

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/SB 1334

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Battery by Strangulation

DATE: April 12, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1334 creates s. 784.031, F.S., to prohibit battery by strangulation. A person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person.

A person who violates this section commits a third degree felony.

The bill provides an exception for any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

The bill amends s. 921.0022, F.S., ranking the offense on the offense severity chart of the Criminal Punishment Code as a level 4 offense.

The bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill provides an effective date of October 1, 2023.

II. Present Situation:

Current law does not specifically prohibit battery by strangulation except in domestic situations. Research shows that strangulation is a common tactic of violence used in domestic abuse situations and is considered a gendered crime with victims overwhelmingly female and offenders male.¹ Recent research has highlighted how common the use of strangulation is in abusive relationships, often emerging late in the progression of a violent relationship and occurring multiple times over the course of the relationship.² Awareness of the gravity of strangulation has resulted in many states across the USA, including Florida, passing specialized laws making non-fatal strangulation a separate criminal felony.³ It is reported that shelter women on average experience 5.3 strangulation attacks during the course of an abusive relationship.⁴ In 591 baseline cases, 68 cases (11.5 percent) explicitly referenced strangulation and 101 cases (17.1 percent) indicated that possible strangulation may have occurred.⁵

Domestic Battery by Strangulation

A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member⁶ or of a person with whom he or she is in a dating relationship⁷ so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person.⁸ There is an exception for any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.⁹

A person who commits domestic battery by strangulation commits a third degree felony.¹⁰

¹ Thomas, K.A., Joshi, M. and Sorenson, S.B. (2014), “ ‘Do you know what it feels like to drown?’ Strangulation as coercive control in intimate relationships,” *Psychology of Women Quarterly*, Vol. 38 No. 1, pp. 124-137.

² Wilbur, L., Higley, M., Hatfield, J., Surprenant, Z., Taliaferro, E., Smith, D.J. Jr and Paolo, A. (2001), “Survey results of women who have been strangled while in an abusive relationship,” *The Journal of Emergency Medicine*, Vol. 21 No. 3, pp. 297-302.

³ Pritchard, A.J., Reckdenwald, A., Nordham, C. and Holton, J. (2018), “Improving identification of strangulation injuries in domestic violence: Pilot data from a researcher-practitioner collaboration,” *Feminist Criminology*, Vol. 13 No. 2, pp. 160-181.

⁴ *Supra*, Note 2.

⁵ *Id.*

⁶ Section 784.041(2)(b)1., F.S., defines “family or household member” as having the same meaning as in s. 741.28, F.S. Section 741.28(3) defines “Family or household member” to mean spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

⁷ Section 784.041(2)(b)2., F.S., defines “dating relationship” as a continuing and significant relationship of a romantic or intimate nature.

⁸ *Supra*, Note 3.

⁹ Section 784.041(2)(a), F.S.

¹⁰ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Battery, Felony Battery, and Aggravated Battery

A battery occurs when a person: actually and intentionally touches or strikes another person against the other person's will; or intentionally causes bodily harm to another person.¹¹ A person who commits a battery commits a first-degree misdemeanor.^{12, 13}

A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a third degree felony.^{14, 15} A person who commits a battery in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S., commits a third degree felony.¹⁶

Felony battery occurs when a person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.¹⁷

A person commits the second-degree felony¹⁸ of aggravated battery if:

- In committing battery, he or she intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;¹⁹ or
- He or she uses a deadly weapon;²⁰ 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.²¹

For the purposes of sentencing under ch. 921, F.S., the crime of aggravated battery, if committed in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S., is ranked one level above the ranking under s. 921.0022, F.S., for the offense committed.²²

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²³ are listed in a single offense severity ranking chart (OSRC),²⁴ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to

¹¹ Section 784.03(1)(a)1. and 2., F.S.

¹² Section 784.08(1)(b), F.S.

¹³ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year, as provided in s. 775.082 or s. 775.083, F.S.

¹⁴ Section 784.03(2), F.S.

¹⁵ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁶ Section 784.03(3), F.S.

¹⁷ Section 784.041(1)(a)-(b), F.S.

¹⁸ A second degree felony is punishable by a term of imprisonment not exceeding fifteen years, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁹ Section 784.045(1)(a)1., F.S.

²⁰ Section 784.045(1)(a)2., F.S.

²¹ Section 784.045(1)(b), F.S.

²² Section 784.045(3), F.S.

²³ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. Section 921.002, F.S.

²⁴ Section 921.0022, F.S.

the severity of the offense.^{25, 26} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{27, 28} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²⁹

III. Effect of Proposed Changes:

The bill creates s. 784.031, F.S., to prohibit battery by strangulation. A person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person.

A person who violates this section commits a third degree felony.³⁰

The bill provides an exception for an act of medical diagnosis, treatment, or prescription. This newly created offense prohibits battery by strangulation regardless of the offender-victim relationship.

The bill amends s. 921.0022, F.S., ranking the offense on the offense severity chart of the Criminal Punishment Code as a level 4 offense.

The bill provides an effective date of October 1, 2023.

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 Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

²⁵ Section 921.0022(2), F.S.

²⁶ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. Section 921.0023, F.S.

²⁷ Sections 921.0022 and 921.0024, F.S.

²⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. Section 921.0024(1), F.S.

²⁹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. Section 921.0024(2), F.S.

³⁰ A third degree felony is punishable by a term of imprisonment of five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

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 Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections. This bill creates a new felony offense for battery by strangulation, which may result in more prison admissions. Currently, these acts may result in arrests and convictions of misdemeanor battery. Creating the felony offense of battery by strangulation may increase the sentence these offenders would otherwise receive. The CJIC provides the following additional information regarding its estimate:

In FY 18-19, the incarceration rate for a Level 4, 3rd degree felony was 21.9 percent, and in FY 19-20 the incarceration rate was 19.0 percent. In FY 20-21, the incarceration rate for a Level 4, 3rd degree felony was 18.4 percent, and in FY 21-22 the incarceration rate was 19.0 percent.

Per FDLE, in FY 21-22, there were 57,525 arrests for misdemeanor battery, with 10,620 guilty/convicted charges and 4,647 adjudication withheld charges. Per DOC, there were 2,034 new commitments to prison in FY 18-19 for felony battery and aggravated battery offenses, with 193 for domestic battery by strangulation. There were 1,481 new commitments in FY 19-20, with 144 for domestic battery by strangulation. There were 1,316 new commitments in FY 20-21, with 130 for domestic battery by strangulation. There were 1,875 new commitments in FY 21-22, with 175 for domestic battery by strangulation. It is not known how many misdemeanor and felony convictions involved strangulation, though domestic battery by strangulation currently brings in a large number of offenders to prison each year.

Without more detailed data, the impact of this new language on the prison population cannot be quantified.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.031 of the Florida Statutes.

This bill substantially amends section 921.0022 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 March 20, 2023:

The committee substitute:

- Specifies that the prohibited act must create a risk of or cause great bodily harm.
- Provides that the offense is ranked as a level 4 on the Offense Severity Chart.

- B. **Amendments:**

None.

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

³¹ CS/SB 1334 - *Battery by Strangulation*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).