

STORAGE NAME: h1397s1a.cp

DATE: March 25, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1397

RELATING TO: Assault and Battery/ Licensed Security Officers

SPONSOR(S): Committee on Law Enforcement and Public Safety, Representative Rodriguez-Chomat and Others

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 6 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 5 NAYS 4
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Committee Substitute for House Bill 1397 enhances the classification and penalty imposed for the offense of assault and battery, when the victim of the offense is a licensed security officer, as defined in the statutes, and the security officer is engaged in the lawful performance of his or her duties. Thus, in the case of assault, where the victim is a security officer, the crime is reclassified from a misdemeanor of the second degree to a misdemeanor of the first degree. For battery, the crime is reclassified from a first degree misdemeanor to a third degree felony. For aggravated assault, it is reclassified from a third degree felony to a second degree felony. In the case of aggravated battery, the crime is reclassified from a second degree felony to a first degree felony.

The bill designates battery on a licensed security officer as a level 4 offense in the Offense Severity Ranking Chart, for the purposes of preparing a score sheet for the sentencing guidelines or code. The bill increases the ranking of battery on law enforcement officers, firefighters, and other designated officers from a level 4 offense to a level 6 offense.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Assault and Battery Offenses

Chapter 784, F.S., defines and provides penalties for assault and battery offenses, as follows:

- ▶ *Assault* is an intentional, unlawful threat by word or act to do violence to another person, coupled with an apparent ability to do so, and doing some act that creates a well-founded fear in the other person that such violence is imminent. A person who commits an assault commits a second degree misdemeanor, punishable by up to a \$500 fine and/or up to 60 days in jail. [s. 784.011, F.S.]
- ▶ *Aggravated assault* is an assault with a deadly weapon without the intent to kill or an assault with an intent to commit a felony. Aggravated assault is a third degree felony. The sentencing judge could sentence an offender to up to a maximum of 5 years in prison. [s. 784.021, F.S.]
- ▶ The offense of *battery* occurs when a person actually and intentionally touches or strikes another person against the other person's will *or* intentionally causes bodily harm to an individual. Battery is a first degree misdemeanor, punishable by up to a \$1,000 fine and/or up to one year in county jail. [s. 784.03, F.S.]
- ▶ *Aggravated battery* occurs when a person commits a battery and 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 a battery was pregnant and the offender knew or should have known that the victim was pregnant.

Assault

To find a person guilty of the second degree misdemeanor offense of assault the following three elements must be proven:

- (1) The defendant intentionally and unlawfully threatened, either by word or act to do violence to the victim.
- (2) At the time the defendant appeared to have the ability to carry out the threat.
- (3) The act of the defendant created a well-founded fear that the violence was about to take place.

Aggravated Assault, a third degree felony, is an assault that is either:

- (1) committed with a deadly weapon or
- (2) made with intent to commit a felony.

Battery

The offense of Battery, section 784.03, F.S., is classified as a first-degree misdemeanor, punishable by up to 1-year in jail, and a \$1,000 fine. The following defines the act of Battery.

- (1) the intentional striking of another person against their will, **or**
- (2) intentionally causing bodily harm to another.

Aggravated Battery

The offense of Aggravated Battery, section 784.045 F.S., is classified as a second degree felony punishable by up to 15 years in prison. Aggravated Battery is committed if a person commits a Battery as defined above and one of the following three conditions is met:

1. The offender intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement.
2. The offender uses a deadly weapon.
3. The victim was pregnant and the offender knew the victim was pregnant.

Enhanced Penalties

Chapter 784 provides for a number of enhancements to the classification of a violent offense that depends upon the status of the victim. The enhancement generally allows the degree of the offense to be reclassified as follows:

- (1) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.
- (2) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- (3) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- (4) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the third degree.

If the victim falls into one of the following categories, then the offense is reclassified as shown in (1) through (4) above:

1. Law enforcement officer.
2. Firefighter.
3. Emergency medical car provider.

4. Parking enforcement specialist.
5. Traffic infraction enforcement officer.
6. Security officer employed by a community college.
7. A person 65 years of age or older.
8. An employee of a school district or a private school.
9. An employee of a state university or any other entity of the state system of public education.
10. An employee of a university developmental research school or the Florida School for the Deaf and the Blind.
11. An employee of The Department of Children and Family Services.

A victim in categories one through six must be engaged in the lawful performance of his or her legal duties in order for the crime to be enhanced.

In addition to those listed above, there is a category of enhancements that only apply to the misdemeanor offense of battery. A person who commits a battery against one of the following two categories of people shall have that battery reclassified as a third degree felony:

1. Intake counselor, case manager, or other staff of a detention center or juvenile commitment facility.
2. Providers of health services to delinquent children.

Sentencing

A judge has complete discretion under the new sentencing code, which takes effect on October 1, 1998, to impose any sentence up to the statutory maximum. The statutory maximum for a first degree felony is 30 years in prison, for a second degree felony the maximum is 15 years, for a third degree felony the maximum is 5 years, for a first degree misdemeanor the maximum is one year in the county jail, and for a second degree misdemeanor the maximum is 60 days in jail.

B. EFFECT OF PROPOSED CHANGES:

The bill enhances the classification of certain violent crimes against licensed security officers, as defined in section 493.6101(19) F.S., when the offender has reason to know the identity or employment of the victim. The offenses are to be reclassified as follows:

- (1) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.
- (2) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

- (3) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- (4) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the third degree.

Section 493.6101(19), F.S., defines security officer as any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, chooses in action, notes or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners, authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

The bill designates battery on a licensed security officer as a level 4 offense in the Offense Severity Ranking Chart, for the purposes of preparing a score sheet for the sentencing guidelines or code. The bill increases the ranking of battery on law enforcement officers, firefighters, and other designated officers from a level 4 offense to a level 6 offense.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

- N/A

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

- N/A

- (3) any entitlement to a government service or benefit?

- N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 784.07, 493.6101, 39.039, 775.0877, 943.051 and 921.0012, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 784.07, F.S., to include licensed security officers in the offense reclassification statute that addresses law enforcement and other persons, as described above.

Section 2 reenacts s. 493.6101(19), F.S., which defines the term "Security officer."

Section 3 reenacts ss. 39.039(1)(b), 775.0877(1), and 943.051(3)(b), F.S., relating to fingerprinting and photographing juvenile offenders, criminal transmission of HIV, and criminal justice information, to incorporate the amendment to s. 784.07, F.S., in cross references.

Section 4 amends of subsection (3) of s. 921.0012, F.S., to specifically include security officers in the offense of assault or battery of a law enforcement officer as a third degree felony. Battery on a security officer is designated a level 4 offense, while battery on law enforcement officers, firefighters and other officers is raised on the ranking of the offenses from level 4 to level 6.

Section 5 provides that the act takes effect on October 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference meets to determine an impact of this bill on March 27, 1998. The Economic and Demographic Research Commission has a preliminary estimate that the bill will have a significant impact that may be 11 million dollars a year within three years

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 of the Florida Constitution does not apply because it deals with a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment was adopted in the Crime and Punishment Committee on March 25, 1998 that removed battery against parking enforcement specialists and traffic accident investigation officers from the ranking chart. These offenses would, therefore, be ranked as a level one felony by default. Battery against law enforcement officers and firefighters would remain a level six offense as set forth by the bill.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

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