

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: SB 496

INTRODUCER: Senator Margolis

SUBJECT: Ocean Lifeguards

DATE: March 2, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, s. 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of specified assault and battery offenses when those offenses are committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties. The bill adds ocean lifeguards to the list of specified persons, which would increase the maximum sentence that can be imposed for specified assault or battery offenses committed against an ocean lifeguard in the same manner as if those offenses were committed against a law enforcement officer or firefighter.

This bill substantially amends s. 784.07, F.S. This bill also makes conforming changes by amending ss. 453.04, 901.15, 943.051, and 985.11, F.S., and reenacting s. 921.022(3)(d), F.S.

II. Present Situation:

Ocean Lifeguards

Senate Criminal Justice Committee staff contacted staff of the Miami-Dade Fire Rescue Department's Ocean Rescue Bureau for background information on ocean lifeguards. According to Bureau staff, personnel of agencies certified by the United States Lifesaving Association will have minimum uniform training necessary to perform as an ocean lifeguard. Non-certified agency personnel and personnel employed by private entities (such as hotels and beach clubs) will likely have similar minimum training. Training of some ocean lifeguards may be more extensive than this minimum training. For example, Bureau personnel "are certified paramedics, Emergency Medical Technicians, and instructors in CPR, First Aid, SCUBA, Search and Recovery, and Basic Life Support. They work in conjunction with the Miami-Dade Police

Department, City of Miami, and City of Key Biscayne, when necessary.”¹ Some personnel may be certified law enforcement officers (e.g., Career Lifeguards employed by Volusia County’s Beach Patrol).² Training may also be geographically specific (e.g., rescues near piers). Bureau staff indicated that “lawful duties” may extend beyond rescue and safety duties (e.g., assisting in the enforcement of park regulations). Bureau staff also indicated that assaults and batteries on ocean lifeguards do occur. Fights break out on beaches and lifeguards can be injured providing assistance to persons injured in the fighting (law enforcement called to the scene are not always immediately available). Lifeguards also encounter drunk and unstable persons on beaches who sometimes commit acts of violence against the lifeguards during these encounters.

Reclassification of Assault and Battery Offenses/Section 784.07, F.S.

Section 784.07(2), F.S., provides that when a person is charged with knowingly committing assault,³ aggravated assault,⁴ battery,⁵ or aggravated battery⁶ against a law enforcement officer,⁷ firefighter,⁸ emergency medical care provider,⁹ traffic accident investigation officer, certain nonsworn law enforcement personnel, law enforcement explorer,¹⁰ traffic infraction enforcement officer,¹¹ parking enforcement specialist,¹² public transit employee or agent,¹³ licensed security

¹ See <http://www.miamidade.gov/MDFR/releases/07-04-09-ocean-rescue.asp> (last accessed on March 3, 2011).

² See <http://volusia.org/beach/guard.htm> (last accessed on March 3, 2011).

³ 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. s. 784.011, F.S.

⁴ An aggravated assault is an assault with a deadly weapon without intent to kill or with intent to commit a felony. s. 784.021, F.S.

⁵ 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. s. 784.03, F.S.

⁶ An aggravated battery occurs when a person in committing 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. s. 784.045, F.S.

⁷ “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. s. 784.07(1)(d), F.S.

⁸ “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. s. 784.07(1)(b), F.S.

⁹ “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 licensed under ch. 401, F.S., 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 ch. 395, F.S., 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. s. 784.07(1)(a), F.S.

¹⁰ “Law enforcement explorer” means 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 sworn law enforcement officers 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. s. 784.07(1)(c), F.S.

¹¹ s. 316.640, F.S.

¹² s. 316.640, F.S.

officer,¹⁴ or security officer employed by the board of trustees of a community college while the law enforcement officer, firefighter, etc., is engaged in the lawful performance of his or her duties, the assault or battery 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 aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of 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 the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is 60 days in a county jail; for a first degree misdemeanor, it is 1 year in a county jail; for a third degree felony, it is 5-years state imprisonment; for a second degree felony, it is 15-years state imprisonment; and for a first degree felony, it is generally 30-years state imprisonment.¹⁵ Fines imposed in lieu of or in addition to incarceration or imprisonment escalate with increasing misdemeanor or felony degree.¹⁶ The offense severity ranking level of applicable reclassified felony offenses is as follows: reclassified battery: Level 4; reclassified aggravated assault: Level 6; and reclassified aggravated battery: Level 7.¹⁷

III. Effect of Proposed Changes:

Currently, s. 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of specified assault and battery offenses when those offenses are committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties. The bill adds ocean lifeguards to the list of specified persons, which would increase the maximum sentence that can be imposed for specified assault or battery offenses committed against an ocean lifeguard in the same manner as if those offenses were committed against a law enforcement officer or firefighter (see “Present Situation” section of this analysis for specific information).

The reclassification occurs 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.

¹³ “Public transit employees or agents” mean 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), F.S. s. 784.07(1)(e), F.S.

¹⁴ s. 493.6101, F.S.

¹⁵ s. 775.082, F.S.

¹⁶ See s. 775.083.

¹⁷ s. 921.0022(3)(d), (f), and (g), F.S. Sentence points accrue based upon the ranking of a non-capital felony offense with higher-level offenses accruing more sentence points than lower-ranking offenses. These points along with points accrued for additional and prior offenses and other factors are entered into a statutorily-derived mathematical calculation to determine the lowest permissible sentence.

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

The bill defines “ocean lifeguard” as 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 makes conforming changes by amending ss. 453.04, 901.15, 943.051, and 985.11, F.S., and reenacting s. 921.022(3)(d), F.S.

The effective date of the bill is October 1, 2011.

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:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a potentially insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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