

**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 890

INTRODUCER: Senator Martin

SUBJECT: Battery by Strangulation

DATE: January 16, 2025

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Vaughan | Stokes         | CJ        | <b>Pre-meeting</b> |
| 2. |         |                | ACJ       |                    |
| 3. |         |                | FP        |                    |

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**I. Summary:**

SB 890 amends s. 784.041, F.S., to revise definition of domestic battery by strangulation by removing references to “family or household member” and “dating relationship.” The bill creates a new, separate offense of battery by strangulation, applicable regardless of relationship status. Definitions for “family or household member” and “dating relationship,” are also removed.

The bill also removes an element from the crime. The state will not have to prove that the battery by strangulation created or caused the risk of bodily harm.

The bill amends s. 921.0022 and 943.0584, F.S., to update the Criminal Punishment Code offense severity ranking chart and revise the list of crimes ineligible for expunction or sealing to reflect the changes in s. 784.041, F.S.

The bill may have a positive insignificant impact on the Department of Corrections. *See Section V. Fiscal Impact Statement.*

The bill takes effect July 1, 2026.

**II. Present Situation:**

Section 784.031, F.S., (effective October 1, 2024) created a new offense for battery by strangulation against another person, which is a Level 4, third degree felony under the Criminal Punishment Code. Previously, Florida statutes did 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.<sup>1</sup> 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.<sup>2</sup> Awareness of the gravity of strangulation has resulted in many states across the United States, including Florida, passing specialized laws making non-fatal strangulation a separate criminal felony.<sup>3</sup> It is reported that shelter women on average experience 5.3 strangulation attacks during the course of an abusive relationship.<sup>4</sup>

### **Battery by Strangulation**

A person commits domestic battery by strangulation if they knowingly and intentionally, against another person's will, cause or create a risk of great bodily harm, by impeding the normal breathing or blood circulation of a *family or household member*<sup>5</sup> or of a person with whom he or she is in a dating relationship<sup>6</sup> by applying pressure on the throat or neck of the other person, or by blocking the nose or mouth of the other person.<sup>7</sup> There is an exception for any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.<sup>8</sup> A person who commits domestic battery by strangulation commits a third degree felony.<sup>9</sup> This crime is listed as a level 6 in the offense severity ranking chart.

Battery by strangulation without domestic violence is when 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. This does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state. A person who commits a battery by strangulation commits a third degree felony.<sup>10</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> *Supra*, Note 2.

<sup>5</sup> 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.

<sup>6</sup> Section 784.041(2)(b)2., F.S., defines "dating relationship" as a continuing and significant relationship of a romantic or intimate nature.

<sup>7</sup> *Supra*, Note 3.

<sup>8</sup> Section 784.041(2)(a), F.S.

<sup>9</sup> A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>10</sup> A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 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.<sup>11</sup>

A person who commits a battery commits a first degree misdemeanor.<sup>12</sup>

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.<sup>13,14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

A person commits the second degree felony<sup>17</sup> of aggravated battery if:

- In committing battery, he or she intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;<sup>18</sup> or
- He or she uses a deadly weapon;<sup>19</sup> or
- 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.<sup>20</sup>

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.<sup>21</sup>

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<sup>11</sup> Section 784.03(1)(a)1. and 2., F.S.

<sup>12</sup> A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year, as provided in ss. 775.082 or 775.083, F.S.

<sup>13</sup> Section 784.03(2), F.S.

<sup>14</sup> A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>15</sup> Section 784.03(3), F.S.

<sup>16</sup> Section 784.041(1)(a)-(b), F.S.

<sup>17</sup> A second degree felony is punishable by a term of imprisonment not exceeding fifteen years, as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>18</sup> Section 784.045(1)(a)1., F.S.

<sup>19</sup> Section 784.045(1)(a)2., F.S.

<sup>20</sup> Section 784.045(1)(b), F.S.

<sup>21</sup> Section 784.045(3), F.S.

## **Criminal Punishment Code**

Felony offenses which are subject to the Criminal Punishment Code<sup>22</sup> are listed in a single offense severity ranking chart (OSRC),<sup>23</sup> 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 the severity of the offense.<sup>24,25</sup> 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.<sup>26, 27</sup> 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.<sup>28</sup>

## **Sealing and Expunction of Criminal History Records**

A criminal history record includes any non-judicial record maintained by a criminal justice agency<sup>29</sup> that contains criminal history information.<sup>30</sup> Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.<sup>31</sup>

A person may have his or her criminal history record expunged under certain circumstances.<sup>32</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The Florida Department of Law Enforcement (FDLE) maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>33</sup> The criminal history record retained by the FDLE is confidential and exempt.<sup>34</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.<sup>35</sup>

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<sup>22</sup> 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.

<sup>23</sup> Section 921.0022, F.S.

<sup>24</sup> Section 921.0022(2), F.S.

<sup>25</sup> 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.

<sup>26</sup> Sections 921.0022 and 921.0024, F.S.

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> Section 943.045(11), F.S., provides that criminal justice agencies include a court, the Florida Department of Law Enforcement, the Department of Juvenile Justice, components of the Department of Children and Families, other governmental agencies that administrate criminal justice, and the investigations component of the Department of Financial Services.

<sup>30</sup> Section 943.045(6), F.S.

<sup>31</sup> Section 943.045(5), F.S.

<sup>32</sup> Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>33</sup> Section 943.045(16), F.S.

<sup>34</sup> Section 943.0585(6)(a), F.S.

<sup>35</sup> Section 943.0585(6), F.S.

When a criminal history record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record.<sup>36</sup> A court may order a criminal history record sealed,<sup>37</sup> rendering it confidential and exempt from Florida's public records laws.<sup>38</sup> Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities<sup>39</sup> for licensing, access authorization, and employment purposes.<sup>40</sup>

### III. Effect of Proposed Changes:

The bill amends s. 784.041, F.S., to revise definition of domestic battery by strangulation by removing references to "family or household member" and "dating relationship." The bill creates a new, separate offense of battery by strangulation, applicable regardless of relationship status. Definitions for "family or household member" and "dating relationship," are also removed.

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### 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.

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<sup>36</sup> Section 943.045(19), F.S.

<sup>37</sup> Section 943.059, F.S.

<sup>38</sup> Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

<sup>39</sup> Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

<sup>40</sup> Sections 943.059(6)(a), F.S.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive insignificant impact of the prison population for the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per DOC, in FY 24-25, there were 166 new commitments to prison for a violation of the Level 6, 3rd degree felony for domestic battery by strangulation, and 7 new commitments for battery by strangulation against another person, a Level 4, 3rd degree felony. Given the low number of new commitments for battery by strangulation against another person under current law and the small difference in incarceration rates between Level 4 (21%) and Level 6 (26%) 3rd felonies, the impact on the prison population is not expected to be significant.<sup>41</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>41</sup> Office of Economic and Demographic Research, *SB 890- Battery by Strangulation*, (on file with the Senate Committee on Criminal Justice)

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 784.041, 921.0022, 943.0584

**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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