

STORAGE NAME: h1451a.cj

DATE: April 20, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 1451

RELATING TO: Law Enforcement Protection Act

SPONSOR(S): Representative Johnson

COMPANION BILL(S): SB 1866 (compare)

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 9 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

HB 1451 amends s. 776.06, F.S., which deals with the use of deadly force by law enforcement and correctional officers. It provides that the discharge of a firearm loaded with "less lethal munitions," and discharged by a law enforcement or correctional officer acting within the scope of his or her duties shall not be considered use of deadly force. The bill defines "less lethal munitions" as "projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body." The use of firearms in the context of "less lethal munitions" would include the use of rubber or plastic bullets and bean bag and disc projectiles, for example. Tear gas, night sticks, batons, and other intermediate weapons used by law enforcement officers are covered by other statutes. The bill limits both civil and criminal liability on the part of the officers or their employer when "less lethal munitions" are used.

HB 1451 also amends s. 784.07, F.S., 1998 Supp., pertaining to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees, or other specified officers. The bill amends s. 784.07(2)(c), F.S., 1998 Supp., by adding a provision requiring any person convicted of aggravated assault upon a law enforcement officer to be sentenced to a minimum term of imprisonment of three years and requiring that person to serve 100 percent of the sentence. Likewise, it amends s. 784.07(2)(d), F.S., 1998 Supp., by adding a provision requiring a person convicted of aggravated battery of a law enforcement officer to be sentenced to a minimum term of imprisonment of five years and requiring that person to serve 100 percent of the sentence.

The fiscal impact of HB 1451 has not yet been determined.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Use of Deadly Force

At the present time the Florida Statutes make no distinction between types of ammunition used in firearms, with reference to the use of deadly force. If a firearm is used by a law enforcement officer, it is considered use of deadly force. Section 776.06, F.S., defines **deadly force** as force which is likely to cause death or great bodily harm, including but not limited to: (1) the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and (2) the firing of a firearm at a moving vehicle in which the person to be arrested is riding.

Assault and Battery

Assault is an intentional, unlawful threat by word or act to do violence to another coupled with an apparent ability to do so, and doing some act which creates a well-founded fear that such violence is imminent. (See, s. 784.011(1), F.S.) **Aggravated assault** is an assault, either: (1) with a deadly weapon but without intent to kill, or (2) with an intent to commit a felony. (See, s. 784.021(1), F.S.)

Battery is the touching or striking of another against that person's will, or intentionally causing bodily harm to another person. (See, s. 784.03(1), F.S.) **Aggravated battery** is a battery, either committed with a deadly weapon, or while intentionally or knowingly causing serious bodily harm. (See, s. 784.045(1), F.S.)

In 1998, the Florida Legislature amended s. 784.07(2)(c), F.S., increasing the penalty for aggravated assault on law enforcement and other specified types of officers from a third degree felony to a second degree felony. Section 784.07(2)(d), F.S., pertaining to aggravated battery on officers, was also amended and reclassified the offense from a second degree felony to a first degree felony.

Current Statutory Maximums for Sentencing

Currently, the statutory maximum periods of incarceration are set forth in s. 775.082(3), F.S., 1998 Supp., and provide for the following maximum sentences:

- Second degree misdemeanor - 60 days in jail
- First degree misdemeanor - 1 year in jail
- Third degree felony - 5 years in prison
- Second degree felony - 15 years in prison
- First degree felony - 30 years in prison
- Life felony or first degree felony punishable by life - life in prison

Reclassification of Crimes Committed Against Law Enforcement Officers and Others

Section 784.07, F.S., 1998 Supp., provides for the reclassification of certain violent crimes to the next higher degree if committed against any of the following professionals:

law enforcement officers, firefighters, emergency medical care providers, intake officers, traffic accident investigation officers, traffic infraction enforcement officers, parking enforcement specialists, public transit employees or agents, and certain security officers.

The offenses are reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Sentencing Under the Criminal Punishment Code

Under Florida's Criminal Punishment Code (Code) an aggravated assault on a law enforcement officer is ranked as a Level 6 offense. See, s. 921.0022(3), F.S., 1998 Supp. Under the Code, the lowest permissible sentence for aggravated assault on a law enforcement officer by a first time offender with no mitigating circumstances is 19.5 months or 1.63 years in state prison, pursuant to s. 921.0024(1), F.S., 1998 Supp.

Aggravated battery on a law enforcement officer is a Level 7 offense, and a first time offender with no mitigating circumstances would receive a lowest permissible sentence of 63 months or 5.75 years in state prison. (Note that, in calculating this minimum sentence, **no points** were given for victim injury; had points been given for victim injury, the minimum sentence would have been significantly higher. For example, if the victim's injury had been "severe" (a realistic assumption), then under the Code, the lowest permissible sentence would have increased 33 percent, from 63 months to 84 months in prison.) See, s. 921.0024(1), F.S., 1998 Supp.

Currently, offenders are subject to serve at least 85 percent of their sentence in prison.

Judges and prosecutors presently have the ability to take into account mitigating circumstances when seeking or imposing sentences on offenders. These mitigating circumstances are found in s. 921.0026, F.S., 1998 Supp., and include reductions negotiated in plea bargaining, the existence of a mental disorder, and the offender's age at the time of the offense.

B. EFFECT OF PROPOSED CHANGES:

Under the proposed bill, the use of firearms loaded with munitions that meet the definition of "less than lethal" would not be considered use of deadly force. Law enforcement and correctional officers and their employers would not be subject to liability associated with deadly force when, in good faith, the officers use "less than lethal" munitions while in the course of duty.

Under the bill, if an offender is adjudicated guilty of aggravated assault or aggravated battery on a law enforcement or certain other kinds of officers, the offender would serve a mandatory minimum sentence of three years for the aggravated assault and five years for the aggravated battery. These minimum mandatory sentences prevent the court from reducing a sentence based on mitigating factors. The offender would also be required to serve 100 percent of the imposed sentence.

The Code uses a formula to assess the minimum amount of time an offender should be sentenced to prison. Under the Code, the minimum sentence for a first time offender charged solely with aggravated assault on a law enforcement officer would be 19.5 months, or 1.63 years, in prison. HB 1451 would increase the sentence by 16.5 months, or 1.38 years. Offenders would be required to serve 100 percent of this three year sentence.

The minimum sentence for an offender charged with aggravated battery on a law enforcement officer would increase only slightly under the provisions of HB 1451. Currently, the Code calls for a 63 month, or 5.75 year, sentence. Serving a minimum of 85 percent of a 5.75 year sentence, an offender could be released after 4.88 years. This is about a month less than the five year sentence HB 1451 calls for, which again must be 100 percent served.

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?

No.

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

No.

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

No.

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

No 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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

No.

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

No.

5. Family Empowerment:

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

The bill does not purport 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?

No.

- 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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 776.06, F.S., and s. 784.07, F.S., 1998 Supp.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

HB 1451 would require offenders to serve more time in prison. With respect to aggravated assault, a first time offender would currently receive a sentence of 1.63 years. The bill would increase that sentence by 16.5 months, or 1.38 years. Likewise, HB 1451 would increase the sentence for aggravated battery on a law enforcement officer from 4.88 years to 5 years. This is an increase of just over one month of time served. Costs based on these factors are indeterminate, and it is not known whether or not the bill will have a significant impact on prison bed space.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

HB 1451 would have an impact on the inmate population in state prisons by creating minimum mandatory terms for aggravated assault upon an officer, and requiring 100 percent of the sentence to be served. The Criminal Justice Estimating Conference has not yet met to determine the prison bed impact of these provisions.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

On March 23, 1999, the Senate Committee on Criminal Justice adopted an amendment to SB 1866, which is comparable to HB 1451. The amendment removes language that would have given the employer of a law enforcement or correctional officer the ability to raise an affirmative defense in civil or criminal actions arising out of the use of any less-lethal munition in good faith during and within the scope of an officer's official duties. Thus, SB 1866 now provides the affirmative defense only for a law enforcement officer or correctional officer, but not for his or her employer. HB 1451 still retains the affirmative defense for the officer's employer.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 1781 passed out of the Criminal Justice Appropriations Committee on April 20, 1999 with one amendment removing the minimum mandatory sentencing provisions from the bill, thereby removing the fiscal impact.

VII. SIGNATURES:

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