

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: CS/SB 1342

INTRODUCER: Criminal Justice Committee; and Criminal Justice Committee

SUBJECT: False Personation/Law Enforcement

DATE: March 14, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JA	
3.				
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5.				
6.				

I. Summary:

This bill increases the sentencing ranking of some offenses involving impersonation of a law enforcement officer or other specified person. Other changes relevant to offenses involving or facilitating such impersonation include:

- Prohibiting the impersonation of a federal law enforcement officer;
- Making offenses involving prohibited use of certain lights and unlawful use of police badges or other indicia of authority third degree felonies and ranking those offenses;
- Ranking offenses involving criminal actions under color of law or through the use of simulated legal process;
- Amending criminal intent language relevant to certain offenses involving unlawful use of police badges or other indicia of authority; and
- Making unlawful showing or displaying of a blue light on any vehicle a first degree misdemeanor.

With the exception of prohibiting the impersonation of a federal law enforcement officer, all of these changes were recommendations from an interim report of the Senate Committee on Criminal Justice: *Review How Florida and Some Other States Punish the Crime of Falsely Personating a Law Enforcement Officer*, Interim Project 2007-107 (November 2006).

This bill substantially amends the following sections of the Florida Statutes: 316.2397, 843.08, 843.081, 843.085, and 921.0022.

II. Present Situation:

In November of 2006, an interim project report prepared by staff of the Senate Committee on Criminal Justice was released. *Review How Florida and Some Other States Punish the Crime of Falsely Personating a Law Enforcement Officer*, Interim Project 2007-107 (November 2006). This report discusses offenses involving false personation (“impersonation”) of a law enforcement officer or other specified person and other offenses involving or facilitating impersonation. The report includes arrest, case disposition, and sentencing data and also includes results of a survey of the impersonation laws of all 50 states and the District of Columbia. Staff presented this report for the committee’s consideration and approval at the committee’s meeting held on January 9, 2007.

The report indicates that impersonation crimes have the potential to detrimentally affect public safety by eroding the public’s trust in law enforcement officers. Impersonation has also been used as the means to facilitate the commission of other crimes.¹ There is also the potential for terrorists to enter secure areas or facilities by means of impersonation.

Data from the report indicates that, for the calendar years 2001 through 2005, there were 806 arrest charges for a violation of s. 843.08, F.S. (false personation of a law enforcement officer or other specified person). For this time period, there were 470 cases filed regarding a violation of this statute, in which 109 cases were adjudicated guilty. Sentencing data indicates that, generally, impersonating a law enforcement officer does not result in a state prison sentence, though a prison sentence is an available sentencing option. In a number of cases, impersonation is an additional offense, the penalty for which is subsumed by a primary offense with a greater penalty, which may increase the likelihood of imprisonment.

Results of the survey of states indicate that Florida’s impersonation and impersonation-related laws are among the most comprehensive in the country, and that only a handful of states impose greater penalties for impersonation of a law enforcement officer than Florida.

The report contains numerous findings and recommendations; those pertinent to the bill are noted as follows:

- Increase the sentencing ranking of offenses involving impersonation of a law enforcement officer or other specified person.

Findings of the report are that the felony degrees of impersonation offenses in s. 843.08, F.S., appear to reflect their seriousness. However, the Level 2 ranking of third degree felony impersonation and Level 4 ranking of second degree felony impersonation, when compared to other ranked offenses and viewed in light of their seriousness, appear to warrant an increase in ranking to Level 3 and Level 5 respectively, rankings which are recommended in the report.

¹ One example cited in the report involved the murder of Sarah Whitlock, a 23 year-old nursing student. It was reported that facts uncovered by Jacksonville police in the investigation of the crime appear to indicate that her murder may have been facilitated by the suspect impersonating a law enforcement officer.

- Make offenses involving prohibited use of certain lights and unlawful use of police badges or other indicia of authority third degree felonies and rank those offenses.

Offenses currently punished as first degree misdemeanors in s. 843.081, F.S. (unlawful use of a flashing/rotating blue light) and s. 843.085(1)-(3), F.S. (unlawful use of a police badge or other indicia of authority), appear to warrant being made third degree felonies with a Level 3 ranking because these offenses seem to be at least as serious as third degree felony impersonation and more serious than some current third degree felonies. The report recommends making these offenses third degree felonies and ranking them in Level 3.

- Rank offenses involving criminal actions under color of law or through the use of simulated legal process.

The same reasons provided for ranking third degree felony impersonation in Level 3 appear to support a Level 3 ranking for third degree felonies in s. 843.0855, F.S. (criminal actions under color of law or through use of simulated process). This section covers impersonation-related acts, e.g., impersonating a law enforcement officer and serving a fake warrant on an unsuspecting person. The report recommends ranking these offenses in Level 3.

- Amend criminal intent language relevant to certain offenses involving unlawful use of police badges or other indicia of authority.

In *Sult v. State*, 906 So.2d 1013 (Fla.2005), the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutional as overbroad and vague, and also violates the right to substantive due process. The Court only discusses subsection (1) of this section but the general intent language the Court found objectionable also appears in subsections (2) and (3) of this section. The Court's analysis appears to suggest that the adoption of a specific intent requirement may address the constitutional problems. Based on this decision, the report found that it is necessary to amend s. 843.085 (1) and (2), F.S., to include a specific intent requirement so that prosecutions may be made under this statute. Based on the opinions of some prosecutors, it does not appear that subsection (3) can be amended to require specific intent without making this subsection a nullity. The report recommended including specific intent language in s. 843.085(1) and (2), F.S., to address the constitutional defect.

- Make unlawful showing or displaying of a blue light on any vehicle a first degree misdemeanor.

Currently, s. 316.2397, F.S., provides that it is a noncriminal traffic violation to unlawfully show or display a blue light on any vehicle. This offense seems to be at least as serious as several current first degree misdemeanors and so appears to warrant being made a first degree misdemeanor. The report recommends making this offense a first degree misdemeanor.

III. Effect of Proposed Changes:

The bill amends s. 316.2397, F.S., to make unlawful showing or displaying of a blue light on any vehicle a first degree misdemeanor (currently, a noncriminal violation).

Section 843.08, F.S. (false personation of a law enforcement officer or other specified person), is amended to prohibit impersonation of a federal law enforcement officer and require numbering of penalty sections for the purpose of ranking offenses.

Section 843.081, F.S. (unlawful use of a flashing/rotating blue light), is amended to make violations of this section third degree felonies (currently first degree misdemeanors).

Section 843.085, F.S. (unlawful use of police badges or other indicia of authority), is amended to make violations of this section third degree felonies (currently first degree misdemeanors).² Current general intent language (“which could deceive a reasonable person into believing”) in subsections (1) and (2) is replaced with specific intent language (“with the intent to mislead or cause another person to believe”).

Section 921.0022, F.S. (the offense severity ranking chart for the Criminal Punishment Code) is amended to rank offenses as follows:

- Third degree felony impersonation is ranked in Level 3 (currently ranked in Level 2).
- Second degree felony impersonation is ranked in Level 5 (currently ranked in Level 4).
- Proposed third degree felony violations involving unlawful use of a flashing/rotating blue light are ranked in Level 3 (currently ranked in Level 1).
- Proposed third degree felony violations involving unlawful use of police badges or other indicia of authority are ranked in Level 3 (currently ranked in Level 1).
- Current third degree felony violations involving criminal actions under color of law or through use of simulated legal process) are ranked in Level 3 (currently ranked in Level 1).

The bill takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

² The first degree misdemeanor penalty is retained for violations of current recordkeeping requirements relating to a transferor.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Analysis of the prison bed impact of the bill was not available at the time this analysis was completed. However, none of the proposed sentencing rankings in the bill are for Level 7 or above, which would result in a recommended lowest permissible sentence of imprisonment for a first-time offender, absent mitigation.³ Since violations of s. 843.081, F.S. (unlawful use of a flashing/rotating blue light), and s. 843.085(1)-(3), F.S. (unlawful use of a police badge or other indicia of authority), are currently punished as misdemeanors, there is no felony sentencing data to estimate the possible prison impact of making these offenses third degree felonies (by looking at past felony sentencing practices).

Unlawful showing or displaying of a blue light in any vehicle is currently a noncriminal traffic violation. The bill makes the offense a first degree misdemeanor. Staff is unable to determine what, if any, impact this change may have on local jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

³ Sentencing data in the interim project report indicated that, for the calendars years 2001 to 2005, there was minimal prison bed impact as a result of sentencing for third degree felony impersonation and second degree felony impersonation in s. 843.08: 161 offenders were sentenced for the primary offense of third degree felony impersonation (Level 2) and 18 of those offenders received a prison sentence (mean sentence length: 42.7 months). Thirty (30) offenders were sentenced for the primary offense of second degree felony impersonation (Level 4) and 3 of those offenders received a prison sentence (mean sentence length: 50.5 months).

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.
