

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 317 False Personation of a Law Enforcement Officer or Other Person

SPONSOR(S): Robaina and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 640

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Public Safety & Domestic Security Policy Committee</u>	<u>8 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2)	<u>Criminal & Civil Justice Policy Council</u>	<u>11 Y, 0 N</u>	<u>Kramer</u>	<u>Havlicak</u>
3)	<u>Criminal & Civil Justice Appropriations Committee</u>	<u>8 Y, 0 N</u>	<u>McAuliffe</u>	<u>Davis</u>
4)	<u>Full Appropriations Council on General Government & Health Care</u>		<u>McAuliffe</u>	<u>Leznoff</u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill modifies several offenses relating to impersonation of a law enforcement officer. The bill:

- Increases from a first degree misdemeanor to a third degree felony the severity of several offenses relating to the unlawful use of police badges or other indicia of authority;
- Changes the intent required to commit a violation of offenses relating to the unlawful use of police badges or other indicia of authority;
- Increases the severity of the offense of showing or displaying blue lights on a vehicle other than a law enforcement vehicle from a nonmoving violation to a first degree misdemeanor;
- Increases the severity of the offense of use of a flashing or rotating blue lights in a vehicle other than a law enforcement vehicle from a first degree misdemeanor to a third degree felony;
- Increases the ranking of several offenses relating to false impersonation of a law enforcement officer within the offense severity ranking chart of the Criminal Punishment Code.

On February 25, 2009, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Blue lights: Section 316.2397, F.S., prohibits any vehicle except a police vehicle from showing or displaying blue lights. A violation of this provision is a noncriminal traffic infraction, punishable as a nonmoving violation by a monetary fine.¹ The bill makes a violation of this provision a first degree misdemeanor, punishable by up to one year in county jail.

Section 843.081, F.S., provides that it is a first degree misdemeanor for a person other than a specified law enforcement officer² to use in or on any nongovernmentally owned vehicle or vessel any flashing or rotating blue light. The term "flashing or rotating blue light" includes "all forms of lights which display a blue light source or which were designed with the intent of displaying a blue light source whether or not such light is actually in use." The bill makes this offense a third degree felony, punishable by up to five years in prison. The offense will be ranked in level 3 of the offense severity ranking chart of the Criminal Punishment Code.³

Falsely personating an officer⁴: Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be one of a list of law enforcement officers or other related officers⁵ and to take upon himself or herself to act as such or to require any other person to aide or assist him or her in a matter pertaining to the duty of any such officer. If the false personation occurs during the course of the commission of a felony, the false personation offense is a second degree felony. If the false

¹ Section 318.18, F.S.

² The section refers to law enforcement officers employed by a federal, state, county or city law enforcement agency or a person appointed by the Governor pursuant to chapter 354.

³ Section 921.0022(3), F.S.

⁴ Many of the changes made by this bill were recommended in a Senate Interim Project. *Review How Florida and Some Other States Punish the Crime of Falsely Personating a Law Enforcement Officer*, Report 2007-107, November 2006.
www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-107cj.pdf

⁵ The section refers to the following:

sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Environmental Protection, officer of the Department of Transportation, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505.

personation occurs during the commission of a felony and the commission of the felony results in the death or personal injury of another person, the false personation offense is a first degree felony.

The bill removes the ranking of these offenses from level 2 of the offense severity ranking chart of the Criminal Punishment Code and divides the ranking as follows: the third degree felony offense is ranked in level 3, the second degree felony offense is ranked in level 5 and the first degree felony offense is ranked in level 7.

Unlawful use of police badges: Section 843.085(1), F.S., prohibits a person, unless authorized by the appropriate agency, to wear or display any authorized indicia of authority including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof of a law enforcement agency which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing it.

The subsection also prohibits a person from wearing or displaying any item which displays the word "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff" and which could deceive a reasonable person into believing that such item is authorized by the law enforcement agency for use by the person displaying or wearing it.

This offense is currently a first degree misdemeanor. The bill makes it a third degree felony. The offense will be ranked in level 3 of the offense severity ranking chart of the Criminal Punishment Code.

In *Sult v. State*, 906 So.2d 1013 (Fla. 2005), the Florida Supreme Court held that this statute was unconstitutionally overbroad and vague. According to the court, because the statute did not require that the offender had a specific intent to deceive; it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court held as follows:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The "could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus...[the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.⁶

The bill amends the statute by replacing language requiring proof that a reasonable person could be deceived with proof that the offender had "*intent to mislead or cause another person to believe* that he or she is a member of that agency or is authorized to display or wear such item". The bill further provides that it is insufficient to prove criminal intent that a person wore or displayed the item without authorization from the agency displayed on the item. Further, to evidence the intent, there must be an additional affirmative act by the person which indicates this intent, such as the person misrepresenting that he or she is employed by the agency displayed on the item or misrepresenting that he or she is authorized by that agency to wear or display the item.

Operating vehicle marked as law enforcement vehicle: Currently, s. 843.085(2), F.S., makes it a first degree misdemeanor to own or operate, without authorization, a motor vehicle marked with the words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff," or by any lettering, marking, or insignia, or colorable imitation including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a law enforcement vehicle which could deceive a reasonable person into believing that such vehicle is authorized by the agency for use by the person operating the motor vehicle. The bill makes this

⁶ *Id.* at 1021.

offense a third degree felony and replaces the intent language to require proof of intent to mislead as described above. The offense will be ranked in level 3 of the offense severity ranking chart.

Selling badges: Currently, s. 843.085(3), F.S., makes it a first degree misdemeanor to sell, transfer, or give away the authorized badge, or colorable imitation thereof of any criminal justice agency or bearing words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," "agent," "state attorney," "public defender," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by the agency.⁷

The bill makes this offense a third degree felony and ranks the offense in level 3 of the offense severity ranking chart.

Criminal actions under color of law:

Section 843.0855, F.S., makes it a third degree felony to:

- Impersonate a public officer or other specified person in connection with a legal process;⁸
- Simulate a legal process;⁹ or
- Influence, intimidate or hinder a public officer or law enforcement officer.¹⁰

These offenses are currently not ranked in the offense severity ranking chart and therefore default to a level one ranking. The bill ranks these offenses in level 3 of the offense severity ranking chart.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.2397, F.S.; relating to certain lights prohibited; exceptions.

Section 2. Amends s. 843.08, F.S.; relating to falsely personating officer.

Section 3. Amends s. 843.081, F.S.; relating to prohibited use of certain lights; penalty.

Section 4. Amends s. 843.085, F.S.; relating to unlawful use of police badges or other indicia of authority.

Section 5. Amends s. 921.0022, F.S.; relating to criminal punishment code, offense severity ranking chart.

Section 6. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁷ The bill provides an exception for "agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354." A transferor of an item covered by this subsection is required to maintain for 2 years a written record of the transaction, including records showing compliance with this subsection, and if such transferor is a business, it must make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located. Violation of this provision is a first degree misdemeanor. The bill does not change this provision.

⁸ Section 843.0855(2), F.S.

⁹ Section 843.0855(3), F.S.

¹⁰Section 843.0855(4), F.S.

On February 25, 2009, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill makes the offense of showing or displaying a blue light in a vehicle a first degree misdemeanor, punishable by up to one year in county jail. Currently the offense is punishable by a fine as a nonmoving violation. This could have a jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES