

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 87 Protection of Ocean Lifeguards

**SPONSOR(S):** Garcia

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 278

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| <b>REFERENCE</b>   | <b>ACTION</b>    | <b>ANALYST</b>       | <b>STAFF DIRECTOR</b> |
|--|------------------|----------------------|-----------------------|
| 1) <u>Committee on Homeland Security &amp; Public Safety</u> | <u>11 Y, 0 N</u> | <u>Padgett</u>       | <u>Kramer</u>         |
| 2) <u>Safety &amp; Security Council</u>                      | <u>16 Y, 0 N</u> | <u>Padgett/Davis</u> | <u>Havlicak</u>       |
| 3) <u>Policy &amp; Budget Council</u>                        | <u></u>          | <u></u>              | <u></u>               |
| 4) <u></u>   | <u></u>          | <u></u>              | <u></u>               |
| 5) <u></u>   | <u></u>          | <u></u>              | <u></u>               |

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**SUMMARY ANALYSIS**

Currently, s. 784.07, F.S., reclassifies the felony or misdemeanor degree of assault and battery offenses committed against a law enforcement officer, firefighter, or other specified person. This bill would add ocean lifeguards to the list of specified persons contained in this section.

This will have the effect of increasing the maximum sentence that can be imposed for an assault or battery committed against an ocean lifeguard in the same manner as if it were committed against a law enforcement officer or firefighter.

This bill amends ss. 435.04, 901.15, 943.051, and 985.11, F.S. by inserting conforming language and amends the offense severity ranking chart in s. 921.0022, F.S., to include the offense.

HB 87 will have an insignificant prison bed impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: HB 87 will have the effect of increasing the maximum sentence which may be imposed for an assault or battery committed against an ocean lifeguard.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Currently, s. 784.07, F.S. provides that when a person is charged with knowingly committing assault<sup>1</sup>, aggravated assault<sup>2</sup>, battery<sup>3</sup>, or aggravated battery<sup>4</sup> against a law enforcement officer<sup>5</sup>, firefighter<sup>6</sup>, emergency medical care provider<sup>7</sup>, traffic accident investigation officer, traffic infraction enforcement officer, parking enforcement specialist<sup>8</sup>, a security officer, or security officer employed by the board of trustees of a community college while the officer, firefighter or emergency medical care provider is engaged in the lawful performance of his or her duties the 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 an aggravated assault, from a felony of the third degree to a felony of the second degree.

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<sup>1</sup> 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. Section 784.011, F.S.

<sup>2</sup> An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. Section 784.021, F.S.

<sup>3</sup> 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. Section 784.03, F.S.

<sup>4</sup> An aggravated battery occurs when a person in committing a 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. Section 784.045, F.S.

<sup>5</sup> A law enforcement officer includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement. Section 784.07(1)(a), F.S.

<sup>6</sup> Firefighter means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires. Section 784.07(1)(b), F.S., or

<sup>7</sup> Emergency medical care provider means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service listed under Chapter 401 who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in Chapter 395 who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof. Section 784.07(1)(c), F.S.

<sup>8</sup> Section 316.640, F.S.

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

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of misdemeanor or felony. 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 of imprisonment and for a first degree felony is thirty years imprisonment.<sup>9</sup>

### Proposed Changes

HB 87 adds ocean lifeguards to the specified officers and persons listed above. Therefore, an assault or battery offense committed against an ocean lifeguard will be reclassified one higher degree than it is currently classified. This will have the effect of increasing the maximum sentence that can be imposed for an assault or battery offense committed against an ocean lifeguard in the same manner as if the offense were committed against a law enforcement officer or firefighter.

HB 87 defines the term "ocean lifeguard" as follows:

A lifeguard employed along the coastal or intracoastal beaches and shores of the state to help prevent injury or drowning of persons.

The bill also amends ss. 435.04, 901.15, 943.051, and 985.11, F.S., to change certain references from "officers" to "persons." The offense severity ranking chart is amended to include the offense.

### C. SECTION DIRECTORY:

Section 1 Amends s. 784.07, F.S. to provide for reclassification of assault or battery on an ocean lifeguard.

Section 2 Amends s. 435.04, F.S. relating to background investigations for Department of Juvenile Justice employees

Section 3 Amends s. 901.15, F.S. relating to arrests without a warrant

Section 4 Amends s. 921.0022, F.S. relating to the offense severity ranking chart

Section 5 Amends s. 943.051, F.S. relating to criminal justice information; collection and storage; fingerprinting.

Section 6 Amends s. 985.11, F.S. relating to fingerprinting and photography

Section 7 Provides effective date of October 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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<sup>9</sup> Section 775.082, F.S.

None.

2. Expenditures:

See fiscal comments.

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 Impact Conference met on January 17, 2008 to consider the prison bed impact of this bill on the Department of Corrections. The Conference determined that the impact would be insignificant.

### 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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES