

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 Criminal Justice Committee

BILL: SB 1094
 INTRODUCER: Senator Justice
 SUBJECT: Assault and Battery/Social Workers
 DATE: March 15, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	JU	_____
4.	_____	_____	JA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides for felony and misdemeanor reclassification of assault and battery offenses committed under specified circumstances upon a person licensed under ch. 490, F.S. (psychologists and school psychologists), or ch. 491, F.S. (clinic social workers, marriage and family therapists, and mental health counselors), or is a social worker as described in s. 491.016(2), F.S.

The bill also requires a mandatory fine (up to \$10,000), mandatory victim restitution, mandatory community service (up to 500 hours), and a mandatory minimum term of imprisonment (5 years) for aggravated assault or aggravated battery on any of these persons. Restitution and community service are in addition to any fine or sentence imposed by the court.

The bill also provides for escalating mandatory minimum terms of imprisonment for battery on any of these persons if, during the commission of the battery, the offender possessed a firearm or destructive device (3 years) or a semiautomatic firearm and its high-capacity detachable box magazine (8 years).

Finally, the bill precludes suspending, deferring, or withholding adjudication of guilt or imposition of sentence and precludes statutory gain-time or discretionary early release, other than pardon or executive clemency, prior to serving the minimum sentence.

This bill creates section 784.071, Florida Statutes.

II. Present Situation:

Licensed Professions under Chs. 490 and 491, F.S.

Ch. 490, F.S., pertains, in part, to the licensing of psychologists and school psychologists.¹

Chapter 491, F.S., pertains, in part, to the licensing of clinical social workers, marriage and family therapists, and mental health counselors.²

Description of Social Worker

The bill, in part, provides for reclassification of felony and misdemeanor assault and battery offenses committed against a “social worker as described in s. 491.016(2).”

Section 491.016(2), F.S., inferentially describes what a “social worker” is³ by making it a first degree misdemeanor for a person to hold himself or herself out to the public as a “social worker” unless he or she has the following qualifications:

- Possesses at least a bachelor’s or master’s degree in social work from a social work program accredited by or from an institution that is an active candidate for accreditation as a social work program by the Council on Social Work Education; or
- Completes, at a university or college outside the United States or Canada, a social work program determined by the Foreign Equivalency Determination Service of the Council on Social Work Education to be equivalent to a bachelor’s or master’s degree in social work.⁴

An Example of a Felony/Misdemeanor Reclassification Statute

The new section created by the bill appears to be substantively similar to s. 784.07, F.S. Section 784.07(2), F.S., reclassifies the felony or misdemeanor degree,⁵ as applicable, of assault,⁶ aggravated assault,⁷ battery,⁸ and aggravated battery⁹ when knowingly committed against any of the following persons:

¹ See ss 49.003, 490.005, 490.0066, and 490.12, F.S.

² See ss 491.003, 491.005, 491.0057, 491.006, and 491.012, F.S.

³ This approach is somewhat akin to the referencing of certain officers in s. 784.07, F.S., such as “a traffic infraction enforcement officer as described in 316.640.” Section 316.640, F.S., does not actually define the term “traffic infraction enforcement officer” but inferentially describes the position by specifying who may be employed as such.

⁴ Sections 39.01(71) and 491.003(17), F.S., define “social worker” as a person who has a bachelor’s, master’s, or doctoral degree in social work.

⁵ Reclassifying an offense has the effect of increasing the maximum penalty that can be imposed for an offense. In general, the maximum penalty for misdemeanors and felonies, as set forth in s. 775.082, F.S., is as follows: for a second degree misdemeanor, 60-days incarceration; for a first degree misdemeanor, 1- year of incarceration; for a third degree felony, 5-years imprisonment; for a second degree felony, 15-years imprisonment; and for a first degree felony, 30-years imprisonment (unless it is specified in a statute that the felony is punishable by a terms of years not exceeding life imprisonment, which is sometimes referred to by the acronym “PBL”). Therefore, if, for example, a first degree misdemeanor is reclassified as a third degree felony, the maximum penalty increases from up to 1-year incarceration in a local jail to 5-years imprisonment in a state prison.

⁶ An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. See s. 784.011, F.S.

⁷ An aggravated assault is an assault with a deadly weapon without intent to kill or with intent to commit a felony. See s. 784.021, F.S.

⁸ A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. See s. 784.03, F.S.

- A law enforcement officer.
- A firefighter.
- An emergency medical care provider.
- A traffic accident investigation officer.
- A nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI.
- A law enforcement explorer.
- A traffic infraction enforcement officer.
- A parking enforcement specialist.
- A licensed security officer wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college.

Subsection (2) of the statute further provides that in order for the reclassification to occur, the offense must have been committed while the officer, etc., is “engaged in the lawful performance of his or her duties.”

Subsection (2) of the statute further provides for reclassification of assault and battery offenses and for mandatory minimum terms for the reclassified aggravated assault and reclassified aggravated battery, as follows:

- In the case of assault, from a second degree misdemeanor¹⁰ to a first degree misdemeanor.¹¹
- In the case of battery, from a first degree misdemeanor to a third degree felony.¹²
- In the case of an aggravated assault, from a third degree felony¹³ to a second degree felony¹⁴ with a 3-year mandatory minimum term of imprisonment.
- In the case of an aggravated battery, from a second degree felony¹⁵ to a first degree felony¹⁶ ranked in Level 7 with a 5-year mandatory minimum term of imprisonment.

⁹ An aggravated battery occurs when a person in committing a battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. *See* s. 784.045, F.S.

¹⁰ A first degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in jail, a fine of up to \$1,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

¹² A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S. *See* s. 921.0022(3)(d), F.S., ranking the reclassified offense in Level 4 of the offense severity ranking chart of Criminal Punishment Code.

¹³ *See* s. 921.0022(3)(f), F.S., ranking the offense in Level 6 of the ranking chart.

¹⁴ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S. *See* s. 921.0022(3)(f), F.S., ranking the reclassified offense in Level 6 of the ranking chart.

¹⁵ *See* s. 921.0022(3)(g), F.S., ranking the offense in Level 7 of the ranking chart.

Section 784.07(3)(a), F.S., provides that a reclassified battery is subject to a 3-year mandatory minimum term of imprisonment if, during the commission of the offense, the person committing the offense possessed a firearm or destructive device. Paragraph (3)(b) of the statute provides that a reclassified battery is subject to an 8-year mandatory minimum term of imprisonment if, during the commission of the offense, the person committing the offense possessed a semiautomatic firearm and its high-capacity detachable box magazine or possessed a machine gun.

Section 784.07(3), F.S., also provides that, notwithstanding s. 948.01, F.S.,¹⁷ adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275, F.S., or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, F.S., prior to serving the minimum sentence.

III. Effect of Proposed Changes:

The bill creates a new and currently unnumbered section that provides that whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person who is licensed under ch. 490, F.S. (psychologists and school psychologists), or ch. 491, F.S. (clinical social workers, marriage and family therapists, and mental health counselors), or is a social worker as described in s. 491.016(2), F.S., and when the person committing the offense knows or has reason to know the identity or position or employment of the victim and at the time of the incident the victim is in the course of performing his or her duties in that position or employment or the incident is related to that position or employment, the offense for which the person is charged is reclassified as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of aggravated assault, from a third degree felony to a second degree felony.
- In the case of aggravated battery, from a second degree felony to first degree felony.

The bill also requires the court to impose a mandatory fine (up to \$10,000), mandatory victim restitution, mandatory community service (up to 500 hours), and a mandatory minimum term of imprisonment (5 years) upon conviction for aggravated assault or aggravated battery on any of these persons. Restitution and community service are in addition to any fine or sentence imposed by the court.

The bill also provides for escalating mandatory minimum terms of imprisonment for battery on any of these persons if, during the commission of the battery, the offender possessed a firearm or destructive device (3 years) or a semiautomatic firearm and its high-capacity detachable box magazine (8 years).

¹⁶ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S. See s. 921.0022(3)(g), F.S., ranking the reclassified offense in Level 7 of the ranking chart.

¹⁷ Section 948.01, F.S., addresses when a court may place a person on probation or into community control.

Finally, the bill precludes suspending, deferring, or withholding adjudication of guilt or imposition of sentence and precludes statutory gain-time or discretionary early release, other than pardon or executive clemency, prior to serving the minimum sentence.

The effective date of the bill is October 1, 2010.

Other Potential Implications:

It is unclear if the bill would cover provisional licensees under chs. 490 and 491, F.S. Presumably some provisional licensees would be covered under the term “social worker” as described in s. 491.016(2), F.S.

The bill does not appear to require that a “social worker” as described in s. 491.016(2), F.S., be licensed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 determined that SB 1094 has an indeterminate prison bed impact.¹⁸

¹⁸ Criminal Justice Impact Conference, <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm>.

VI. Technical Deficiencies:

Although not critical to implementation of the bill or prosecution of reclassified offenses under the bill, sentencing anomalies could conceivably be created by not specifically ranking reclassified offenses in the offense severity ranking chart (s. 921.0022, F.S.) of the Criminal Punishment Code, Florida's general sentencing framework. Specifically, some reclassified offenses could end up with a lower ranking than the offenses prior to reclassification. A ranking is not only an assessment by the Legislature of the degree of seriousness of the offense but is also used to determine the lowest permissible sentence the court may impose. Sentence points are assigned to the primary offense, additional and prior offenses and other factors. The higher the ranking assigned to the primary offense, the more sentence points that accrue.

There are at least two ways to rank reclassified offenses in the ranking chart. One way is to specifically rank reclassified offenses in s. 921.0022(3), F.S., in whatever levels are determined to be appropriate. An example of this approach is the specific ranking of reclassified offenses under s. 784.07, F.S.

The second way is to indicate in the bill that for purposes of sentencing under ch. 921, F.S., a felony offense that is reclassified under this section (the section created by the bill) is ranked one level above the ranking under s. 921.0022, F.S., or s. 921.0023, F.S., of the offense committed. Additionally, reference to the new section would need to be listed in s. 921.0023(2), F.S., so that it would be indicated that reclassification of the felony degree through application of the new section to any offense listed in the chart shall not cause the offense to become unlisted in the chart. An example of this approach is s. 775.0845, F.S.

VII. Related Issues:

None.

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

None.

B. Amendments:

None.