

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 2150

INTRODUCER: Senator Dockery

SUBJECT: Strangulation/Felony Battery

DATE: March 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	HE	_____
3.	_____	_____	JU	_____
4.	_____	_____	JA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 2150 provides that a person commits felony battery, which is a third degree felony, if the person commits the act of strangulation by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure to the throat or neck or by blocking the nose or mouth of the other person. The bill provides an affirmative defense to a charge for this particular felony battery, which is that an act constituting strangulation was the result of a legitimate medical procedure.

This bill substantially amends section 784.041 of the Florida Statutes.

II. Present Situation:

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor,¹ 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.

While battery is generally a first degree misdemeanor, battery is third degree felony² if a person who has one prior conviction for battery, aggravated battery, or felony battery commits any second or subsequent battery. The term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

¹ The maximum penalty for a first degree misdemeanor is a term of imprisonment not exceeding one year. Imprisonment would be in a jail, not in a state prison. s. 775.082, F.S.

² The maximum penalty for a third degree felony is five years in state prison. s. 775.082, F.S.

Section 784.041, F.S., provides that a person commits felony battery, a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

Section 784.045, F.S., provides that a person commits aggravated battery, a second degree felony,³ if the person:

- In committing battery, intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, uses a deadly weapon; or
- The person who was 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.

Currently, Florida does not have a statute that specifically addresses strangulation as do, for example, North Carolina, Nebraska and Missouri.⁴ Nebraska's statute is the statute most relevant to this analysis. It provides:

§ 28-310.01. Strangulation; penalty; affirmative defense.

(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) Except as provided in subsection (3) of this section, strangulation is a Class IV felony.

(3) Strangulation is a Class III felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of strangulation.

(4) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

Non-fatal strangulations may not cause visible injuries, and therefore, may end up having to be charged as a simple battery, a first degree misdemeanor, because the prosecutor cannot establish great bodily harm, permanent disability, or permanent disfigurement.

III. Effect of Proposed Changes:

Senate Bill 2150 provides that a person commits felony battery, which is a third degree felony, if the person commits the act of strangulation by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. The bill provides an affirmative

³ The maximum penalty for a second degree felony is fifteen years in state prison. s. 775.082, F.S.

⁴ See North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.

defense to a charge for this particular felony battery, which is that an act constituting strangulation was the result of a legitimate medical procedure.

The offense created by the bill almost mirrors the Nebraska statute previously described. One notable difference is that in the Nebraska statute strangulation does not include knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by blocking the nose or mouth of the other person.

The bill takes effect on October 1, 2006.

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:

The Criminal Justice Impact Conference estimated the bill would have an indeterminate prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
