

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 589 Offenses Against Firefighters

**SPONSOR(S):** Duggan and Willhite

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	DuShane	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Jones	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

A "firefighter" is a person who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services.

Florida law provides special protections for a firefighter engaged in the lawful performance of his or her duties by enhancing criminal penalties for an offender who commits a specified dangerous offense against a firefighter. A person who commits an assault or battery on a firefighter is subject to a penalty enhancement reclassifying the crime one offense level. Additionally, a person who causes the death of a firefighter by committing manslaughter is subject to an aggravated offense and a penalty enhancement reclassifying the crime one offense level.

Other laws enhance penalties for offenses committed against a specified type of public officer or official, but do not include a firefighter. Section 782.065, F.S., requires a court to sentence a defendant convicted of the murder of a law enforcement officer, correctional officer, or correctional probation officer in the line of duty to a mandatory sentence of life imprisonment without eligibility for release. The law does not require the enhanced penalty for the murder of a firefighter.

HB 589 adds firefighters to the class of victims protected under s. 782.065, F.S. Under the bill, if a firefighter is murdered in the line of duty, a court must sentence the defendant to life imprisonment without eligibility for release. The mandatory sentence applies if the defendant is convicted of:

- First degree murder in violation of s. 782.04(1), F.S., when a death sentence is not imposed;
- Second or third degree murder in violation of s. 782.04(2), (3), or (4), F.S.;
- Attempted first or second degree murder in violation of s. 782.04(1)(a)1. or (2), F.S.; or
- Attempted felony murder in violation of s. 782.051, F.S.

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on prison beds (an increase of 10 or fewer beds) by increasing the sentence length of offenders convicted of a murder offense against a firefighter.

The bill provides an effective date of October 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Criminal Sentencing

Generally, the maximum sentence a court may impose is determined by the level of the offense committed by an offender. Section 775.082, F.S., designates the maximum sentence for each level of criminal offense as follows:

- A second degree misdemeanor is punishable by up to 60 days in county jail.
- A first degree misdemeanor is punishable by up to one year in county jail.
- A third degree felony is punishable by up to five years in state prison.
- A second degree felony is punishable by up to 15 years in state prison.
- A first degree felony is punishable by up to 30 years in state prison.<sup>1</sup>
- A capital felony is punishable by death, otherwise life imprisonment without eligibility for release.

The legislature may assign a mandatory minimum sentence for a specified criminal offense. A court must impose a mandatory minimum sentence for any offense required by statute. Only the prosecuting attorney has discretion to waive a mandatory minimum sentence.<sup>2</sup> If a court imposes a mandatory minimum sentence, the defendant must remain incarcerated for the entire sentence and is not eligible for early release.

##### Penalty Enhancements for Crimes Against a Firefighter

A "firefighter" is a person who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services.<sup>3</sup>

Florida law protects firefighters and other specified public officers by enhancing penalties for some dangerous offenses if committed against such professionals in the line of duty.<sup>4,5</sup> An enhanced penalty applies when a defendant is convicted of any of the following crimes against a firefighter:

- Assault is reclassified from a second degree misdemeanor to a first degree misdemeanor.<sup>6</sup>
- Aggravated assault is reclassified from a third degree felony to a second degree felony.<sup>7</sup>
- Battery is reclassified from a first degree misdemeanor to a third degree felony.<sup>8</sup>
- Aggravated battery is reclassified from a second degree felony to a first degree felony.<sup>9</sup>
- Manslaughter is reclassified from a second degree felony to a first degree felony.<sup>10</sup>

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<sup>1</sup> If the relevant criminal statute authorizes the penalty, a first degree felony may also be punishable by imprisonment for a term of years not exceeding life. S. 775.082(3)(b)1., F.S.

<sup>2</sup> See ss. 27.366 and 775.087(5), F.S.

<sup>3</sup> S. 633.102, F.S.

<sup>4</sup> Section 784.07, F.S., applies to law enforcement officers, firefighters, emergency medical care providers, and public transit employees or agents engaged in the performance of a legal duty.

<sup>5</sup> Section 782.07, F.S., applies to law enforcement officers, firefighters, emergency medical technicians, and paramedics engaged in the performance of a legal duty.

<sup>6</sup> S. 784.07(2), F.S. Assault is an intentional, unlawful threat by a word or act to do violence to another, coupled with an apparent ability to do so, and some act, which creates a well-founded fear in such other person that violence is imminent. S. 784.011(1), F.S.

<sup>7</sup> An aggravated assault occurs when a person assaults another with a deadly weapon without intent to kill or with an intent to commit a felony. S. 784.021, F.S.

<sup>8</sup> A person commits battery when he or she actually or intentionally touches or strikes another person against their will or intentionally causes bodily harm to another person. S. 784.03, F.S.

<sup>9</sup> Aggravated battery occurs when a person intentionally causes great bodily harm, permanent disability, or permanent disfigurement to another person, or uses a deadly weapon against another person. S. 784.045, F.S.

<sup>10</sup> Manslaughter is the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification. S. 782.07(1), F.S.

Other offenses carry enhanced penalties when committed against a specified type of public officer or official, but do not include a firefighter. Section 782.065, F.S., requires a court to sentence a defendant convicted of the murder of a law enforcement officer, part-time law enforcement officer, correctional officer, part-time correctional officer, correctional probation officer, or part-time correctional probation officer to a mandatory sentence of life imprisonment without eligibility for release. The mandatory sentence applies when the defendant is convicted of:

- First degree murder in violation of s. 782.04(1), F.S., when a death sentence is not imposed;
- Second or third degree murder in violation of s. 782.04(2), (3), or (4), F.S.;
- Attempted first or second degree murder in violation of s. 782.04(1)(a)1. or (2), F.S.; or
- Attempted felony murder in violation of s. 782.051, F.S.<sup>11</sup>

## Murder

### *First Degree Murder*

First degree murder is the unlawful killing of a human being when committed with premeditation<sup>12</sup> or when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Drug trafficking under s. 893.135(1), F.S.,
- 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,
- Aggravated feeling or eluding with serious bodily injury or death,
- A felony act of terrorism or an act in furtherance of terrorism, or
- Human trafficking.<sup>13</sup>

First degree murder is a capital felony punishable by death or life imprisonment without release.<sup>14</sup> If the state seeks to impose the death penalty following a conviction, the court must conduct a separate sentencing proceeding.<sup>15</sup> The jury must unanimously determine, beyond a reasonable doubt, whether the state has proved at least one aggravating factor prior to making a sentencing recommendation to the court.<sup>16</sup>

The jury's recommendation must balance the sufficiency of any aggravating factors, whether such aggravating factors outweigh any mitigating circumstances, and whether the defendant should be sentenced to life imprisonment without parole or death.<sup>17</sup> If the jury recommends life imprisonment, the

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<sup>11</sup> S. 782.065, F.S. Section 775.0823, F.S., partially overlaps with s. 782.065, F.S., which enhances penalties for offenses against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, and judges.

<sup>12</sup> S. 782.04(1)(a)1., F.S.

<sup>13</sup> S. 782.04(1)(a)2., F.S.

<sup>14</sup> S. 775.082(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> S. 921.141(2)(b)1., F.S. Aggravating factors are limited to 15 enumerated factors listed in section 921.141(6), F.S. These factors can include: whether the defendant was previously convicted of a felony, whether the defendant knowingly created a great risk of death to many persons, or whether the crime was especially heinous, atrocious, or cruel.

<sup>17</sup> *Id.*

court must impose the sentence.<sup>18</sup> If the jury recommends death, the court must consider the aggravating factors found by the jury and any mitigating circumstances, and may impose a life sentence or death.<sup>19</sup> However, if the jury does not unanimously find at least one aggravating factor, the defendant is ineligible for a death sentence and must be sentenced to life imprisonment without release.<sup>20</sup>

Attempted first degree murder is a first degree felony with a maximum penalty of 30 years imprisonment.<sup>21</sup> To prove attempted first degree murder, the state must show premeditation and specific intent to commit the offense and that the defendant acted to effectuate the intent, beyond preparation, but short of completing the crime.<sup>22</sup>

### *Second Degree Murder*

Second degree murder is the unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life without premeditation.<sup>23</sup> A defendant may also be convicted of second degree murder when another person is unlawfully killed while the defendant is perpetrating or attempting to perpetrate:

- Drug trafficking under s. 893.135(1), F.S.,
- 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,
- Aggravated feeling or eluding with serious bodily injury or death,
- Resisting an officer with violence, or
- A felony act of terrorism or an act in furtherance of terrorism.<sup>24</sup>

Second degree murder is a first degree felony punishable by imprisonment for a term of years not exceeding life. Attempted second degree murder is an intentional act that could have resulted, but did not, in a person's death, when the act was imminently dangerous to another and demonstrated a depraved mind without regard for human life.<sup>25</sup> Attempted second-degree murder is a second-degree felony.<sup>26</sup>

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<sup>18</sup> S. 921.141(3)(a)1., F.S.

<sup>19</sup> S. 921.141(3)(a)2., F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 775.082(4)(6)1., F.S.

<sup>22</sup> *Williams v. State*, 531 So. 2d 212, 216 (Fla. 1st DCA 1988).

<sup>23</sup> S. 782.04(2), F.S.

<sup>24</sup> S. 782.04(3), F.S.

<sup>25</sup> *Coissy v. State*, 957 So. 2d 53, 55 (Fla. 4th DCA 2007).

<sup>26</sup> *Harris v. State*, 660 So. 2d 409, 410 (Fla. 4th DCA 1995). A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

### *Third Degree Murder*

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person perpetrating, or attempting to perpetrate, any felony other than:

- Drug trafficking under s. 893.135(1), F.S.,
- 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,
- Unlawful distribution of a specified controlled substance by a person 18 years of age or older, when such drug is proven to be the proximate cause of the user's death,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Aggravated fleeing or eluding with serious bodily injury or death,
- Resisting an officer with violence, or
- A felony act of terrorism or an act in furtherance of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.<sup>27</sup>

### *Attempted Felony Murder*

A person perpetrating or attempting to perpetrate a felony, who commits, aids, or abets an intentional act that is not an essential element of the crime and that could, but does not, cause the death of another, commits attempted felony murder.<sup>28</sup> The degree of the offense differs based on the underlying felony committed or attempted, and may be a first or second degree felony.<sup>29</sup>

### **Effect of Proposed Changes**

HB 589 adds firefighters to the class of victims protected under s. 782.065, F.S. Under the bill, if a firefighter is murdered in the line of duty, a court must sentence the defendant to life imprisonment without eligibility for release. The mandatory sentence applies if the defendant is convicted of:

- First degree murder in violation of s. 782.04(1), F.S., when a death sentence is not imposed;
- Second or third degree murder in violation of s. 782.04(2), (3), or (4), F.S.;
- Attempted first or second degree murder in violation of s. 782.04(1)(a)1. or (2), F.S.; or
- Attempted felony murder in violation of s. 782.051, F.S.

Under the bill, a "firefighter" means a person who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services.

The bill is effective October 1, 2020.

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<sup>27</sup> S. 782.04(4), F.S.

<sup>28</sup> S. 782.051, F.S.

<sup>29</sup> *Id.*

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

**Section 2:** Provides an effective date of October 1, 2020.

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

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

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will result in a positive insignificant impact on prison beds (an increase of 10 or fewer beds) by increasing the sentence length of offenders convicted of a murder offense against a firefighter.

In Fiscal Year 2018-19, 923 offenders were admitted to prison for committing murder. The average sentence length was 292.9 months (24.4 years). The number of offenders who currently receive this enhanced penalty is unknown, nor is it known how many offenders would receive this enhancement under the amended bill. The rarity of murder and the long sentences associated with such an offense would likely prevent a significant impact on prison beds from occurring.<sup>30</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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.

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<sup>30</sup> Criminal Justice Impact Conference, Office of Economic and Demographic Research, SB 1142 – Offenses Against Firefighters (Identical HB 589) (Jan. 27, 2020).

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**