

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 807  
**SPONSOR(S):** Hooper  
**TIED BILLS:**

Domestic Violence

**IDEN./SIM. BILLS:** CS/SB 184

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	_____	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill creates the offense of “domestic battery by strangulation” and provides that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the person actually and intentionally, against the will of another:

- Impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of great bodily harm; or
- Causes great bodily harm by applying pressure on the throat or neck of the other person or by blocking the other person’s nose or mouth.

The bill defines “family or household member” and “persons in a dating relationship.”

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility** – This bill creates the offense of “domestic battery by strangulation” and makes it a third degree felony.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor<sup>1</sup>, 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. However, while battery is generally a first degree misdemeanor, battery is a third degree felony<sup>2</sup> if a person who has one prior conviction for battery, aggravated battery, or felony battery commits any second or subsequent battery.

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,<sup>3</sup> if:

- In committing battery, the offender intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, the offender 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.<sup>4</sup> 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.

##### Effect of the Bill

The bill provides that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the person actually and intentionally, against the will of another:

- Impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of great bodily harm; or
- Causes great bodily harm by applying pressure on the throat or neck of the other person or by blocking the other person’s nose or mouth.

The bill defines “family or household member” by reference to the definition of the term in s. 741.28, F.S. Subsection (3) of s. 741.28, F.S., defines “family or household member” as “spouses, former

<sup>1</sup> A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. *See* ss. 775.082 and 775.083.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

<sup>3</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

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

spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.”

The bill defines “persons in a dating relationship” by reference to the definition of the term in s. 784.046(1)(d), F.S. However, it should be noted that this subsection defines the term “dating violence” rather than “dating relationship.” “Dating violence” is defined, in part, as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”

C. SECTION DIRECTORY:

**Section 1.** Amends s. 784.041, F.S., creating the offense of “domestic battery by strangulation.”

**Section 2.** Amends s. 921.0022, F.S., conforming the offense severity ranking chart of the Criminal Punishment Code.

**Section 3.** This bill takes effect October 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of this bill. However, on February 16, 2007, the CJIC determined that Senate Bill 184, which is similar to this bill, would have an insignificant prison bed impact.

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:

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As noted above, the bill defines "persons in a dating relationship" by reference to the definition of the term in s. 784.046(1)(d), F.S. However, this subsection defines the term "dating violence" rather than "persons in a dating relationship." The term "persons in a dating relationship" is not currently defined by statute. A definition of such term could be created using language similar to that found in s. 784.046(1)(d), F.S. (e.g. "Dating relationship" means "a continuing and significant relationship of a romantic or intimate nature.")

A number of procedures that are routinely used in the rendering of emergency care and treatment by both laypersons and emergency medical services personnel and that are authorized under Florida law would impede the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. This bill does not provide an exception for such procedures.

Section 741.28, F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." This bill provides that a person commits domestic battery by strangulation if they cause great bodily harm to "a person." However, the bill does not specify that "a person" must be a "family or household member" or "a person with whom he or she is in a dating relationship." Without this specification, it would appear that the offense does not relate to "domestic violence" but would instead fall within the current definition of aggravated battery.

D. STATEMENT OF THE SPONSOR

No comment submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**