

3.15 VIOLENT OFFENSES COMMITTED AGAINST SPECIFIED JUSTICE SYSTEM PERSONNEL

§ 775.0823, Fla. Stat.

If you find (defendant) **guilty of** (crime listed in § 775.0823, Fla. Stat. [or the lesser-included crime of (insert name of crime)]) **and that** (victim) **was the victim of that crime, you must then answer the following two questions:**

- 1. Did the State prove beyond a reasonable doubt that at the time of the crime, (victim of crime) was a[n] [law enforcement officer] [correctional officer] [correctional probation officer] [part-time law enforcement officer] [part-time correctional officer] [auxiliary law enforcement officer] [auxiliary correctional officer] [state attorney] [assistant state attorney] [public defender] [regional counsel] [court-appointed counsel] [defense attorney in a criminal proceeding] [justice] [judge]?**

_____ **Yes** _____ **No**

- 2. Did the State prove beyond a reasonable doubt:**

[the crime arose out of or in the scope of the officer's duty as a [law enforcement officer] [correctional officer] [correctional probation officer] [part-time law enforcement officer] [part-time correctional officer] [auxiliary law enforcement officer] [auxiliary correctional officer]]?

[the crime arose out of or in the scope of the [state attorney's] [assistant state attorney's] duty as a prosecutor or investigator]?

[the crime arose out of or in the scope of the [justice's] [judge's] duty as a judicial officer]?

[the [public defender] [regional counsel] [court-appointed counsel] [defense attorney] was acting in [his] [her] capacity as defense counsel?

_____ **Yes** _____ **No**

Give definitions as applicable.

§ 943.10, Fla. Stat.

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law

enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

“Correctional officer” means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.

“Correctional probation officer” means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above but not including the probation and parole regional administrator level.

“Part-time law enforcement officer” means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

“Part-time correctional officer” means any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

“Auxiliary law enforcement officer” means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

“Auxiliary correctional officer” means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

“State Attorney” means the person who was elected as the judicial circuit’s state attorney pursuant to s. 27.01, Florida Statute.

“Assistant State Attorney” means a person who was appointed by a state attorney pursuant to s. 27.181, Florida Statute.

“Public defender” means the person who was elected as the judicial circuit’s public defender pursuant to s. 27.50, Florida Statutes.

“Regional counsel” means the person who was appointed to act as the regional counsel pursuant to s. 27.511(3), Florida Statutes.

Court-appointed counsel means the person who was appointed to represent a client pursuant to s. 27.40, Florida Statutes.

[Justice] [Judge] means a judicial officer of [the Florida Supreme Court] [a district court of appeal] [a circuit court] [a county court].

Comments

There would be no effect for a § 775.0823, Fla. Stat. jury finding for first degree murder because that crime carries a mandatory life sentence and because life means life. But for second degree murder, third degree murder, attempted murders, kidnapping, aggravated battery, and aggravated assault, the scoresheet multipliers in § 921.0024, Fla. Stat. can be scored only if there were a jury finding of facts that did not inhere in the verdict. *See Alleyne v. United States*, 570 U.S. 99 (2013).

This instruction was adopted on December 15, 2023.