

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 228

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Mandatory Minimum Sentences

DATE: November 18, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 228 eliminates the minimum mandatory sentences for aggravated assault in the 10-20-Life statute by deleting aggravated assault from the list of crimes to which the law applies.¹

Under 10-20-Life, a person convicted of one of the specified crimes or the attempt to commit the crime must be sentenced to the following mandatory prison terms:

- Possession of a firearm – 10 years.
- Possession of a semi-automatic/machine gun – 15 years.
- Discharge of a firearm (any type) – 20 years.
- Discharge with great bodily injury or death – 25 years to life.

Under the bill, persons who are convicted of only an aggravated assault offense will no longer qualify for the 10-20-Life mandatory minimum sentences.

The bill also repeals subsection (6) from s. 775.087, F.S. This provision was added to the 10-20-Life statute in 2014, allowing the sentencing court to deviate from the minimum mandatory sentences for the offense of aggravated assault. Under the bill, a person convicted of only aggravated assault will no longer qualify for 10-20-Life sentencing, therefore the repealed language would be moot.

¹ Sections 775.087(2)(a)1., and 775.087(3)(a)1., F.S.

The Criminal Justice Impact Conference met on October 28, 2015, and determined the bill has a positive, indeterminate fiscal impact.

The bill is effective July 1, 2016.

II. Present Situation:

The 10-20-Life Law

The 10-20-Life law, s. 775.087, F.S., was among ten sentencing laws enacted by the 1999 Legislature in response to Florida's rising violent crime rate in the 1990s.² Scholars noted that the new laws took sentencing discretion away from judges and, at the same time, discouraged elected state attorneys from plea-bargaining these cases to lesser sentences.³

10-20-Life requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, while committing the offense, the person possesses or discharges a firearm or destructive device or if the discharge of the firearm results in death or great bodily harm.⁴

Mandatory Minimum Sentencing Under 10-20-Life

Under 10-20-Life, a person convicted of one of the specified crimes or the attempt to commit the crime must be sentenced to the following mandatory prison terms:

- Possession of a firearm – 10 years.
- Possession of a semi-automatic/machine gun – 15 years.
- Discharge of a firearm (any type) – 20 years.
- Discharge with great bodily injury or death – 25 years to life.

However, s. 775.087(2)(a)(1), provides a minimum mandatory sentence of three years, instead of the 10 years, for the possession of firearm while committing the offenses of aggravated assault, possession of a firearm by a felon, or burglary of a conveyance.

The specified crimes are:⁵

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;

² Chapter 99-12, L.O.F., "Whereas" clauses.

³ Fingerhut, Scola, *Tough Times in the Sunshine State*, The Florida Bar Journal, November, 1999 Volume LXXIII, No. 10, p. 28, available at <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/56453A7242AA141485256ADB005D629E> (last visited Nov. 17, 2015). Until 2011, when s. 27.366, F.S., was amended, 10-20-Life required state attorneys to report every potential 10-20-Life defendant to the presiding officers of the Legislature and the Governor. Current law only requires that the deviation memo be retained in the case file.

⁴ The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

⁵ Section 775.087(2)(a)1., F.S.

- h. Kidnapping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of drug trafficking provisions of s. 893.135(1); or
- r. Possession of a firearm by a felon.⁶

Since the creation of the 10-20-Life minimum mandatory sentencing, over 15,000 inmates have been admitted to prison for offenses under this law.⁷ On June 30, 2014, there were approximately 9,957 inmates in the prison population who were sentenced under 10-20-Life.⁸

Amendment to 10-20-Life

Section 775.087, F.S., was amended in 2014 to create an exception for sentencing in aggravated assault cases. The exception provides that the court shall not impose the minimum mandatory sentence if the court makes written findings that:

- a) The defendant had a good faith belief that the aggravated assault was justifiable pursuant to ch. 776, F.S.;
- b) The aggravated assault was not committed in the course of committing another criminal offense;
- c) The defendant does not pose a threat to public safety; and
- d) The totality of the circumstances involved in the offense do not justify the imposition of such sentence.⁹

The Use of the 10-20-Life in Cases Involving Self-Defense

In recent years some high-profile cases and controversy has emerged concerning the use of the 10-20-Life statute when sentencing a defendant who either displays or fires a gun in self-defense. Many of these cases constituted aggravated assault. Defendants who believe they acted in self-defense often times agree to a plea deal, admitting to crimes they do not feel they committed, in

⁶ The offense of possession of a firearm by a convicted felon does not appear in the crimes specified in s. 775.087(3)(a)1., F.S., however, sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance is specified therein. Section 775.087(3)(a)1.j., F.S.

⁷ Criminal Justice Estimating Conference, *Criminal Justice Trends*, p. 53, July 28, 2015, available at <http://edr.state.fl.us/content/conferences/criminaljustice/trends.pdf> (last visited Nov. 17, 2015).

⁸ *Id.*

⁹ Chapter 2014-195, L.O.F.; s. 775.087(6), F.S.

order to avoid the risk of a trial and a possible minimum mandatory 10 or 20-year prison sentence.¹⁰

III. Effect of Proposed Changes:

The bill eliminates the minimum mandatory sentences for aggravated assault in the 10-20-Life statute by deleting aggravated assault from the list of crimes to which 10-20-Life applies.¹¹ As a result, persons who are convicted of only an aggravated assault offense will no longer qualify for the 10-20-Life penalties.

The bill repeals the exception for sentencing in aggravated assault cases enacted in 2014. As discussed in the present situation, this exception allows the sentencing court to deviate from the minimum mandatory sentences for crimes of aggravated assault if the court makes certain statutory findings based upon mitigating evidence presented at sentencing. Under the bill, because a person convicted of only aggravated assault will no longer qualify for 10-20-Life sentencing, the repealed language would have no further application in cases of aggravated assault committed after the effective date of the bill.

The 10-20-Life statute is referenced in ss. 27.366, 921.0022(2), 921.0024(1)(b), 947.146(3)(b), and 985.557(2)(d), F.S., therefore those sections are amended or reenacted to incorporate or conform the amendments made to s. 775.087, F.S., by the bill.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Arguably it was the Marissa Alexander and Ronald Thompson 10-20-Life cases in Florida's Fourth Judicial Circuit and the George Zimmerman "Stand Your Ground"/justifiable use of force case in Sanford that began to highlight for the public the disparate application of these two legal concepts. See Heller, *Use a Gun and You're Done: How 10-20-Life and "Stand Your Ground" Together Have a Disparate Impact on Florida Citizens*, Vol. 43, 2014, Southwestern L.R., available at http://www.swlaw.edu/pdfs/lr/43_3levitt (last visited Nov. 17, 2015). See also Menzel, 'Worst...case...ever' draws 20-year sentence, outrage, *The St. Augustine Record*, June 22, 2012.

¹¹ Sections 775.087(2)(a)1., and 775.087(3)(a)1., F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of Economic and Demographic Research, there were 235 inmates sentenced under the 10-20-Life on June 30, 2015, with a primary offense of aggravated assault. This represents roughly 2.3 percent of the 10-20-Life population. Below is a more detailed breakdown of that population.¹²

10-20-Life June 30, 2015, Population with Primary Offense of Aggravated Assault					
Offense	Sentence				
	3 YR-10 YR	10 YR-20 YR	20 YR-25 YR	25 YR-Life	Total
Aggravated assault with weapon - no intent to kill	12	19	168	10	209
Aggravated assault – intent to commit felony	0	1	2	0	3
Aggravated assault on law enforcement officer, firefighter, emergency management services	3	6	14	0	23
Total	15	26	184	10	235

Consequently, the bill will result in a reduction in the number of offenders sentenced to prison under 10-20-Life. The Criminal Justice Impact Conference met on October 28, 2015, and determined the bill has a positive, indeterminate fiscal impact due to the reduction in the need for state prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 775.087 and 985.557 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 27.366, 921.0022, 921.0024, and 947.146.

¹² Office of Economic and Demographic Research, email to Senate Criminal Justice Committee, (Oct. 6, 2015) (on file with the Senate Fiscal Policy Committee).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on October 5, 2015:

- Aggravated assault is removed from the list of crimes to which the 10-20-Life law applies. This means that a person who commits aggravated assault with a firearm is no longer subject to the minimum mandatory sentence.
- Subsection (6) of s. 775.087, F.S., is repealed. This eliminates language added to the statute in order to give persons convicted of aggravated assault an opportunity to present mitigating evidence at sentencing and to allow the court to deviate from the 10-20-Life minimum mandatory sentence. The language is no longer necessary due to the deletion of aggravated assault from the list of 10-20-Life crimes.
- Section 985.557, F.S., the juvenile direct file statute, is amended to conform a cross-reference to the list of 10-20-Life crimes.
- Sections 27.366, 921.0022(2), 921.0024(1)(b), and 947.146(3)(b), F.S., are reenacted to incorporate the amendments made by the bill to s. 775.087, F.S.
- The reference to the bill as the “Self-Defense Protection Act” is deleted.

- B. **Amendments:**

None.