

**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 Health Policy

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BILL: CS/SB 614

INTRODUCER: Criminal Justice Committee and Senator Rodriguez

SUBJECT: Assault or Battery on Hospital Personnel

DATE: March 16, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 614 amends s. 784.07, F.S., which reclassifies the misdemeanor or felony degrees of assault and battery offenses if such offenses are knowingly committed against a law enforcement officer, firefighter, or other specified persons. The bill defines the term “hospital personnel” and adds such personnel to the list of specified persons protected under that section of statute. The reclassification of the offense has the effect of increasing the maximum sentence that may be imposed for the offense.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).

The bill provides an effective date of October 1, 2021.

**II. Present Situation:**

**Hospitals**

Hospitals are licensed by the Agency for Healthcare Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. A hospital is an establishment that:

- Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals

who require diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and

- Regularly makes available at least clinical laboratory services, diagnostic x-ray services, and treatment facilities for surgery or obstetrical care, or other definitive treatment of similar extent.<sup>1</sup>

Hospitals in Florida employ approximately 287,244 individuals and 59,199 medical staff.<sup>2</sup> Hospitals employ individuals in a number of occupations, including healthcare practitioners, healthcare support, office and administrative staff, janitorial and maintenance, food preparation and service, community and social services, business and financial operations, information technology, and management and executive positions.<sup>3</sup>

### **Violence against Healthcare Personnel**

Workplace violence is defined as any act or threat of physical violence, harassment, intimidation, or other disruptive behavior that occurs at the work site.<sup>4</sup> The impact of workplace violence can range from psychological issues to physical injury, or even death.<sup>5</sup> There are four types of workplace violence:

- The perpetrator has no association with the workplace or employees;
- The perpetrator is a customer or patient of the workplace or employee;
- The perpetrator is a current or former employee of the workplace; and
- The perpetrator has a personal relationship with the employee but not with the workplace.<sup>6</sup>

The second type of violence, usually committed by patients, their families, or their friends, is the most common type of violence against healthcare employees.<sup>7</sup> Hospitals settings create extreme levels of stress for patients, their families and friends, as well as employees of the institution.<sup>8</sup> Fear, illness, and emotional circumstances contribute to agitation and aggression from patients.

<sup>1</sup> Section 395.002(12), F.S. The term “hospital” does not include an institution conducted by adherents of a well-recognized church or religious denomination that depends exclusively on prayer or spiritual means to heal, care for, or treat any person.

<sup>2</sup> Florida Health Care Association, *2021 Directory of Hospitals*, p. 11, available at <http://www.fha.org/reports-and-resources/hospital-directory.aspx> (select “view the digital edition online”) (last visited March 9, 2021).

<sup>3</sup> Becker’s Hospital Review, *What Occupations Make up the Hospital Workforce?* (April 2, 2014), available at <https://www.beckershospitalreview.com/hr/what-occupations-make-up-the-hospital-workforce.html> (last visited March 9, 2021).

<sup>4</sup> U.S. Department of Labor, Occupational Safety and Health Administration, *Workplace Violence*, available at <https://www.osha.gov/workplace-violence#:~:text=Workplace%20violence%20is%20any%20act,%2C%20clients%2C%20customers%20and%20visitors> (last visited March 9, 2021).

<sup>5</sup> Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *Occupational Violence*, (last rev. Sept. 22, 2020), available at <https://www.cdc.gov/niosh/topics/violence/default.html> (last visited March 9, 2021).

<sup>6</sup> James P. Phillips, M.D., *Workplace Violence against Health Care Workers in the United States*, NEW ENGLAND J OF MEDICINE, 374(17) (April 28, 2016), pp. 1662, available at [https://www.researchgate.net/publication/301686568\\_Workplace\\_Violence\\_against\\_Health\\_Care\\_Workers\\_in\\_the\\_United\\_States](https://www.researchgate.net/publication/301686568_Workplace_Violence_against_Health_Care_Workers_in_the_United_States) (last visited March 9, 2021).

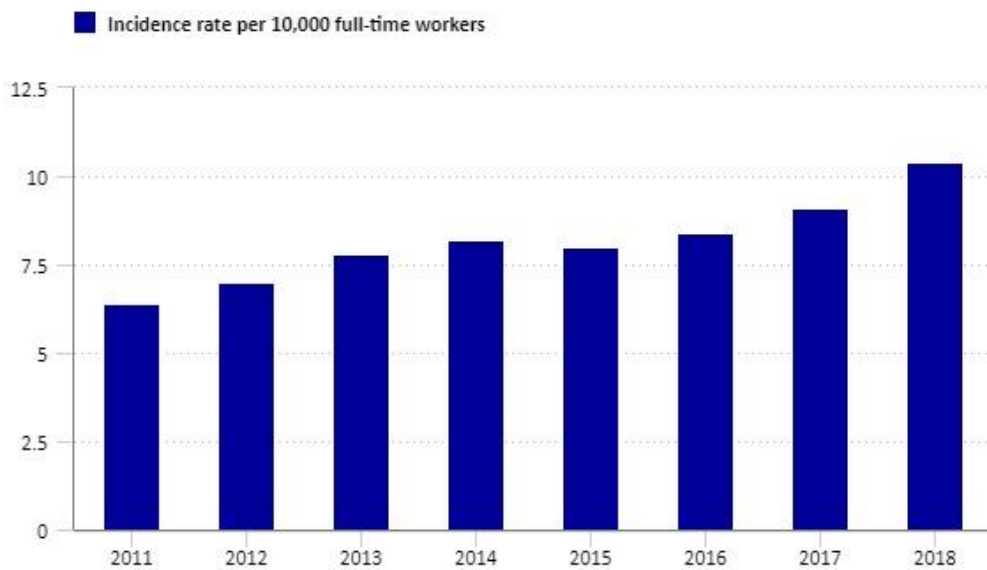
<sup>7</sup> *Supra n. 6* at p. 1663.

<sup>8</sup> Wallace Stephens, *Violence against Healthcare Workers: A Rising Epidemic*, AM J OF MANAGED CARE (May 12, 2019), available at <https://www.ajmc.com/view/violence-against-healthcare-workers-a-rising-epidemic> (last visited March 10, 2021).

Additionally, substance abuse, mental illness, or drug-seeking habits may contribute to such workplace violence.<sup>9</sup>

The healthcare and social service industries experience the highest rates of injuries caused by workplace violence and have a 20 percent higher chance of being a victim of workplace violence than other workers.<sup>10</sup> Healthcare workers accounted for 73 percent of all nonfatal workplace injuries and illnesses due to violence in 2018.<sup>11</sup> A 2017 report commissioned by the American Hospital Association estimated that violence against hospital employees resulted in \$429 million in medical care, staffing, indemnity, and other costs.<sup>12</sup> Incidents of violence against healthcare workers are increasing.<sup>13</sup>

**Chart 1. Incidence rate of nonfatal workplace violence to healthcare workers, 2011-18**



Workplace violence committed against healthcare workers is typically underreported. Healthcare workers do not formally report all incidents for a variety of reasons, such as no serious injury

<sup>9</sup> Ashleigh Watson, M.D., Mohammad Jafari, HBS, and Ali Seifi, M.D., *The Persistent Pandemic of Violence against Health Care Workers*, AM J OF MANAGED CARE 26(12) (December 11, 2020), pp. e377-e379, available at <https://www.ajmc.com/view/the-persistent-pandemic-of-violence-against-health-care-workers> (last visited March 10, 2021).

<sup>10</sup> U.S. Bureau of Labor Statistics, *Fact Sheet: Workplace Violence in Healthcare, 2018*, (April 2020), available at <https://www.bls.gov/iif/oshwc/cfoi/workplace-violence-healthcare-2018.htm#:~:text=Workplace%20violence%20in%20healthcare%20is,issue%20and%20a%20growing%20concern.&text=The%20health%20care%20and%20social,viole%20injury%20than%20workers%20overall> and the Joint Commission, *Physical and Verbal Violence against Health Care Workers*, SENTINEL EVENT ALERT, 59 (April 17, 2018), available at [https://www.jointcommission.org/-/media/documents/office-quality-and-patient-safety/sea\\_59\\_workplace\\_violence\\_4\\_13\\_18\\_final.pdf?db=web&hash=9E659237DBAF28F07982817322B99FFB](https://www.jointcommission.org/-/media/documents/office-quality-and-patient-safety/sea_59_workplace_violence_4_13_18_final.pdf?db=web&hash=9E659237DBAF28F07982817322B99FFB) (last visited March 10, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> Jill Van Den Bos, ASA, MAAA et al., *Cost of Community Violence to Hospitals and Health Systems*, (July 26, 2017), p. 2, available at <https://www.aha.org/system/files/2018-01/community-violence-report.pdf> (last visited March 10, 2021).

<sup>13</sup> U.S. Bureau of Labor Statistics, *supra* note 10.

was suffered, inconvenience, and the perception that violence comes with the job.<sup>14</sup> In fact, a study conducted in 2000, found that 82 percent of U.S. nurses had been assaulted at least once during their careers and 73 percent believed that assault was a part of their jobs.<sup>15</sup> The American College of Emergency Physicians reported the findings of a 2018 survey which found that 47 percent of emergency room physicians had been physically assaulted at work but only 3 percent pressed charges.<sup>16</sup> Additionally, employers may not always accurately report incidents of workplace violence.

The recent pandemic may have exacerbated violence against healthcare workers. Between February 1, 2020, and July 31, 2020, 611 incidents of violence, harassment, or stigmatization related to COVID-19 took place against healthcare workers, patients, and medical infrastructure, according to the International Committee of the Red Cross. Of these, 67 percent were directed at healthcare workers and more than 20 percent involved physical assault and 15 percent were verbal assaults or threats.<sup>17</sup>

## **Assault and Battery**

### ***Assault and Aggravated Assault***

Section 784.011, F.S., provides that it is a second degree misdemeanor<sup>18</sup> to commit an assault, which 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 784.021, F.S., provides that an aggravated assault is an assault:

- With a deadly weapon<sup>19</sup> without intent to kill; or
- With an intent to commit a felony.

Aggravated assault is a third degree felony<sup>20</sup> and is ranked in Level 6 of the Criminal Punishment Code offense severity level ranking chart.<sup>21</sup>

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<sup>14</sup> U.S. Government Accountability Office, *Workplace Health and Safety: Additional Efforts Needed to Help Protect Health Care Workers from Workplace Violence*, (March 2016), pp. 16-18, available at <https://www.gao.gov/assets/680/675858.pdf> (last visited March 10, 2021).

<sup>15</sup> Watson, *supra* note 9.

<sup>16</sup> American College of Emergency Physicians, *Violence in the Emergency Department: Resources for a Safer Workplace*, available at <https://www.acep.org/administration/violence-in-the-emergency-department-resources-for-a-safer-workplace/> (last visited March 10, 2021).

<sup>17</sup> Sharmila Devi, *COVID-19 Exacerbates Violence against Healthcare Workers*, THE LANCET, 396(10252), p. 658 (Sept. 5, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31858-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31858-4/fulltext) (last visited March 10, 2021).

<sup>18</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>19</sup> When undefined in statute, Florida courts have defined a “deadly weapon” as an instrument that will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design or an object that is used or threatened to be used in a way likely to produce death or great bodily harm. *See Brown v. State*, 86 So.3d 569, 571 (Fla. 5th DCA 2012).

<sup>20</sup> A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>21</sup> Section 921.0022(3)(g), F.S.

***Battery and Aggravated Battery***

Section 784.03, F.S., provides that the offense of 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.

Generally, a battery under this statute is punishable as a first degree misdemeanor<sup>22</sup> but a person commits a third degree felony if he or she has one prior conviction for battery, aggravated battery, or felony battery and commits any second or subsequent battery.<sup>23</sup>

Section 784.045, F.S., provides that a person commits aggravated battery who, in committing battery:

- Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- Uses a deadly weapon; or
- Knows or should have known that the victim of the battery was pregnant at the time of the offense.

Aggravated battery is a second degree felony and is ranked in Level 7 of the Criminal Punishment Code offense severity level ranking chart.<sup>24</sup>

***Assault or Battery on a Law Enforcement Officers or Other Specified Professional***

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery 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;

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<sup>22</sup> A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>23</sup> Section 784.03(2), F.S.

<sup>24</sup> Section 921.0022(3)(g), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.

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,<sup>25</sup> and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.<sup>26</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
- 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>27</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>28</sup>

### III. Effect of Proposed Changes:

The bill amends s. 784.07, F.S., to reclassify the degree of the offense when an individual knowingly commits an assault or battery against hospital personnel while that hospital personnel is engaged in the lawful performance of his or her duties. The bill defines “hospital personnel” as a health care practitioner as defined in s. 456.001, F.S.,<sup>29</sup> an employee, an agent, or a volunteer

<sup>25</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082(3)(b) and 775.083(1)(b), F.S.

<sup>26</sup> Section 784.07(2), F.S.

<sup>27</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>28</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>29</sup> Section 456.001, F.S., defines “health care practitioner” as any person licensed under ch. 457, F.S., (acupuncture); ch. 458, F.S., (medical practice); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathy); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy);

who is employed, under contract, or otherwise authorized by a hospital, as defined in s. 395.002, F.S., to perform duties directly associated with the care and treatment rendered by any department of a hospital or with the security thereof.

The offenses are reclassified 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
- In the case of aggravated battery, from a second degree felony to a first degree felony.

The reclassification of the offense has the effect of increasing the maximum sentence that may be imposed for the offense, as noted above.

The bill provides an effective date of October 1, 2021.

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

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

This bill appears to be exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

##### **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.

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ch. 466, F.S., (dentistry); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, or XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, or orthotics, prosthetics, and pedorthics, respectively); ch. 478, F.S., (electrolysis); ch. 480, F.S., (massage therapy); ch. 483, F.S., (clinical laboratory personnel or medical physicists); ch. 484, F.S., (optical devices and hearing aids); ch. 486, F.S., (physical therapy practice); ch. 490, F.S., (psychological services); or ch. 491, F.S., (clinical, counseling, and psychotherapy services).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not reviewed the bill; however, the Office of Economic and Demographic Research (EDR) did provide a preliminary estimate of the bill's impact. The EDR estimates that the bill will have a positive insignificant prison bed impact (i.e. increase of 10 or fewer prison beds).<sup>30</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 Substantial Changes:**

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

**CS by Criminal Justice on February 16, 2021:**

The committee substitute replaces the term “physician” with the broader term “health care practitioner as defined in s. 456.001” in the definition of health care personnel.

**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>30</sup> The EDR estimate is on file with the Senate Committee on Criminal Justice.