

STORAGE NAME: h1451.lecp

DATE: March 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: HB 1451

RELATING TO: Law Enforcement Protection Act

SPONSOR(S): Representative Johnson

COMPANION BILL(S): SB 1866(s)

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION
- (2) GOVERNMENTAL OPERATIONS
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

House Bill 1451 amends s. 776.06, F.S., which deals with the use of deadly force by law enforcement and correctional officers. House Bill 1451 provides that firearms loaded with "less lethal munitions," and discharged by a law enforcement officer acting within the scope of his or her duties shall not be considered use of deadly force. The bill also provides a definition of "less lethal munitions" as follows: "Projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the persons 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. This bill also limits both civil and criminal liability on the part of the officers or their employer when "less lethal munitions" are used.

House Bill 1451 also amends s. 784.07 F.S., pertaining to assault or battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, or other specified officers. In section 784.07(c), F.S., the bill amends the statute to add: "Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years and shall serve 100 percent of the sentence." In s. 784.07(d), F.S., the bill amends the statute to add: "Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years and shall serve 100 percent of the sentence."

Accordingly, the bill provides that any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum mandatory prison term of three years, and any person convicted of aggravated battery upon a law enforcement officer must receive a minimum sentence of five years in prison.

I. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Use of Deadly Force

At the present time 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(1) F.S., defines **Deadly force** as: force which is likely to cause death or great bodily harm and includes but is 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 a threat by word or act to do violence to another coupled with the ability to do so, which creates a well-founded fear that the violence is imminent. Aggravated assault is an assault with a deadly weapon.

Battery is a touch or a striking of another against that person's will. Aggravated battery is either a battery committed with a deadly weapon, or a battery causing serious bodily harm.

In 1998, the legislature amended s. 784.07(c), F.S., to increase the penalty for aggravated assault on a law enforcement officer from a third degree felony to a second degree felony. Section 784.07(d), F.S., pertaining to aggravated battery on a law enforcement officer was also amended by the legislature in 1998 and was increased 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 section 775.082 F.S., and provide as follows:

- 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., provides for the reclassification of certain violent crimes to the next higher degree if committed against any of the following:

law enforcement officers, firefighters, emergency medical care providers, traffic accident investigation officers, traffic infraction enforcement officers, traffic infraction enforcement officers, parking enforcement specialist, 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 an aggravated assault on a law enforcement officer is ranked as a level 6 offense in the Criminal Punishment Code. See , s. 921.0022(3) F.S. Under the code, the lowest permissible sentence for committing aggravated assault on a law enforcement officer by a first time offender with no mitigating circumstances would be a sentence of 33 months or 2.75 years in state prison, pursuant to s. 921.0024(1), F.S.

Aggravated battery on a law enforcement officer is a level 7 offense under the Criminal Punishment Code. A first time offender with no mitigating circumstances would receive a lowest permissible sentence of 63 months or 5.75 years in state prison pursuant to the Criminal Punishment Code. See, s. 921.0024(1), F.S. 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., and include: Plea Bargaining, Mental Disorder, and the offenders 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 they use "less than lethal" munitions while on duty.

Under the bill, if an offender is adjudicated guilty of aggravated assault or aggravated battery on a law enforcement officer, the offender would serve a mandatory minimum sentence of 3 years for aggravated assault and 5 years for aggravated battery on a law enforcement officer. While these mandatory sentences are similar to the lowest permissible sentence authorized by the punishment code, a minimum mandatory sentence prevents the court from reducing a sentence based on mitigating factors. The offender would also be subjected to serving out 100 percent of the imposed sentence.

The Criminal Punishment 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 sentenced to 33 months or 2.75 years in prison. House Bill 1451 would increase the sentence by 3 months or .25 years. Offenders would be required to serve 100 percent of this 3 year sentence.

The minimum sentence for an offender charged with aggravated battery on a law enforcement officer would also increase slightly under the provisions of HB 1451. Currently, the Criminal Punishment Code calls for a 5.75 year sentence for an offender who commits aggravated battery on a law enforcement officer. 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 time in prison than under the provisions of HB 1451, which calls for a 5 year prison term, serving 100% of the sentence.

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?

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?

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?

No

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:

776.06 and 784.07

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

If passed, the amendment to s. 784.07 F.S., would mean that offenders would have to serve more time in prison. However, with respect to aggravated assault, a first time offender would currently receive a sentence of 2.75 years. Serving 85 percent of this sentence, the offender would actually serve 2.33 years. This bill would only increase that sentence by .67 years or 9 months. House Bill 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, but it is expected to have insignificant prison bed impact to the Department of Corrections.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

House bill 1451 with the amendment to s.776.06 would reduce the liability of local and state law enforcement agencies.

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:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

IV. COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

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