

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: SB 566

INTRODUCER: Senators Rich and Crist

SUBJECT: Criminal Sentencing

DATE: April 20, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	Luczynski	Maclure	JU	Favorable
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill adds the offense of attempted felony murder to the list of offenses committed against law enforcement officers or other similar officials which are subject to an increased and certain penalty. Under such circumstances, a person convicted of attempted felony murder is subject to a 2.5 sentencing point multiplier under the Criminal Punishment Code.¹ The bill also increases the sentencing multiplier in the case of second-degree murder of a law enforcement officer or other similar official to 2.5, from the existing multiplier of 2.0. As a result, this bill increases the lowest permissible sentence that can be imposed against a person for conviction of one of these violent offenses against a law enforcement officer or similar official.

The bill also adds attempted felony murder committed against a law enforcement officer or other similar official to those crimes that render an inmate ineligible for control release.

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

II. Present Situation:

In 1989, the Legislature enacted the Law Enforcement Protection Act,² providing for mandatory minimum penalties for persons convicted of certain crimes of violence, as enumerated in

¹ Sections 921.002-921.0026, F.S. The Criminal Punishment Code applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.

² The Law Enforcement Protection Act, ch. 89-100, Laws of Fla. (codified at §§ 775.0823, 944.277(1)(h)-(i), F.S. (1989)).

s. 775.0823, F.S., against a law enforcement officer or other similar official. The Legislature found that:

law enforcement officers, correctional officers, state attorneys, and assistant state attorneys occupy a unique position in civilized society. As the first line of defense against lawlessness and violence, they are charged with the duty of protecting the citizens and enforcing the laws of this state. Because of such duty, law enforcement and correctional officers are constantly exposed to great risk of personal injury and death, and consequently are entitled to the greatest protection which can be provided through the laws of this state.³

The current version of s. 775.0823, F.S., provides for an increase and certainty of penalty if any of a list of enumerated offenses is committed against the following individuals when the offense arises out of or in the scope of that individual's official duty:

- law enforcement officers;
- correctional officers;
- state attorneys or assistant state attorneys; or
- justices or judges.⁴

Additionally, a person who is found to have violated s. 775.0823, F.S., must be adjudicated guilty and sentenced for the offense. The specific crimes to which the increased penalties apply are:

- first-degree murder (s. 782.04(1), F.S.);
- attempted first-degree murder (ss. 782.04(1) and 777.04, F.S.⁵);
- second-degree murder [s. 782.04(2) (depraved mind) and (3) (felony murder), F.S.];
- attempted second-degree murder (ss. 782.04(2) and (3), and 777.04, F.S.);
- third-degree murder (s. 782.04(4), F.S.);
- attempted third-degree murder (ss. 782.04(4), 777.04, F.S.);
- manslaughter during the commission of a crime (s. 782.07, F.S.);
- kidnapping (s. 787.01, F.S.);
- aggravated battery (s. 784.045, F.S.); and
- aggravated assault (s. 784.021, F.S.).⁶

The increased penalties for the commission of these crimes, except for first degree murder, are assessed through sentencing point multipliers, which are provided in the Criminal Punishment Code.⁷ The Criminal Punishment Code sets forth the Sentencing Worksheet, by which a defendant's lowest permissible sentence is calculated, using a system of sentencing points based

³ The Law Enforcement Protection Act, ch. 89-100, § 2, Laws of Fla.

⁴ Section 775.0823, F.S.

⁵ Section 777.04, F.S., governs attempts to commit an offense.

⁶ Section 775.0823(1)-(10), F.S.

⁷ Section 921.0024(1)(b), F.S.

upon a Ranking Chart.⁸ The Ranking Chart has assigned point values by “level of offense.” Additional factors considered on the worksheet include the defendant’s criminal history, whether he or she was on probation or some other community supervision at the time of the offense, victim injury points, and the “multipliers” previously mentioned. If the total sentencing points exceed 44 points, a state prison sentence is indicated. When the total sentence points exceeds 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. The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. However, if the lowest permissible sentence exceeds the statutory maximum sentence as provided in s. 775.082, F.S., the sentence calculated by the Criminal Punishment Code must be imposed.⁹

The sentencing multiplier provision related to “law enforcement protection” states in pertinent part:

If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation ... of the Law Enforcement Protection Act under 775.0823(9) or (10), the subtotal points are multiplied by 1.5.¹⁰

Section 947.146, F.S., provides in pertinent part that inmates who are serving a sentence for certain offenses committed against law enforcement officers or other similar officials are ineligible for control release.

III. Effect of Proposed Changes:

This bill adds the offense of attempted felony murder to the list of offenses committed against law enforcement officers or other similar officials which are subject to an increased and certain penalty. Under such circumstances, a person convicted of attempted felony murder is subject to a 2.5 sentencing point multiplier under the Criminal Punishment Code. Attempted felony murder consists of the commission of the enumerated crimes that constitute felony murder, when the victim is not killed.¹¹ This change will result in substantially higher penalties for the crime of attempted felony murder when the victim is one of the following persons and the offense arises out of or in the scope of that individual’s official duty:

- law enforcement officers;
- correctional officers;
- state attorneys or assistant state attorneys; or
- justices or judges.¹²

⁸ Section 921.0022, F.S.

⁹ Section 921.0024(2), F.S.

¹⁰ Section 921.0024(1)(b), F.S.

¹¹ Section 782.051, F.S.

¹² Section 775.0823, F.S.

In addition, this bill increases to 2.5 from 2.0 the sentencing point multiplier applicable to the offense of second-degree murder of a law enforcement officer or similar covered official, thereby increasing the lowest permissible sentence that can be imposed against a person for conviction for that offense.

The bill also amends the control release statute¹³ to include attempted felony murder under s. 775.0823, F.S., among those crimes that render an inmate ineligible for control release.

The bill provides an effective date of October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference discussed this bill on February 16, 2007,¹⁴ and determined that any prison bed impact resulting from the bill would likely be insignificant.

VI. Technical Deficiencies:

None.

¹³ Section 947.146, F.S.

¹⁴ OFFICE OF ECON. & DEMOGRAPHIC RESEARCH, THE FLA. LEGISLATURE, CONFERENCES: CRIMINAL JUSTICE ESTIMATING CONFERENCE IMPACT CONFERENCES (Feb. 16, 2007), <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm>.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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