

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 Criminal Justice

BILL: CS/SB 384

INTRODUCER: Criminal Justice Committee and Senator Bradley and others

SUBJECT: Violent Offenses Committed Against Criminal Defense Attorneys

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 384 amends s. 775.0823, F.S., to provide for enhanced punishment for certain violent offenses committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S., or a defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.

These professionals are added to the list of criminal justice professionals in s. 775.0823, F.S. A sentence point multiplier in s. 921.0024, F.S., of the Criminal Punishment Code is applied when such violent offense is committed against a listed criminal justice professional when such offense arises out of or in the scope of the professional's official duties.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Recent Incident of Violence on Court-Appointed Counsel

On November 21, 2022, an attorney employed by the Office of Criminal Conflict and Civil Regional Counsel, First Region, was representing a defendant charged with a criminal offense at a trial in Alachua County.¹ Without warning, the defendant repeatedly punched his attorney on the left side of his head, fracturing the attorney's skull.² The defendant was subsequently charged with aggravated battery, a second degree felony.³ While current law provides for enhanced punishment for certain violent offenses committed against specified criminal justice professionals while they are engaged in their professional duties,⁴ this law does not currently cover court-appointed counsel or defense attorneys.⁵

The Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code⁶ (Code) as Florida's "primary sentencing policy."⁷ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁸ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may be added or multiplied for other factors such as victim injury, commission of certain drug trafficking offenses, and certain violent offenses committed against listed criminal justice professionals performing their duties. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁹

Absent mitigation,¹⁰ the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.¹¹ However, if the offender's offense has a mandatory minimum term that is greater than the

¹ Patrick R. Fargason, *Measure Would Provide More Protections for Defense Lawyers*, Fla. Bar News, (Jan. 4, 2023), available at <https://www.floridabar.org/the-florida-bar-news/measure-would-provide-more-protections-for-defense-lawyers/> (last visited on Feb. 27, 2023).

² *Id.*

³ A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

⁴ *See* ss. 775.0823 and 921.0024(1)(b), F.S.

⁵ *Id.*

⁶ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

⁷ *See* chs. 97-194 and 98-204, L.O.F.

⁸ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁹ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁰ The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

¹¹ Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed one year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.¹² Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.¹³

Section 775.0823, F.S., and the LEPA Multiplier under s. 921.0024, F.S.

Section 775.0823, F.S., and s. 921.0024(1)(b), F.S., work jointly to provide for enhanced punishment under the Code for certain violent offenses committed against a specified criminal justice professional when such offense arises out of or in the scope of the professional's official duties.¹⁴ The violent offenses are:

- Attempted first degree murder under s. 782.04(1), F.S.;
- Attempted felony murder under s. 782.051, F.S.;
- Second degree murder under s. 782.04(2) and (3), F.S.;
- Attempted second degree murder under s. 782.04(2) and (3), F.S.
- Third degree murder under s. 782.04(4), F.S.;
- Attempted third degree murder under s. 782.04(4), F.S.;
- Manslaughter under s. 782.07, F.S., during the commission of a crime;
- Kidnapping under s. 787.01, F.S.;
- Aggravated battery under s. 784.045, F.S.; and
- Aggravated assault under s. 784.021, F.S.¹⁵

The specified criminal justice professionals are any:

- Law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.;
- State attorney elected pursuant to s. 27.01, F.S., or assistant state attorney appointed under s. 27.181; F.S.; and
- Justice or judge of a court described in Art. V of the State Constitution.¹⁶

The LEPA multiplier (an acronym for "Law Enforcement Protection Act," s. 775.0823, F.S.) under s. 921.0024(1)(b), F.S., of the Code multiplies sentence points under the Code for any violent offense specified in s. 775.0823, F.S., that is committed against a listed criminal justice professional when such offense arises out of or in the scope of the professional's official duties. Sentence points are multiplied in the following manner:

- Multiplier of 2.5 for:
 - Attempted first degree murder;¹⁷

¹² Fla. R. Crim. P. 3.704(d)(26).

¹³ See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

¹⁴ Section 775.0823(1), F.S., specifies life imprisonment without early release is the punishment if a death sentence is not imposed. This provision is not relevant to the Code multiplier because the Code does not apply to capital felonies. Section 921.002, F.S.

¹⁵ Section 775.0823(1)-(11), F.S.

¹⁶ Section 775.0823, F.S.

¹⁷ Attempted first degree murder is a level 9 first degree felony. Sections 777.04(4)(b), 782.04(1), and 921.0022(3)(i.), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000.

- Attempted felony murder;¹⁸ and
- Second degree murder.¹⁹
- Multiplier of 2.0 for:
 - Attempted second degree murder;²⁰
 - Third degree murder;²¹
 - Attempted third degree murder;²²
 - Manslaughter²³ committed during the commission of a crime; and
 - Kidnapping under s. 787.01, F.S.²⁴
- Multiplier of 1.5 for:
 - Aggravated battery under s. 784.045, F.S.;²⁵ and
 - Aggravated assault under s. 784.021, F.S.²⁶

The effect of the LEPA multiplier is that the minimum prison sentence (in months) under the Code will be longer.

III. Effect of Proposed Changes:

The bill amends s. 775.0823, F.S., to provide for enhanced punishment for certain violent offenses committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S.,²⁷ or a defense attorney in a criminal proceeding acting in his or her capacity as defense

Sections 775.082 and 775.083, F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

¹⁸ Attempted felony murder is either a level 8 first degree felony or a level 9 first degree felony (punishable by life). Sections 782.051(1) and (2), and 921.0022(3)(h) and (i), F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

¹⁹ Second degree murder is either a level 9 first degree felony (punishable by life) or a level 10 first degree felony (punishable by life). Sections 782.04(2) and (3) and 921.0022(3)(i) and (j), F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

²⁰ Attempted second degree murder is a level 8 or level 9 second degree felony. Sections 777.04(4)(a) and (c) and 782.04(2) and (3), F.S. While a second degree felony is generally punishable by not more than 15 years in state prison (s. 775.082, F.S.), if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

²¹ Third degree murder is a level 8 second degree felony. Sections 782.04(4) and 921.0022(3)(h), F.S.

²² Attempted third degree murder is a level 7 third degree felony. Sections 777.04(4)(a) and (d) and 782.04(4), F.S. A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

²³ Manslaughter is a level 7 second degree felony or a level 7 first degree felony. Sections 782.07(1) and (4), 921.002(3)(g), and 921.0023(3), F.S.

²⁴ Kidnapping is generally a level 9 first degree felony (punishable by life). Sections 787.01(2) and 921.0022(3)(i), F.S.

²⁵ Aggravated battery is a level 7 second degree felony. Sections 784.045 and 921.0022(3)(g), F.S.

²⁶ Aggravated assault is a level 6 second degree felony. Sections 784.021 and 921.0022(3)(f), F.S.

²⁷ Section 27.40, F.S., provides for the appointment of counsel to represent any individual in a criminal or civil proceeding who is entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. The court appoints a public defender to represent indigent persons as authorized in s. 27.51, F.S. The office of criminal conflict and civil regional counsel are appointed to represent persons in those cases in which provision is made for court-appointed counsel, but only after the public defender has certified to the court in writing that the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation. Private counsel appointed by the

counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.

These professionals are added to a list of criminal justice professionals in s. 775.0823, F.S. The following sentence point multiplier in s. 921.0024(1)(b), F.S., of the Code must be applied when the violent offense is committed against a listed criminal justice professional when such offense arises out of or in the scope of the professional's official duties:

- Multiplier of 2.5 for:
 - Attempted first degree murder;
 - Attempted felony murder;²⁸ and
 - Second degree murder.
- Multiplier of 2.0 for:
 - Attempted second degree murder;
 - Third degree murder;
 - Attempted third degree murder;
 - Manslaughter committed during the commission of a crime; and
 - Kidnapping under s. 787.01, F.S.
- Multiplier of 1.5 for:
 - Aggravated battery under s. 784.045, F.S.; and
 - Aggravated assault under s. 784.021, F.S.²⁹

Conforming changes are made to ss. 921.0024 and 947.146, F.S., which are consistent with the amendment of s. 775.0823, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

court to provide representation are selected from a registry of individual attorneys maintained under s. 27.40, F.S. *See* s. 27.40(1)-(3), F.S.

²⁸ Attempted felony murder is either a level 8 first degree felony or a level 9 first degree felony (punishable by life). Sections 782.051(1) and (2), and 921.0022(3)(h) and (i.), F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

²⁹ *See* "Present Situation" section of this analysis for a discussion of the maximum penalties and offense severity ranking levels under the Code associated with these violent offenses.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).³⁰

The EDR provides the following information regarding its estimate:

Per [Department of Corrections], data on the profession of victims is not available for most of the violent offenses covered in this statute. However, per [Florida Department of Law Enforcement], there were 11 officers killed feloniously between 2015 and 2020. Also, s. 784.07, F.S.[,] does cover offense reclassification for aggravated assault/battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, etc. In FY 18-19, there were 122 new commitments to prison for these offenses and in FY 19-20, there were 103 new commitments. In FY 20-21, there were 101 new commitments, and there were 119 new commitments in FY 21-22. Finally, s. 782.07(4)[,] F.S.[,] contains a felony for manslaughter of law enforcement officers, firefighters, and other first responders. There have been 2 new commitments in the last four fiscal years for a violation of s. 782.07(4)[,] F.S. Multiple professions are currently covered under these statutes, so this new

³⁰ *SB 384 – Violent Offenses Committed Against Criminal Defense Attorneys*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

language would not be expected to have a significant impact on the prison population.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.0823, 921.0024, and 947.146.

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 March 13, 2023:

The committee substitute:

- Amends s. 775.0823, F.S., to provide for enhanced punishment for certain violent offenses committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S., or a defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.
- Makes conforming changes to various statutes consistent with the amendment of s. 775.0823, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³¹ *Id.*