

STORAGE NAME: h1727s1.cp

DATE: January 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1727

RELATING TO: Assault and Battery on upon Code Inspectors

SPONSOR(S): Representative Livingston

COMPANION BILL(S): SB 0106

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

(1) CRIME AND PUNISHMENT YEAS 8 NAYS 0

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I. SUMMARY:

The bill enhances the classification of certain violent crimes against code inspectors when the offender has reason to know that the victim is a code inspector. For example, if a person knowingly batters a code inspector, the bill will cause that misdemeanor offense to be penalized as a third degree felony, punishable by up to five years in prison instead of one year in the county jail.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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, 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 code inspectors, as defined in section 162.04(2), 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 162.04(2), F.S., defines code inspector as any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

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:

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1. See EFFECTS OF PROPOSED CHANGES

Section 2. Provides an effective date of October 1 of the year that the bill becomes law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

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:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

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 estimates that the bill will have an indeterminate to minimal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not subject to the mandates provision because it affects a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce 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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was amended and made a committee substitute in the Crime and Punishment Committee to change the effective date from October 1, 1997 to October 1 of the year in which the bill becomes law.

The bill was also amended to place the new offense in the Offense Severity Ranking Chart so that the enumerated violent crimes against code inspectors is ranked in the same level as the offenses would be ranked if committed against a law enforcement officer. Regardless of how an offense is ranked, a judge has complete discretion under the new sentencing code to impose any sentence up to the statutory maximum. The purpose of the code and the ranking of an offense is to establish a lowest permissible sentence. A judge may not impose a sentence below the lowest permissible sentence without a mitigating reason as specified by statute or the case law.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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J. Willis Renuart

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