

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 135 Self-Defense Protection Act  
**SPONSOR(S):** Criminal Justice Subcommittee; Combee and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	White	White
2) Justice Appropriations Subcommittee	10 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

Currently, s. 775.087, F.S., commonly known as the "10-20-Life" law, requires the court to sentence a person convicted of aggravated assault, attempted aggravated assault, or other specified offenses to a minimum term of imprisonment of:

- Three years if, during the commission of the offense, the person actually possessed a firearm or destructive device or 15 years if the firearm possessed was a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.
- Twenty years if, during the commission of the offense, the person discharged a firearm, destructive device, semiautomatic firearm, or machine gun or 25 years to life imprisonment if such discharge resulted in death or great bodily harm to a person.

These minimum terms must be imposed for an aggravated assault conviction unless the court makes written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776, F.S.
- The aggravated assault was not committed in the course of committing another criminal offense.
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

The bill deletes aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S., and makes a conforming change by repealing the exception to such sentences based on specified court findings. Thus, persons who are convicted of aggravated assault or attempted aggravated assault and who actually possessed or discharged a firearm or other specified weapon during the commission of that offense will no longer be subject to the 10-20-Life mandatory minimum sentences.

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have an indeterminate prison bed impact on the Department of Corrections likely reducing the number of prison beds needed. The CJIC met again on January 6, 2016, to determine if amendments adopted subsequently would affect the prior prison bed impact estimate and found that the estimate would not change. See Fiscal Impact Section

The bill takes effect on July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Aggravated Assault and 10-20-Life**

##### *Aggravated Assault*

Assault, a first degree misdemeanor,<sup>1</sup> is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.<sup>2</sup> “Aggravated assault,” a third degree felony,<sup>3</sup> is an assault with:

- A deadly weapon without intent to kill; or
- An intent to commit a felony.<sup>4</sup>

##### *10-20-Life*

Section 775.087, F.S., commonly known as the “10-20-Life” law, requires the court to sentence a person convicted of aggravated assault, attempted aggravated assault, or other specified offenses to a minimum term of imprisonment of:

- Three years<sup>5</sup> if, during the commission of the offense, the person actually *possessed*<sup>6</sup> a “firearm” or “destructive device.”<sup>7, 8</sup>
- Fifteen years<sup>9</sup> if the firearm in the person’s possession was a semiautomatic firearm and its high-capacity detachable box magazine<sup>10</sup> or a machine gun.<sup>11, 12</sup>

If, during the aggravated assault or attempted aggravated assault, the person *discharged* a firearm, destructive device, semiautomatic firearm, or machine gun, the court must sentence the person to a minimum term of imprisonment of 20 years.<sup>13</sup> If such discharge resulted in death or great bodily harm to a person, the person must be sentenced to a minimum term of imprisonment of not less than 25 years and not more than life in prison.<sup>14</sup>

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<sup>1</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>2</sup> s. 784.011, F.S.

<sup>3</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>4</sup> s. 784.021, F.S.

<sup>5</sup> The other offenses subject to the three-year mandatory minimum term are burglary of a conveyance and certain possession of firearm by a felon. s. 775.087(2)(a)1., F.S. A ten-year minimum mandatory term applies to the possession of a firearm or destructive device during the commission of or attempt to commit the following offenses: murder; sexual battery; robbery; certain burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking and capital importation of illegal drugs and specified controlled substances; and certain possession of a firearm by a felon. *Id.*

<sup>6</sup> Section 775.087(4), F.S., states, “For purposes of imposition of minimum mandatory sentencing provisions of this section, with respect to a firearm, the term “possession” is defined as carrying it on the person. Possession may also be proven by demonstrating that the defendant had the firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the offense, if proven beyond a reasonable doubt.”

<sup>7</sup> s. 775.087(2)(a)1., F.S.

<sup>8</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>9</sup> The other offenses subject to the 15-year mandatory minimum term are murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; and trafficking and capital importation of illegal drugs and specified controlled substances. s. 775.087(3)(a)1., F.S.

<sup>10</sup> The terms “semiautomatic firearm” and “high capacity detachable box magazine” are defined in s. 775.087(2)(e) and (3)(e), F.S.

<sup>11</sup> The term “machine gun” is defined in s. 790.001, F.S.

<sup>12</sup> s. 775.087(3)(a)1., F.S.

<sup>13</sup> s. 775.087(2)(a)2. and (3)(a)2., F.S.

<sup>14</sup> s. 775.087(2)(a)3. and (3)(a)3., F.S.

According to information from the Office of Economic and Demographic Research, 27 inmates were admitted to prison in Fiscal Year 2014-2015 under 10-20-Life mandatory minimum sentences for aggravated assault.<sup>15</sup>

#### *Deviations from 10-20-Life*

Section 27.366, F.S., states that it is the Legislature's intent "that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms," provided "that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime." If an offender meets the mandatory minimum sentencing criteria in the 10-20-Life law, but does not receive such sentence, the state attorney "must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney."<sup>16</sup>

While s. 27.366, F.S., accords prosecutors the discretion to waive imposition of minimum mandatory sentences, statute, aside from one exception adopted by the Legislature in 2014, does not accord such discretion to the sentencing courts.<sup>17</sup> If the charging document specifically pleads the basis for the 10-20-Life mandatory minimum sentence and there is a clear jury finding that the defendant actually possessed or used a firearm or other specified weapon, imposition of a mandatory minimum sentence is a non-discretionary duty of the sentencing court.<sup>18</sup>

During the 2014 Regular Session, the Legislature enacted a single exception to the mandatory minimum terms which applies only to sentences for aggravated assault.<sup>19</sup> Section 775.087(6), F.S., specifies that the sentencing court shall not impose such mandatory minimum terms if the court makes written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776, F.S.
- The aggravated assault was not committed in the course of committing another criminal offense.
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

#### **Effect of Bill**

The bill deletes aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S. Thus, persons who are convicted of aggravated assault or attempted aggravated assault and who actually possessed or discharged a firearm or other specified weapon will no longer be subject to the 10-20-Life law.

The bill also makes a conforming change by repealing subsection (6) of s. 775.087, F.S., which prohibits the imposition of mandatory minimum sentences to an aggravated assault conviction if the sentencing court makes specified findings. Such exception is no longer relevant due to the bill's deletion of aggravated assault from the 10-20-Life law.

Finally, the bill amends s. 985.557(2)(d), F.S., to conform a cross-reference to changes made by the act and reenacts ss. 27.366, 921.0022(2), 921.0024(1)(b), and 947.136(3)(b), F.S., to incorporate the amendment to s. 775.087, F.S.

#### **B. SECTION DIRECTORY:**

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<sup>15</sup> Email from Matthew Hasbrouck, Office of Economic and Demographic Research, Criminal Justice Impact Conference Summaries, (Oct. 28, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

<sup>16</sup> s. 27.366, F.S.

<sup>17</sup> *State v. Kelly*, 147 So. 3d 1061 (Fla. 3d DCA 2014).

<sup>18</sup> *Johnson v. State*, 53 So.3d 360, 362 (Fla. 5th DCA 2011) ; *Orjales v. State*, 758 So. 2d 1157, 1159 (Fla. 2d DCA 2000) (quoting *State v. Hargrove*, 694 So. 2d 729, 731 (Fla. 1997)).

<sup>19</sup> Ch. 2014-195, Laws of Fla.

Section 1. Amends s. 775.087, F.S., relating to minimum sentences for possession or use of a weapon during certain felony offenses.

Section 2. Amends s. 985.557, F.S., relating to the direct filing of juveniles.

Section 3. Reenacts s. 27.366, F.S., relating to the legislative intent for the 10-20-Life law.

Section 4. Reenacts s. 921.0022, F.S., relating to the Criminal Punishment Code offense severity ranking chart.

Section 5. Reenacts s. 921.0024, F.S., relating to the Criminal Punishment Code worksheet computations and scoresheets.

Section 6. Reenacts s. 947.146, F.S., relating to the Control Release Authority.

Section 7. Provides that the bill takes effect on July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on state government revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an indeterminate prison bed impact on the Department of Corrections likely reducing the number of prison beds needed.

Since the October 28 CJIC meeting, the bill was amended to delete aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S. The original bill amended s. 775.087, F.S., extending an exception to certain mandatory minimum sentences if a use or threatened use of force was justifiable under specified provisions to other cases and allowed all 10-20-Life defendants the opportunity to avoid a minimum mandatory sentence associated with his or her offense by presenting mitigating evidence prior to sentencing that the defendant had a good faith belief that his or her use of force or threatened use of force was justifiable, the defendant does not pose a threat to public safety, and the mandatory minimum sentence is not justified given the totality of circumstances involved in the offense.

The CJIC met again on January 6, 2016, to determine if amendments adopted subsequently would affect the prior prison bed impact estimate and found that the estimate would not change.

According to information from the Office of Economic and Demographic Research, 27 inmates were admitted to prison in Fiscal Year 2014-2015 under 10-20-Life mandatory minimum sentences for aggravated assault.

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

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by deleting all references to aggravated assault specified in s. 775.087, F.S., rather than only modifying the exception for aggravated assault specified in s. 775.087(6), F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.