

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 567

Assault and Battery

**SPONSOR(S):** Bembry

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1094

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Health Care Services Policy Committee</u>	<u></u>	<u>Schoonover</u>	<u>Schoolfield</u>
2)	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Criminal &amp; Civil Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4)	<u>Criminal &amp; Civil Justice Policy Council</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

HB 567 will create a section of law to reclassify the felony or misdemeanor degree of assault and battery offenses committed against a licensed psychologist, a licensed mental health counselor, a licensed marriage and family therapist, a licensed clinical social worker, and a social worker.

The bill creates additional fine and sentence guidelines for aggravated assault or aggravated battery committed against the individuals the bill protects.

For battery offenses committed against the above individuals the bill protects, the bill will allow for an additional sentence if the person is convicted of a battery and, during the commission of the offense, possessed weapons including a firearm, a destructive device, a semi-automatic firearm and its magazine, or a machine gun.

According to the Criminal Justice Impact Conference this bill has an indeterminate fiscal impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Currently, sections of law increase the maximum sentence that could be imposed for an assault<sup>1</sup> and aggravated assault<sup>2</sup> or battery<sup>3</sup> and aggravated battery<sup>4</sup> committed against specified individuals, including, but not limited to, law enforcement officers, employees or protective investigators of the Department of Children and Family Services (DCF), employees of the Department of Health (DOH) or its direct service providers, and employees of a community-based provider and its direct service providers.<sup>5</sup>

Current law does not increase the maximum sentence that could be imposed for an assault and aggravated assault or battery and aggravated battery committed against licensed psychologists, licensed mental health counselors, licensed marriage and family therapists, licensed clinical social workers, and social workers.

Reclassification of an offense has the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is 60 days in jail; for a first degree misdemeanor is one year in jail; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.<sup>6</sup>

#### *Professions to be Affected*

A licensed psychologist's work includes, but is not limited to, the observation, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological

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<sup>1</sup> 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. s. 784.011, F.S.

<sup>2</sup> An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. s. 784.021, F.S.

<sup>3</sup> 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. s. 784.03, F.S.

<sup>4</sup> An aggravated battery occurs when a person in committing 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. s. 784.045, F.S.

<sup>5</sup> s. 784.07, F.S.; s. 784.081, F.S.

<sup>6</sup> s. 775.082, F.S.

principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating undesired behavior and mental health.<sup>7</sup>

A licensed mental health counselor's work includes, but is not limited to, using scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development.<sup>8</sup> Except to relate specifically to the definition of practice authorized in s. 491.003, F.S., mental health counselors are not permitted to describe or label any test, report, or procedure as "psychological."<sup>9</sup>

A licensed marriage and family therapist's work includes, but is not limited to, using scientific and applied marriage and family theories, methods and procedures for the purpose of describing, evaluating, and modifying marital and family systems. The therapist also evaluates, assesses, diagnoses, treats, and prevents emotional and mental disorders or dysfunctions, sexual dysfunction, behavioral disorders, alcoholism, and substance abuse.<sup>10</sup>

A licensed clinical social worker's duties include, but are not limited to, counseling, behavioral modification, consultation, client-centered advocacy, crisis intervention. A clinical social worker provides services in the prevention and treatment of undesired behavior and enhancement of mental health.<sup>11</sup> In order to become a licensed clinical social worker, one must fulfill specific education requirements and specific state requirements for licensure. Those requirements include a master's degree in social work and completion of two years of supervised clinical experience.<sup>12</sup>

A social worker has a bachelor's, master's, or doctoral degree in social work.<sup>13</sup> A social worker cannot practice clinical social work unless licensed to do so.<sup>14</sup> Social workers help people function the best they can in their environment by assisting them in dealing with their relationships and personal and family problems. Social workers are concerned with social problems and their causes, their solutions and their human impacts.<sup>15</sup>

### Effect of Proposed Changes

This bill will create a section of law to reclassify the felony or misdemeanor degree of assault and battery offenses committed against a licensed psychologist, a licensed mental health counselor, a licensed marriage and family therapist, a licensed clinical social worker, and a social worker. A requirement of the reclassification is that the person committing the offense knows or has reason to know the identity or position or employment of the victim. Additionally, the victim must be performing his or her duties in that position of employment at the time of the incident.

Specifically, the bill will reclassify offenses as follows:

- Assault: A misdemeanor of second degree is reclassified to a misdemeanor of the first degree.
- Battery: A misdemeanor of the first degree is reclassified to a felony of the third degree.
- Aggravated Battery: A felony of the third degree is reclassified to a felony of the second degree.
- Aggravated Assault: A felony of the second degree is reclassified to a felony of the first degree.

The bill creates additional fine and sentence guidelines for aggravated assault or aggravated battery committed against the individuals the bill protects.

- Fined no more than \$10,000.00
- Ordered to make restitution to the victim
- Perform up to 500 hours of community service work

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<sup>7</sup> s. 490.003, F.S.

<sup>8</sup> s. 491.003(9)

<sup>9</sup> Id.

<sup>10</sup> s. 491.003(8). F.S.

<sup>11</sup> s. 491.003(7), F.S.

<sup>12</sup> Email from Jacqui Sosa, Department of Health, February 15, 2010. (On file with committee staff).

<sup>13</sup> s. 491.003(17). F.S.

<sup>14</sup> s. 491.016(1), F.S.

<sup>15</sup> Email from Jacqui Sosa, Department of Health, February 15, 2010. (On file with committee staff).

- Sentenced to a minimum term of 5 years.

The minimum sentence of 5 years for aggravated assault is greater than the minimum sentence of 3 years for aggravated assault committed against law enforcement officers, firefighters, and the other individuals specified in s. 784.07, F.S.

Additionally, the bill provides for an additional sentence against a person convicted of a battery and during the commission of the offense the person possessed certain weapons, including:

- A firearm or destructive device: Sentenced to an additional minimum imprisonment of 3 years.
- An automatic firearm and its high-capacity detachable box magazine or a machine gun: Sentenced to an additional minimum term of 8 years.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 784.071, F.S., relating to assault or battery on social workers and other specified persons.

Section 2. Provides an effective date of October 1, 2010.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

#### D. FISCAL COMMENTS:

According to the Criminal Justice Impact Conference this bill has an indeterminate fiscal impact.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**