

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 Criminal Justice Committee

BILL: CS/SB 1808

INTRODUCER: Criminal Justice Committee and Senator Diaz de la Portilla

SUBJECT: Assault or Battery

DATE: April 12, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties must be sentenced to a 10-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm or destructive device.

The bill also provides that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties, must be sentenced to a 12-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

This bill substantially amends the following section of the Florida Statutes: 784.07.

II. Present Situation:

Simple battery is generally a first degree misdemeanor.¹ Section 784.07(2)(b), F.S., reclassifies² a battery from a first degree misdemeanor to a third degree felony³ if a person knowingly⁴ commits a battery upon any of the following persons in the lawful performance of that person's duties:

- A law enforcement officer.⁵
- A firefighter.⁶
- An emergency medical care provider.
- 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 public transit employee or agent.
- A person licensed as a security officer and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer.
- A security officer employed by the board of trustees of a community college.

Section 784.07(3)(a), F.S., provides that a person who is convicted under s. 784.07(2)(b), F.S., must be sentenced to a 3-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm⁷ or destructive device.⁸ Section 784.07(3)(b),

¹ See s. 784.03(1), F.S. This offense is committed 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. *Id.* A first degree misdemeanor is punishable by up to one year in a county jail and a fine of up to \$1,000 may also be imposed. ss. 775.082 and 775.083, F.S.

² Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for the offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony.

³ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000 may also be imposed. ss. 775.082 and 775.083, F.S. The reclassified third degree felony under s. 784.07(2)(b), F.S., is ranked in Level 4 of the offense severity ranking chart of the Criminal Punishment Code. s. 921.0022(3)(d), F.S.

⁴ As regards a law enforcement officer as a victim under s. 784.07, the Florida Supreme Court has held that the term "knowingly" in s. 784.07, F.S., includes knowledge of the officer's status. *Polite v. State*, 973 So.2d 1107, 1115 (Fla.2007).

⁵ Section 784.07(1)(d), F.S., defines the term "law enforcement officer" to include a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

⁶ Section 784.07(1)(b), F.S., defines the term "firefighter" to mean any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

⁷ Section 790.001(6), F.S., defines the term "firearm" to mean any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon;

F.S., provides that a person who is convicted under s. 784.07(2)(b), F.S., must be sentenced to a 8-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a semiautomatic firearm⁹ and its high-capacity detachable box magazine¹⁰ or a machine gun.¹¹

Section 784.07(3), F.S., also provides that, notwithstanding s. 948.01, F.S., adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275, F.S., or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, F.S., prior to serving the minimum sentence.

III. Effect of Proposed Changes:

The bill retains current 3 and 8-year mandatory minimum terms under s. 784.07(3), F.S., if the battery is upon a person specified in s. 784.07(2), F.S., who is not a law enforcement officer or firefighter.

The bill amends s. 784.07(3), F.S., to provide that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties must be sentenced to a 10-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm or destructive device.

The bill also amends s. 784.07(3), F.S., to provide that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties, must be sentenced to a 12-year mandatory minimum term of imprisonment if the person, during the commission of this offense,

any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

⁸ Section 790.001(4), F.S., defines the term “destructive device” to mean any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. “Destructive device” does not include a device which is not designed, redesigned, used, or intended for use as a weapon; any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; any shotgun other than a short-barreled shotgun; or any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

⁹ Section 775.087(3)(e)2., F.S., defines the term “semiautomatic firearm” to mean a firearm which is capable of firing a series of rounds by separate successive depressions of the trigger and which uses the energy of discharge to perform a portion of the operating cycle.

¹⁰ Section 775.087(3)(e)1., F.S., defines the term “high-capacity detachable box magazine” to mean any detachable box magazine, for use in a semiautomatic firearm, which is capable of being loaded with more than 20 centerfire cartridges.

¹¹ Section 790.001(9), F.S., defines the term “machine gun” to mean any firearm, as defined in s. 790.001, F.S., which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

Staff notes that the battery offense to which the minimum sentence provisions apply is a third degree felony (as reclassified). Since the maximum penalty provided under s. 775.082, F.S., for a third degree felony is 5-years state imprisonment, the mandatory minimum terms are greater than the maximum penalty under s. 775.082, F.S. This is not unlike the current 8-year mandatory minimum term under s. 784.07(3)(b), F.S.¹²

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates 10 and 12-year mandatory minimum terms of imprisonment.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimated that the original bill would have an insignificant prison bed impact. Given that the committee substitute reduces the mandatory minimum terms provided in the original bill, this estimate should not change.

VI. Technical Deficiencies:

None.

¹² In *Medenhall v. State*, 48 So.3d 740 (Fla.2010), the Florida Supreme Court held that specific provisions of s. 775.087, F.S., the “10-20-Life” statute with regard to mandatory minimums controlled over the general provisions of s. 775.082, F.S., regarding statutory maximums.

VII. Related Issues:

None.

VIII. 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 April 12, 2011:**

- Provides that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties must be sentenced to a 10-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm or destructive device.
- Provides that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties, must be sentenced to a 12-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

B. Amendments:

None.