

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 508

INTRODUCER: Criminal Justice Committee and Senator Hill

SUBJECT: Law Enforcement Explorers

DATE: March 26, 2009 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree, as applicable, of assault and battery offenses knowingly committed against a law enforcement officer, firefighter, and other specified persons. The bill adds “law enforcement explorer,” a term defined in the bill, to the list of specified persons in this section, so that assault and battery offenses committed against a law enforcement explorer are reclassified in the same manner as assault and battery offenses against persons currently specified in the statute. The change also means that some of these reclassified offenses will be subject to mandatory minimum terms of imprisonment (as currently provided in the statute).

This bill substantially amends s. 784.07, F.S. This bill also reenacts s. 921.0022(3)(d), (f), and (g), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, to incorporate the amendments made to s. 784.07, F.S., in references to that section.

II. Present Situation:

The Law Enforcement Exploring program is sponsored by “Learning for Life,” a group affiliated with the Boy Scouts of America.¹ The program is open to persons 14 through 20 years old.² Law enforcement explorers are given training in police protocol and assist sworn officers in performing their duties in the field.³ Learning for Life has issued guidelines for law enforcement explorers that indicate the scope of activities that the group believes are permissible:

Law Enforcement Explorers, through completion of a basic training curriculum, periodic in-service training courses, and practical experiences, often can be involved with more complex and challenging activities within the agency. However, each agency, in order to provide for a well-managed program and effective risk management, should have written policies and standard operating procedures to govern their Explorer program. These should include limitations and prohibitions for Explorer involvement in law enforcement and related activities, as dictated by the sponsoring agency as well as adherence to all applicable Learning for Life/Law Enforcement Exploring policies. The chief executive officer of the agency should approve the agency’s Law Enforcement Exploring program policies and standard operating procedures.

In developing written policies and standard operating procedures, each agency should strive to permit Explorers to engage in as many practical activities as possible so as to make their experience in the program meaningful, while at the same imposing limitations and prohibitions that will minimize or avoid their exposure to high-risk situations. High-risk situations would include felony-in-progress calls, high-speed pursuits, and certain crisis intervention matters. Keeping in mind potential legal issues with regard to federal and state statutes regulating criminal law and procedure, as well as privacy and confidentiality concerns, Explorers should not be permitted to participate in interviews, interrogations, the handling or processing of evidence, or the intake or transfer of persons taken into custody. Additionally, to the extent possible, Explorers should not be placed in situations where they may be called as a witness in a criminal or civil proceeding.

Law enforcement patrol operations and calls for service often involve spontaneous situations that require an aggressive and risk-inherent response; or, just as likely, a seemingly mundane patrol procedure or call for service might escalate into a situation requiring the same type of response.

Typical types of patrol operations, calls for services, and other law enforcement assistance that trained Law Enforcement Explorers can provide with relatively minimal risk include, but are not limited to, the following:

- A. Crime prevention services
- B. Citizen tours of police facilities
- C. Perimeter security checks
- D. Bicycle safety inspections

¹See <http://www.scouting.org/Media/AnnualReports/2007/131flsummary.aspx>

²See <http://www.learning-for-life.org/exploring/index.html>

³*Id.*

- E. Disabled motorist assists
- F. Complaint reception
- G. Child identification fingerprinting for parents/legal guardian
- H. Agency information booth at career fairs and community events
- I. Agency telecommunications/dispatch center assistance
- J. Assistance with organized searches for lost/missing persons
- K. Traffic/crowd control at parades, festivals, and other community events

There are numerous police operations and procedures that must not intentionally involve Law Enforcement Explorers due to the considerable potential for legal complications or for an aggressive and risk inherent response. The law enforcement officer who is responsible for the Explorer must use his/her best professional judgment with respect to the safety and security of the Explorer and should never intentionally place an Explorer in a high risk or legally precarious situation. Such operations and procedures include, but are not limited to, the following:

- A. Arrests
- B. Felony in-progress calls
- C. Breathalyzer/sobriety tests
- D. Custodial interviews or interrogations
- E. Traffic or foot pursuits
- F. Searches & seizures (to include direct Explorer involvement in a routine stop and frisk)
- G. Surveillance
- H. Processing evidence or involved in the chain of custody of same
- I. Field testing of narcotics or other controlled substances if such test is part of a criminal investigation
- J. Handling, intake or transfer of persons taken into custody⁴

Section 784.07(2), F.S., reclassifies the felony or misdemeanor degree,⁵ as applicable, of assault,⁶ aggravated assault,⁷ battery,⁸ and aggravated battery⁹ when knowingly committed against any of the following persons:

⁴ *Law Enforcement Exploring Program Guidelines* (undated), Learning for Life (<http://www.learningforlife.org/exploring/lawenforcement/index.html>).

⁵ Reclassifying an offense has the effect of increasing the maximum penalty that can be imposed for an offense. In general, the maximum penalty for misdemeanors and felonies, as set forth in s. 775.082, F.S., is as follows: for a second degree misdemeanor, 60-days incarceration; for a first degree misdemeanor, 1- year of incarceration; for a third degree felony, 5-years imprisonment; for a second degree felony, 15-years imprisonment; and for a first degree felony, 30-years imprisonment (unless it is specified in a statute that the felony is punishable by a term of years not exceeding life imprisonment, which is sometimes referred to by the acronym 'PBL'). Therefore, if, for example, a first degree misdemeanor is reclassified as a third degree felony, the maximum penalty increases from 60-days incarceration in a local jail to 5-years imprisonment in a state prison.

⁶ 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. *See* s. 784.011, F.S.

⁷ An aggravated assault is an assault with a deadly weapon without intent to kill or with intent to commit a felony. *See* s. 784.021, F.S.

⁸ 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. *See* s. 784.03, F.S.

- A law enforcement officer;¹⁰
- A firefighter;¹¹
- An emergency medical care provider;¹²
- A “traffic accident investigation officer as described in s. 316.640”;
- A “nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI”;
- A “traffic infraction enforcement officer as described in s. 316.640”;
- A “parking enforcement specialist as defined in s. 316.640”; or
- A “person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college.”

Subsection (2) of the statute further provides that in order for the reclassification to occur, the offense must have been committed “while the officer, firefighter, emergency medical care provider, intake officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, parking enforcement specialist, public transit employee or agent,¹³ or security officer is engaged in the lawful performance of his or her duties.”

Subsection (2) of the statute further provides for reclassification of assault and battery offenses and for mandatory minimum terms for the reclassified aggravated assault and reclassified aggravated battery, as follows:

⁹ 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. *See* s. 784.045, F.S.

¹⁰ Section 784.07(1)(a), F.S., states that 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, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.”

¹¹ Section 784.07(1)(b), F.S., states that a ‘firefighter’ is “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.”

¹² Section 784.07(1)(c), F.S., states that an “emergency medical care provider” is “an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed 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.”

¹³ Section 784.0(1)(d), F.S., states that “public transit employees or agents” “means bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l).”

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.¹⁴
- In the case of an aggravated assault, from a third degree felony¹⁵ to a second degree felony¹⁶ with a 3-year mandatory minimum term of imprisonment.
- In the case of an aggravated battery, from a second degree felony¹⁷ to a first degree felony ranked in Level 7 with a 5-year mandatory minimum term of imprisonment.¹⁸

Section 784.07(3)(a), F.S., provides that a reclassified battery is subject to a 3-year mandatory minimum term of imprisonment if, during the commission of the offense, the person committing the offense possessed a firearm or destructive device. Paragraph (3)(b) of the statute provides that a reclassified battery is subject to an 8-year mandatory minimum term of imprisonment if, during the commission of the offense, the person committing the offense possessed a semiautomatic firearm and its high-capacity detachable box magazine or possessed a machine gun.

III. Effect of Proposed Changes:

The bill amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assault and battery offenses, as applicable, knowingly committed against a law enforcement officer, firefighter, and other specified persons. The bill adds “law enforcement explorer” to the list of specified persons in this section, so that assault and battery offenses committed against a law enforcement explorer are reclassified in the same manner as assault and battery offenses against persons currently specified in the statute. The change also means that some of these reclassified offenses will be subject to mandatory minimum terms of imprisonment. (See the “Present Situation” section of this analysis.)

The bill defines a “law enforcement explorer” as “any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by a sworn law enforcement officer on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.”¹⁹

¹⁴ See s. 921.0022(3)(d), F.S., ranking the reclassified offense in Level 4 of the offense severity ranking chart of Criminal Punishment Code.

¹⁵ See s. 921.0022(3)(f), F.S., ranking the offense in ranked in Level 6 of the ranking chart.

¹⁶ See s. 921.0022(3)(f), F.S., ranking the reclassified offense in Level 6 of the ranking chart.

¹⁷ See s. 921.0022(3)(g), F.S., ranking the offense in ranked in Level 7 of the ranking chart.

¹⁸ See s. 921.0022(3)(g), F.S., ranking the reclassified offense in Level 7 of the ranking chart.

¹⁹ The definition of “law enforcement officer” refers to a “person who is a current member of a law enforcement agency’s explorer program.” The only program that staff found that uses the term “law enforcement explorers” is the “Learning for Life” group that is affiliated with the Boy Scouts of America, so the definition is apparently not intended to cover a citizen participating as an observer in a police “ride-along,” a person “career shadowing” police officers, or a person participating in any other group affiliated with law enforcement agencies. FDLE staff informed legislative staff that a cadet at a law enforcement academy may decide to participate as an observer in a police “ride-along” but the basic training provided to cadets does not include assisting sworn law enforcement officers in their duties.

The bill also reenacts s. 921.0022(3)(d), (f), and (g), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, to incorporate the amendments made to s. 784.07, F.S., in references to that section.

The bill takes effect on October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Assault and battery offenses knowingly committed against a law enforcement officer will result in reclassification of the degree of those offenses, which means the maximum penalty for these offenses will be greater and some offenses will be subject to mandatory minimum terms of imprisonment. (See the “Present Situation” section of this analysis.)

The Criminal Justice Impact Conference, which provides the official estimate of prison bed impact, if any, of legislation, estimated that the bill will have an insignificant prison bed impact.²⁰

VI. Technical Deficiencies:

None.

²⁰ See <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (click on “2009 Conference Results” link).

VII. Related Issues:

The impetus for the bill appears to be a 2007 incident in Tampa. According to the *Tampa Tribune*, a burglary suspect struck a Tampa police officer and a 17 year-old law enforcement explorer with the officer's baton.²¹

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 25, 2009:

- Clarifies in the definition of “law enforcement explorer” that a person covered by this definition is performing functions other than those required to be performed by a sworn law enforcement officer on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency.

- B. **Amendments:**

None.

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

²¹ Kalfrin, Valeria. Proposed Law Ups Ante For Assaulting Police Explorers. *Tampa Tribune* (December 23, 2008) (<http://www2.tbo.com/content/2008/dec/23/proposed-law-ups-ante-assaulting-police-explorers/news-breaking/>).