

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 21, 1998 Revised: \_\_\_\_\_

Subject: False Identification

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill prohibits a person from assuming another person’s identity, and then acting as the other person in any business or economic transaction, or in any legal matter, thereby causing an economic loss or legal liability to the other person or business. Criminal penalties are provided, which increase in severity depending upon the value of the loss. A person adversely affected by another person assuming his or her identity may apply to the court for an order to correct any public record, and the court may also issue an order to correct any private record, after notice and hearing, of any entity that conducts business in this state.

The bill also prohibits a person who has been arrested or lawfully detained by a law enforcement officer from giving a false name, or otherwise falsely identifying himself or herself, to a law enforcement officer or any jail or prison personnel. Criminal penalties are provided which increase in severity if another person suffers economic loss or legal disability as a result of the false name or identification. “Economic loss” is defined.

The bill creates two as yet unnumbered sections of the Florida Statutes.

**II. Present Situation:**

There are many laws dealing with false personations and false representations. For example, a licensed private investigator who impersonates a law enforcement officer is subject to disciplinary action, including a fine and suspension or revocation of the investigator’s license.

s. 493.6118, F.S. A person who obtains property by false personation of another person commits a misdemeanor or third degree felony, depending upon the value of the property. s. 817.02, F.S. A person who obtains a credit card or other property by making false statements regarding the person’s financial condition, assets, or liabilities commits a first degree misdemeanor.

s. 817.03, F.S. A person who falsely personates a law enforcement officer during the course of the commission of a felony resulting in the death or personal injury of another human being commits a first degree felony. s. 843.08, F.S. A person who, with intent to defraud, obtains the signature of any person to a mortgage, promissory note, or other instrument evidencing a debt by color or aid of fraudulent or false representation commits a third degree felony. s. 817.54, F.S. A person who deliberately impersonates a judge in connection with any legal process affecting persons and property commits a third degree felony. s. 843.0855, F.S.

Current law provides that the crime of resisting arrest without violence (s. 843.02, F.S.) encompasses giving a false name to a law enforcement officer subsequent to arrest. *See Olsen v. State*, 691 So.2d 17 (Fla. 3rd DCA 1997). *See also Caines v. State*, 500 So.2d 728 (Fla. 2d DCA 1987) (giving of false name resulting in filing of information against, and court appearance of defendant, falls within the scope of s. 843.02, F.S.). The statute makes the crime a first degree misdemeanor. s. 843.02, F.S.

### III. Effect of Proposed Changes:

The bill creates a new, and as yet unnumbered, section of the Florida Statutes which prohibits a person from assuming another person's identity, and then acting as the other person in any business or economic transaction, or in any legal matter, thereby causing an economic loss or legal liability to the other person or business. If the value of the loss is less than \$300, the act is punishable as a first degree misdemeanor. If the value of the loss is more than \$300, the act is punishable as a third degree felony.

The bill also provides that a person who is adversely affected by a person's assuming his or her identity may apply to the court sentencing the violator of the new section for an order to correct any public record. The sentencing court may also issue an order to correct any private record, after notice and hearing, of any entity that conducts business in this state. Since the person is adversely affected "by a violation of subsection (1)," and subsection (1) only references economic loss or legality disability to another person or business as a result of the unlawful assumption of identity, it appears that the meaning of "adversely affected" is limited to economic loss or legal disability to another person or business as a result of the unlawful assumption of identity.

The bill creates a new, and as yet unnumbered, section of the Florida Statutes which prohibits a person who has been arrested or lawfully detained by a law enforcement officer from giving a false name, or otherwise falsely identifying himself or herself, without also giving his or her true name, to a law enforcement officer or any jail or prison personnel. Commission of this offense is a first degree misdemeanor if another person does not suffer an economic loss or legal disability as a result of the false name or identification; it is a third degree felony if another person suffers economic loss or legal disability as a result of the false name or identification. Thus, the classification of the crime is the same as that in the current statute for resisting arrest without violence if there is no economic loss or legal disability, with a higher classification if there is such a loss or disability.

“Economic loss” is defined as including, but not being limited to, “loss of employment, an inability to obtain employment, a demotion in employment, the loss of a business relationship, a negative statement in a credit report, an inability to obtain credit, any costs related to an arrest made due to a violation of subsection (1), or any costs incurred in correcting a public or private record.”

The bill takes effect on October 1, 1998.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Staff of the Senate Criminal Justice Committee has requested that the Criminal Justice Estimating Conference assess the fiscal impact of the bill. The Conference had not met to consider the fiscal impact of this bill at the time this analysis was completed.

**VI. Technical Deficiencies:**

The bill makes it a crime to assume the identity of another and then act as that other person in any business or economic transaction or “in any legal matter.” The meaning of this phrase is unclear.

## VII. Related Issues:

There may be some overlap between some of the elements of the unlawful assumption of identity offense and the elements of other offenses such as forgery, worthless checks, stopping payment on a check with intent to defraud, theft, dealing in stolen property, etc. Overlap between elements of different criminal statutes is not uncommon.

Pursuant to s. 775.021, F.S., a person is to be convicted and sentenced for each criminal offense committed in the course of one criminal episode or transaction. Three exceptions exist to this rule of construction. The first exception exists where crimes have identical elements. The second exception exists where crimes are degrees of the same offense. *See Sirmons v. State*, 634 So.2d 153 (Fla. 1994) (dual convictions arising from a single incident based on the same core offense violate this statutory exception). “The common core shared by two offenses does not itself have to be a crime in order for the offenses to be degrees of the same offense,” and “[d]egrees of the same offense’ is not limited to ‘third degree,’ ‘second degree’ or ‘first degree’; it appears to mean the scope or extent of crimes identified anywhere in the Florida Statutes that are essential varieties of the same core offense.” *State v. Anderson*, 695 So.2d 309, 310 (Fla. 1997). The third exception is where the greater offense necessarily includes the lesser offense. *Sirmons, supra*. This exception prohibits “multiple convictions and punishments for lesser included offenses where the greater charge is proved.” *Guinto v. State*, 693 So.2d 46, 47 (Fla. 4th DCA), citing *Sirmons*.

In *Steele v. State*, 537 So.2d 711 (Fla. 5th DCA 1989), the Fifth District Court of Appeal held that it was improper to convict the appellant of resisting a law enforcement officer without violence, as there was no evidentiary support to show any criminal investigation of the appellant at the time he gave a false name to the law enforcement officer, no request for assistance by the appellant or his companions, and no evidence that the appellant impeded the officer in his investigation in any way by the misinformation. *Steele* is inapplicable to the new offense created by the bill relating to providing a false name to a law enforcement officer, because it is only a criminal offense if a person who is *arrested or lawfully detained* provides a false name to a law enforcement officer. In *Steele*, the law enforcement officer had no probable cause or reasonable suspicion to support either an arrest or lawful detention of the appellant and his companions when the officer questioned them as to their identity.

Cases in which it has been claimed that a conviction for resisting a law enforcement officer violates the defendant’s protected free speech are also not applicable to the new offense relating to providing a false name to a law enforcement officer. In *D.G. v. State*, 661 So.2d 75 (Fla. 2d DCA 1995), the Second District Court of Appeal noted that “[i]t has been suggested that words alone can never ‘obstruct’ a law enforcement officer and that this statute proscribes only conduct that physically opposes an officer in performance of lawful duties.” 661 So.2d at 76, citing *Wilkerson v. State*, 556 So.2d 453 (Fla. 1st DCA 1990), *review denied*, 564 So.2d 1088 (1990). “On the other hand, there are cases holding that the use of mere words can be a violation of section 843.02 when a suspect provides false information to a police officer during a valid arrest or *Terry* stop.” *Id.*, citing *Rumph v. State*, 544 So.2d 728 (Fla. 5th DCA 1989) and *Caines v. State*, 500 So.2d 728 (Fla. 2d DCA 1987).

The *D.G.* court concluded that from these cases, and other Florida cases, a general proposition can be made:

If a police officer is not engaged in executing process on a person, is not legally detaining that person, or has not asked the person for assistance with an ongoing emergency that presents a serious threat of imminent harm to person or property, the person's words alone can rarely, if ever, rise to the level of an obstruction. Thus obstructive conduct rather than offensive words are normally required to support a conviction under this statute. *Id.*

The newly created offense relating to providing a false name to a law enforcement officer does not appear to require obstructive conduct. Moreover, even if this new offense could be construed as substantially similar to s. 843.02, F.S., under the general proposition stated in *D.G.*, the new offense is an exception to the normal limitation of s. 843.02, F.S., to obstructive conduct because the criminal offense created by the bill relates to a person providing a false name to a law enforcement officer *after he has been arrested or lawfully detained.*

**VIII. Amendments:**

None.