

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1866

INTRODUCER: Senator Pizzo

SUBJECT: Assault or Battery

DATE: February 10, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 1866 reclassifies the misdemeanor or felony degree of an assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon a code enforcement officer, an employee of a state park or park operated by a political subdivision, or a certified lifeguard while such officer, employee, or lifeguard is engaged in the lawful performance of his or her duties.

The Legislature's Office of Economic and Demographic Research preliminarily estimates the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## II. Present Situation:

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault,<sup>1</sup> aggravated assault,<sup>2</sup> battery,<sup>3</sup> and aggravated battery<sup>4</sup> when a person is charged with knowingly committing

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

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.<sup>5</sup>

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.<sup>6</sup>

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

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<sup>5</sup> "Public transit employees or agents" is defined in s. 784.07(1)(e), 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. However, notwithstanding the specific reference omission, it appears that the statute has been applied when the 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).

<sup>6</sup> Section 784.07(2)(a)-(d), F.S.

- 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.<sup>7</sup>

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.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill amends s. 784.07, F.S., to reclassify the misdemeanor or felony degree of an assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon a code enforcement officer as defined in s. 162.21, F.S.,<sup>9</sup> an employee of a state park or a park operated by a political subdivision, or a lifeguard certified under s. 514.071, F.S.,<sup>10</sup> while that officer, employee, or lifeguard is engaged in the lawful performance of his or her duties. The reclassification is as follows:

- In the case of assault, from a second degree misdemeanor (maximum penalty of 60 days in county jail) to a first degree misdemeanor (maximum penalty of one year in county jail);
- In the case of battery, from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison);
- In the case of aggravated assault, from a third degree felony to a second degree felony (maximum penalty of 15 years in state prison); and
- In the case of aggravated battery, from a second degree felony to a first degree felony (maximum penalty of 30 years in state prison).<sup>11</sup>

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

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> Section 162.21(1), F.S., defines a “code enforcement officer” as any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

<sup>10</sup> Section 514.071(1), F.S., requires that any person working as a lifeguard at a public swimming pool must be certified by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs. Lifeguards must be currently certified in lifeguarding, first aid, and cardiopulmonary resuscitation.

<sup>11</sup> Section 775.082, F.S. (maximum penalties).

- 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.<sup>12</sup>

A person subject to such mandatory minimum term may not have adjudication of guilt or imposition of sentence suspended, deferred, or withheld, and 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.<sup>13</sup>

The bill is effective October 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

##### **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.

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<sup>12</sup> Section 784.07(3)(a) and (b), F.S.

<sup>13</sup> Section 784.07(3), F.S.

**C. Government Sector Impact:**

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 insignificant” prison bed impact (an increase of 10 or fewer prison beds).<sup>14</sup>

The Legislature’s Office of Economic and Demographic Research (EDR) provides the following information relevant to this estimate:

Large numbers come to prison each year with these offenses as primary. There were 1,998 (adj.)<sup>15</sup> sentenced in FY 17-18 with 466 (adj.) sentenced to prison.... In FY 18-19, there were 400 new commitments to prison for these offenses. It is unknown how large the code enforcement officer, park employee, or lifeguard victim pool is, but simple battery is the most common felony offense and the incarceration rate is low (16.3% adj.). CJIC has heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 784.07 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>14</sup> E-mail from EDR staff, dated Jan. 27, 2020 (on file with the Senate Committee on Criminal Justice).

<sup>15</sup> 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.

<sup>16</sup> The EDR estimate is on file with the Senate Committee on Criminal Justice.