); against any state attorney

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0409-00

29 | elected pursuant to s. 27.01 or assistant state attorney
 30 | appointed under s. 27.181; or against any justice or judge of a
 31 | court described in Art. V of the State Constitution, which
 32 | offense arises out of or in the scope of the officer's duty as a
 33 | law enforcement or correctional officer, the state attorney's or
 34 | assistant state attorney's duty as a prosecutor or investigator,
 35 | or the justice's or judge's duty as a judicial officer, as
 36 | follows:

37 | (3) For attempted felony murder as described in s.
 38 | 782.051, a sentence pursuant to s. 775.082, s. 775.083, or s.
 39 | 775.084.

40 |
 41 | Notwithstanding the provisions of s. 948.01, with respect to any
 42 | person who is found to have violated this section, adjudication
 43 | of guilt or imposition of sentence shall not be suspended,
 44 | deferred, or withheld.

45 | Section 2. Paragraph (b) of subsection (1) of section
 46 | 921.0024, Florida Statutes, is amended to read:

47 | 921.0024 Criminal Punishment Code; worksheet computations;
 48 | scoresheets.--

49 | (1)

50 | (b) WORKSHEET KEY:

51 |
 52 | Legal status points are assessed when any form of legal status
 53 | existed at the time the offender committed an offense before the
 54 | court for sentencing. Four (4) sentence points are assessed for
 55 | an offender's legal status.

56 |

57 Community sanction violation points are assessed when a
58 community sanction violation is before the court for sentencing.
59 Six (6) sentence points are assessed for each community sanction
60 violation, and each successive community sanction violation;
61 however, if the community sanction violation includes a new
62 felony conviction before the sentencing court, twelve (12)
63 community sanction violation points are assessed for such
64 violation, and for each successive community sanction violation
65 involving a new felony conviction. Multiple counts of community
66 sanction violations before the sentencing court shall not be a
67 basis for multiplying the assessment of community sanction
68 violation points.

69
70 Prior serious felony points: If the offender has a primary
71 offense or any additional offense ranked in level 8, level 9, or
72 level 10, and one or more prior serious felonies, a single
73 assessment of 30 points shall be added. For purposes of this
74 section, a prior serious felony is an offense in the offender's
75 prior record that is ranked in level 8, level 9, or level 10
76 under s. 921.0022 or s. 921.0023 and for which the offender is
77 serving a sentence of confinement, supervision, or other
78 sanction or for which the offender's date of release from
79 confinement, supervision, or other sanction, whichever is later,
80 is within 3 years before the date the primary offense or any
81 additional offense was committed.

82
83 Prior capital felony points: If the offender has one or more
84 prior capital felonies in the offender's criminal record, points

HB 409

2007

85 shall be added to the subtotal sentence points of the offender
86 equal to twice the number of points the offender receives for
87 the primary offense and any additional offense. A prior capital
88 felony in the offender's criminal record is a previous capital
89 felony offense for which the offender has entered a plea of nolo
90 contendere or guilty or has been found guilty; or a felony in
91 another jurisdiction which is a capital felony in that
92 jurisdiction, or would be a capital felony if the offense were
93 committed in this state.

94
95 Possession of a firearm, semiautomatic firearm, or machine gun:
96 If the offender is convicted of committing or attempting to
97 commit any felony other than those enumerated in s. 775.087(2)
98 while having in his or her possession: a firearm as defined in
99 s. 790.001(6), an additional 18 sentence points are assessed; or
100 if the offender is convicted of committing or attempting to
101 commit any felony other than those enumerated in s. 775.087(3)
102 while having in his or her possession a semiautomatic firearm as
103 defined in s. 775.087(3) or a machine gun as defined in s.
104 790.001(9), an additional 25 sentence points are assessed.

105
106 Sentencing multipliers:

107
108 Drug trafficking: If the primary offense is drug trafficking
109 under s. 893.135, the subtotal sentence points are multiplied,
110 at the discretion of the court, for a level 7 or level 8
111 offense, by 1.5. The state attorney may move the sentencing
112 court to reduce or suspend the sentence of a person convicted of

113 a level 7 or level 8 offense, if the offender provides
 114 substantial assistance as described in s. 893.135(4).

115
 116 Law enforcement protection: If the primary offense is a
 117 violation of the Law Enforcement Protection Act under s.
 118 775.0823(2), (3), or (4), the subtotal sentence points are
 119 multiplied by 2.5. If the primary offense is a violation of s.
 120 775.0823(2), (3), or (4), (5), (6), (7), ~~or (8)~~, or (9), the subtotal
 121 sentence points are multiplied by 2.0. If the primary offense is
 122 a violation of s. 784.07(3) or s. 775.0875(1), or of the Law
 123 Enforcement Protection Act under s. ~~775.0823(9) or (10)~~ or (11),
 124 the subtotal sentence points are multiplied by 1.5.

125
 126 Grand theft of a motor vehicle: If the primary offense is grand
 127 theft of the third degree involving a motor vehicle and in the
 128 offender's prior record, there are three or more grand thefts of
 129 the third degree involving a motor vehicle, the subtotal
 130 sentence points are multiplied by 1.5.

131
 132 Offense related to a criminal street gang: If the offender is
 133 convicted of the primary offense and committed that offense for
 134 the purpose of benefiting, promoting, or furthering the
 135 interests of a criminal street gang as prohibited under s.
 136 874.04, the subtotal sentence points are multiplied by 1.5.

137
 138 Domestic violence in the presence of a child: If the offender is
 139 convicted of the primary offense and the primary offense is a
 140 crime of domestic violence, as defined in s. 741.28, which was

141 committed in the presence of a child under 16 years of age who
142 is a family or household member as defined in s. 741.28(3) with
143 the victim or perpetrator, the subtotal sentence points are
144 multiplied by 1.5.

145 Section 3. Paragraph (k) of subsection (3) of section
146 947.146, Florida Statutes, is amended to read:

147 947.146 Control Release Authority.--

148 (3) Within 120 days prior to the date the state
149 correctional system is projected pursuant to s. 216.136 to
150 exceed 99 percent of total capacity, the authority shall
151 determine eligibility for and establish a control release date
152 for an appropriate number of parole ineligible inmates committed
153 to the department and incarcerated within the state who have
154 been determined by the authority to be eligible for
155 discretionary early release pursuant to this section. In
156 establishing control release dates, it is the intent of the
157 Legislature that the authority prioritize consideration of
158 eligible inmates closest to their tentative release date. The
159 authority shall rely upon commitment data on the offender
160 information system maintained by the department to initially
161 identify inmates who are to be reviewed for control release
162 consideration. The authority may use a method of objective risk
163 assessment in determining if an eligible inmate should be
164 released. Such assessment shall be a part of the department's
165 management information system. However, the authority shall have
166 sole responsibility for determining control release eligibility,
167 establishing a control release date, and effectuating the
168 release of a sufficient number of inmates to maintain the inmate

169 population between 99 percent and 100 percent of total capacity.
 170 Inmates who are ineligible for control release are inmates who
 171 are parole eligible or inmates who:

172 (k)1. Are serving a sentence for an offense committed on
 173 or after January 1, 1994, for a violation of the Law Enforcement
 174 Protection Act under s. 775.0823(2), (3), (4), ~~or~~ (5), or (6),
 175 and the subtotal of the offender's sentence points is multiplied
 176 pursuant to former s. 921.0014 or s. 921.0024;

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

182
 183 In making control release eligibility determinations under this
 184 subsection, the authority may rely on any document leading to or
 185 generated during the course of the criminal proceedings,
 186 including, but not limited to, any presentence or postsentence
 187 investigation or any information contained in arrest reports
 188 relating to circumstances of the offense.

189 Section 4. This act shall take effect October 1, 2007.