

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Section 784.081, F.S., provides that when a person is charged with committing assault¹, aggravated assault², battery³ or aggravated battery⁴ against a enumerated list of “specified officials or employees”, the assault or battery offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Included within the list of specified officials contained in s. 784.081, F.S. are:

Any elected official or employee of:

- a school district,
- a private school,
- the Florida School for the Deaf and the Blind,
- a university developmental research school,
- a state university, or any other entity of the state system of public education, as defined in § 228.041;

¹ An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011, F.S.

² An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

³ A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S.

⁴ An aggravated battery occurs when a person in committing battery 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 the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

- an employee or protective investigator of the Department of Children and Family Services
- an employee of a lead community-based provider and its direct service contract providers.

The offenses are reclassified when the offender knew or had reason to know the status of the victim. Unlike the statute which reclassifies assault and battery offenses committed against a law enforcement officer⁵, section 784.081 does not limit the reclassification to offenses that are committed while the victim is engaged in the performance of his or her duties.

HB 123 will add “*an interscholastic sports official* as defined in s. 440.02(15)(d)11” to the list of specified officials for which enhanced penalties apply. Section 440.02 provides definitions relating to workers’ compensation. The referenced sub-paragraph contains language defining the term “employee” to exclude

A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event.....For purposes of this subparagraph, the term “sports official” means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

The reclassification of assault and battery offenses committed against an interscholastic sports official will have the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor is one year of incarceration; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.⁶

HB 123 also creates a new section of statute which provides that, in addition to any other penalty provided by law, any person who “batters” a sports official, at any level of competition, within the immediate confines or immediate vicinity of the athletic facility at which the athletic contest in which the sports official is an active participant commits a misdemeanor of the first degree. The bill provides that the misdemeanor is punishable by a fine on not more than \$10,000 and a term of imprisonment of not more than 3 years. The bill defines the term “sports official” for the purposes of this section to mean, “any person who serves as a referee, an umpire, or a linesman and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is an member of a local, state, regional or national organization that is engaged in part in providing education and training to sports official”.

C. SECTION DIRECTORY:

Section 1: Amends s. 784.081, F.S.; adding interscholastic sports officials to list of specified officials.

Section 2. Creates s. 784.0815, F.S.; providing penalty for offender who batters a sports official under certain circumstances.

Section 3: Provides effective date.

⁵ s.787.07(2), F.S.

⁶ s. 775.082, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference met on 2/16/04 and determined that this bill has an insignificant prison bed impact on the Department of Corrections. The bill reclassifies the offenses of battery, assault, aggravated battery and aggravated assault committed against a person officiating an interscholastic activity. As a result, the offenses will have a higher statutory maximum sentence. However, the offenses of aggravated battery and aggravated assault on a specified official are ranked in the same level in the offense severity ranking chart of the Criminal Punishment Code as the corresponding offenses committed against a victim who is not a member of the protected class. Therefore, the bill will not increase the minimum sentence for these aggravated offenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

In 1978, the Florida Supreme Court considered a constitutional challenge to the statute that provided for reclassification of assault and battery offenses against law enforcement officers. The defendant claimed that the statute violated equal protection because it punished "more stringently those who commit assault or battery upon law enforcement officers or firefighters than those who commit the same act upon any other person, without there being any rational basis to support such disparity of treatment." Soverino v. State, 356 So.2d 269, 271 (Fla. 1978). The court held that:

[T]he test to be utilized in examining whether a statutory classification satisfies the Equal Protection Clause is whether it rests on some difference bearing a reasonable relation to the object of the legislation. In [this case], we find that such a reasonable relation exists. The statute *reclassifies the offense only if the law enforcement officer or firefighter "is engaged in the lawful performance of his duties."* Because the public welfare is protected by the performance of these duties, the legislature in its wisdom has chosen to accord greater protection to one who performs these indispensable public services. When an officer is not performing his official duties, he is no longer protecting the public welfare and, consequently, the statute yields him no greater protection than that accorded to members of the general public. Thus, contrary to appellant's assertion that the legislature has created "an elite class of untouchables," in reality it merely has passed a law which fosters the public safety and welfare

Id. at 271-272

At least one court has concluded that the Supreme Court's holding in Soverino was based on the fact that the statute was limited to offenses that occurred while the officer was engaged in the lawful performance of his or her duties. State v. Slaughter, 574 So.2d 218, 220 (Fla.1st DCA 1991) ("In Soverino, the court found that section 784.07 is constitutional, since it reclassified the offense only if the law enforcement officer or firefighter is engaged in the lawful performance of his duties. In this vein, the statute was deemed reasonably related to the legislative purpose of affording greater protection to the officer or firefighter when the officer or firefighter was engaged in protecting the public welfare.) Unlike the statute which reclassifies assault and battery offenses committed against a law enforcement officer, section 784.081, which is amended by this bill, does not limit the reclassification to offenses that are committed while the victim is engaged in the performance of his or her duties. Because of the basis of the holding in the Soverino case, this statute may be more vulnerable to a constitutional challenge than it would be if the reclassification only applied while the specified official was engaged in the course of his or her duties.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill amends section 784.081 to add "an interscholastic sports official, as defined in s. 440.02(15)(d)11" to the list of specified officials for which an offender who commits a assault of battery against such a victim can receive enhanced penalties. However, the referred section, does not contain a definition of the term "interscholastic sports official". The provision defines what *does not* constitute an employee for the purpose of workers' compensation. The subparagraph does contain a definition of the term "sports official" but, taken alone, that definition appears to be broader than officials who perform their duties for an interscholastic event. Further, the referred subparagraph provides that the subparagraph does not apply to any person employed by a district school board who serves as a sports official as part of his or her responsibilities during normal school hours. It is not clear whether these individuals would be excluded from the term "interscholastic sports official" which is contained in the bill.

Section 2 of the bill creates section 784.0815 which relates to battery on a sports official. The catch-line of the newly created section incorrectly relates to "*assault* on sports officials." The provision purports to create a misdemeanor of the first degree for battery against a sports official, punishable by a term of imprisonment of not more than 3 years. However, the maximum punishment for a first degree misdemeanor is one year in county jail.⁷

⁷ Section 775.082(4), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES