

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 Committee on Judiciary

BILL: CS/SB 1416

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Assaults on Specified Persons

DATE: February 17, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Erickson</u> | <u>Jones</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Stallard</u> | <u>Cibula</u> | <u>JU</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1416 creates s. 341.0611, F.S., which provides that:

- By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a sign in accordance with specifications in the bill containing the following statement: “ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON.”
- By July 1, 2021, such public transit provider must create and implement a risk reduction program. Each risk reduction program must include conflict de-escalation training for transit operators, and may include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operators’ workstations.

The bill also amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assaults and batteries on certain officers or employees to provide that an assault against any of these officers or employees is reclassified from a second degree misdemeanor to a third degree felony. Currently, an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified under this statute as amended by the bill has a maximum penalty of 5 years in state prison and fine not to exceed \$5,000; in contrast, the maximum penalty for an assault reclassified under the current statute is 1 year in county jail and a fine not to exceed \$500.

The Criminal Justice Impact Conference estimates that the bill will have a “positive significant” prison bed impact (an increase of more than 25 prison beds). The bill may also have a fiscal impact on public transit providers. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault,¹ aggravated assault,² battery,³ and aggravated battery⁴ when a person is charged with knowingly committing any of these offenses upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a 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 law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person’s employing agency and that the person is a licensed security officer;
- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.⁵

¹ Assault, which is a second degree misdemeanor, 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(1) and (2), F.S.

² Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. Section 784.021(1) and (2), F.S.

³ Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. Section 784.03(1)(a), F.S.

⁴ A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; 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. Section 784.045(1) and (2), F.S.

⁵ “Public transit employees or agents” is defined in s. 784.07(1)(e), F.S., as 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. There is no specific reference in the statute to a public transit employee or agent in the list of officers and employees referenced as being subject to an assault or battery, which triggers the reclassification if the assault or battery occurs while the officer or employee is engaged in his or her lawful duties. A public transit employee or agent is only referenced in regard to a listed officer or employee engaged in performance of his or her lawful duties. Further, the Florida jury instruction for s. 784.07(2)(a), F.S. (relating to reclassification of the degree of assault) does not specifically reference a public transit employee or agent. Fla. Std. Jury Instr. (Crim.) 8.10. (See “Technical Deficiencies” section of this analysis.) However, notwithstanding the specific reference omission, it appears that the statute has been applied when the

The reclassification of the degree of the offense is as follows:

- 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;
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment; and
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.⁶

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:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁷

III. Effect of Proposed Changes:

New Requirements Relating to Certain Public Transit Providers

The bill creates s. 341.0611, F.S., which provides that:

- By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a sign in accordance with specifications in the bill containing the following statement: “ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON.”

victim is a public transit employee. *See, e.g., Walker v. State*, 193 So.3d 946, 948-949 (Fla. 4th DCA 2016), rehearing denied, 193 So.3d 990 (Fla. 4th DCA 2016) (appellate court stating that the charges against the appellant included a count relating to battery on a public transit employee in violation of ss. 784.03(1), 784.07(1)(e), and 784.07(2)(b), F.S., and the appellant was found guilty as charged on this count).

⁶ Section 784.07(3)(a) and (b), F.S. Additionally, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence. Section 784.07(3), F.S.

⁷ Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

- By July 1, 2021, such public transit provider must create and implement a risk reduction program. Each risk reduction program must include conflict de-escalation training for transit operators, and may include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

Declaration of Important State Interest

The bill includes a declaration of important state interest supporting the requirements that public transit providers conspicuously post signage that provides notification of the criminal penalties for assault on a public transit worker, and also create and implement a risk reduction program that includes conflict-de-escalation training.

Revision of the Offense Degree Designation for an Assault Reclassified under s. 784.07, F.S.

The bill amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assaults and batteries on certain officers or employees to provide that an assault against any of these officers or employees is reclassified from a second degree misdemeanor to a third degree felony. Currently, an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified under this statute as amended by the bill has a maximum penalty of 5 years in state prison; in contrast, the maximum penalty for an assault reclassified under the current statute is 1 year in county jail.

The bill also amends s. 784.07, F.S., to include specific reference to a public transit employee or agent in the list of officers or employees who have been assaulted or battered (as charged).

Effective Date

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature...."

This bill requires public transit providers to post signage (as specified in the bill), and create and implement a risk reduction program that must include conflict de-escalation training for transit operators. These requirements may cause public transit providers to spend funds.

Article VII, section 18(d) of the State Constitution, provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. If the bill does qualify as a mandate, and no exemption applies, in order to be binding on the counties,

the bill must include a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

The bill includes a declaration of an important state interest supporting the requirements that public transit providers conspicuously post signage that provides notification of the criminal penalties for assault on a public transit worker, and also create and implement a risk reduction program that includes conflict-de-escalation training (see “Effect of Proposed Changes” section of this analysis).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires public transit providers to post signage (as specified in the bill), and create and implement a risk reduction program that must include conflict de-escalation training for transit operators. Public transit providers will likely see an increase in costs to comply with the bill’s requirements.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a “positive significant” prison bed impact (an increase of more than 25 prison beds).⁸

⁸ The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on Jan. 27, 2020. The meeting is available on video on the Florida Channel at <https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/> (last visited on Feb. 13, 2020).

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 400 new commitments to prison for these offenses, though it is not known how many transit workers were victims. In FY 17-18, simple battery had an incarceration rate of 16.3% (adj.).⁹ Per [Florida Department of Law Enforcement], in FY 18-19, there were 259 guilty/convicted and 77 adjudication withheld where a 2nd degree misdemeanor was increased to a 1st degree felony under s. 784.07, F.S. While it is expected that 2nd degree assault would have a lower incarceration rate as a 3rd degree felony, the large number of those impacted would be expected to be enough to reach significance.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.07 of the Florida Statutes.

This bill creates section 341.0611 of the Florida Statutes.

IX. 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 February 4, 2020:

The committee substitute:

- Authorizes (rather than requires) public transit providers operating regularly scheduled transit service for the general public to include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.
- Amends s. 784.07, F.S., to include specific reference to a public transit employee or agent in the list of officers or employees who have been assaulted or battered (as charged).

⁹ The abbreviation "adj." means "adjusted." Sentencing data from the Department of Corrections is incomplete, which means that the number the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

¹⁰ The EDR's estimate is on file with the Senate Committee on Criminal Justice.

B. Amendments:

None

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