

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 815 Strangulation

**SPONSOR(S):** Russell

**TIED BILLS:** IDEN./SIM. BILLS:

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson	Kramer
2) Criminal Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

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**SUMMARY ANALYSIS**

This bill amends felony battery to include the act of strangulation. Currently, a battery by strangulation where there is no great bodily harm, permanent disability, or permanent disfigurement is a misdemeanor; this bill makes battery by strangulation a third degree felony. This bill defines the act of strangulation and provides an affirmative defense.

The Criminal Justice Estimating Conference met February 28, 2006 and determined that this bill would have an unquantifiable prison bed impact on the Department of Corrections.

The effective date of this bill is October 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for battery by strangulation.

#### B. EFFECT OF PROPOSED CHANGES:

Under Florida law a simple battery occurs when a person actually and intentionally touches or strikes another person against the will of the other<sup>1</sup> or intentionally causes bodily harm to another person.<sup>2</sup> The crime of felony battery<sup>3</sup> requires that the offender cause great bodily harm, permanent disability, or permanent disfigurement. The crime of aggravated battery<sup>4</sup> requires intent to cause great bodily harm, permanent disability, permanent disfigurement, or use of a deadly weapon.

Currently, Florida does not have statutes in place that specifically address strangulation unlike other states<sup>5</sup>. The act of strangulation can be potentially fatal; however, non-fatal strangulations rarely cause visible injuries. Consequently, non-fatal strangulations are charged as a simple battery because a prosecutor can not establish great bodily harm, permanent disability, or permanent disfigurement. Simple battery is a first degree misdemeanor which is punishable by a term of imprisonment not exceeding 1 year<sup>6</sup> and a fine of \$1,000.<sup>7</sup>

This bill amends felony battery to include the act of strangulation. This bill provides that the act of strangulation is committed 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. A felony battery is a third degree felony punishable by a term of imprisonment not exceeding 5 years<sup>8</sup> and a fine of \$5,000.<sup>9</sup>

This bill also provides it is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

#### C. SECTION DIRECTORY:

Section 1 amends section 784.041, F.S., to include the act of strangulation and to provide an affirmative defense.

Section 2 provides an effective date of October 1, 2006.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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<sup>1</sup> Section 784.03(1)(a)1., F.S.

<sup>2</sup> Section 784.03(1)(a)2., F.S.

<sup>3</sup> Section 784.041, F.S.

<sup>4</sup> Section 784.045, F.S.

<sup>5</sup> See North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.

<sup>6</sup> Section 775.082(4)(a), F.S.

<sup>7</sup> Section 775.083(1)(d), F.S.

<sup>8</sup> Section 775.082(3)(d), F.S.

<sup>9</sup> Section 778.083(1)(c), F.S.

None.

2. Expenditures:

The Criminal Justice Impact Conference met February 28, 2006 and determined this bill would have an unquantifiable prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES