

STORAGE NAME: h0061.cp

DATE: February 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 61

RELATING TO: Battery

SPONSOR(S): Representative Constantine

STATUTE(S) AFFECTED: Sections 784.041, and 921.0012, F.S.

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill creates a new section 784.041, F.S., entitled: "Felony battery". The bill makes it a third degree felony for a person to touch or strike another in a manner which causes great bodily harm, permanent disability, or permanent disfigurement. The person's intent to cause serious injury is not an element of the felony battery created by this bill. If the state is able to prove a person has the intent to cause serious injury, the offense is presently aggravated battery, a second degree felony.

The fiscal impact of this bill is indeterminate, but it will probably have a minimal impact on the state prison system.

This bill creates another lesser included offense of aggravated battery. A jury that is vacillating on whether the state proved the specific intent element of aggravated battery might be more inclined to convict a person of the new felony battery offense. This would be an increase in punishment from simple battery, the only lesser included offense of aggravated battery in current law. However, a jury that would have otherwise resolved that doubt in favor of an aggravated battery verdict, might be more inclined to settle on the lesser felony battery when offered this mid point compromise. See Comments, part A, p.8.

In order to prove felony battery, this bill requires the defendant to touch or strike the victim. Touching is not a required element of simple battery or aggravated battery, but rather it is one of two alternatives. The other alternative, causing bodily harm (without touching), is not provided in this bill as a method of proving felony battery. Consequently, where the state is only able to prove that the defendant intentionally caused bodily harm, but did not actually touch or strike, it will not be able to obtain a conviction for felony battery. See Comments, part B, p.9.

Last session, the Legislature created "felony battery" for repeat offenders who commit a third simple battery. This bill creates a second type of "felony battery" in a separate subsection. To avoid any confusion, the felony battery created by this bill could be placed along side either the already existing felony battery subsection or the aggravated battery subsection. See Comments, part C, p.9.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Battery Offenses:

Chapter 784, F.S., defines and provides penalties for battery offenses, as follows:

- ▶ The offense of *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 an individual. Battery is a first degree misdemeanor, punishable by up to a \$1,000 fine and/or up to one year in county jail. [s. 784.03(1) , F.S.]
- ▶ Last session, the Legislature created the offense of *felony battery*. [s. 784.03 (2), F.S. (1996 supp); s.5, ch. 96-392.] Felony battery occurs when a person who has two prior battery convictions commits a third or subsequent battery offense. Felony battery is a third degree felony not presently ranked on the sentencing guidelines *Offense Severity Ranking Chart*. Unranked third degree felonies are treated as Level 1 offenses under the guidelines. [s. 921.0013, F.S.] This means that an offender, who just minimally qualified for the felony battery by virtue of two prior misdemeanor battery convictions, would not be eligible for a state prison sentence under the guidelines. This is true even assuming points were scored for moderate injury.

In some cases, a judge could depart from the sentencing guidelines and impose a sentence of up to 5 years in prison. [s. 784.03, 775.082, F.S.] However, such a departure is restricted to circumstances described in statutes and case law. See s. 921.0016, F.S.

- ▶ *Aggravated battery* occurs when a person commits a battery and *intentionally* or knowingly causes great bodily harm, permanent disability, or permanent disfigurement *or* uses a deadly weapon. Aggravated battery also occurs if the victim of a battery was pregnant and the offender knew or should have known that the victim was pregnant. Aggravated battery is a second degree felony ranked in Level 7 of the sentencing guidelines *Offense Severity Ranking Chart*. Under the sentencing guidelines, a first-time offender would receive a recommended state prison sentence, ranging from:
 - ▶ 2.9 to 4.8 years, if the offense involved moderate victim injury; or
 - ▶ 4.3 to 7.1 years, if the offense involved severe victim injury.

Note: According to the Department of Corrections, in about 56 % of cases where the guidelines recommend state prison, defendants receive a mitigated sentence (downward departure). This figure includes mitigation attributable to plea agreements, a valid downward departure reason. In some cases, a judge could depart upwards and impose a sentence of up to 15 years in prison. [s. 784.045, 775.082, F.S.] Such a departure is restricted to circumstances described in statutes and case law. See s. 921.0016, F.S.

Currently, several statutes reclassify the degree of the offenses described above for certain victims, including but not limited to, school employees, community college

security officers, HRS employees, emergency medical services personnel, persons 65 years of age or older, law enforcement officers, correctional officers, correctional probation officers, and firefighters. To illustrate the effect of this penalty enhancement, if a victim of a *battery* is not an enumerated person, the offender commits a *first degree misdemeanor*; if the victim is an enumerated person, the offender commits a *third degree felony*.

2. General vs. Specific Intent Crimes:

A general intent crime requires proof of the defendant's intent to do the prohibited act. In contrast, a specific intent crime requires proof of the defendant's subjective intent to cause a statutorily prohibited result. Aggravated battery is a specific intent crime; the state must prove that the defendant had the subjective intent to cause the serious injury which resulted from the battery. Battery, sometimes referred to as "simple battery", is a general intent crime.

If a judge or jury finds that the state failed to present sufficient evidence of a defendant's specific intent to cause serious injury, a defendant will not be convicted of aggravated battery even if the victim's injuries are serious. In such a case, the defendant could only be convicted of simple battery, a lesser included offense of aggravated battery.

Case law holds that the state can prove specific intent to cause serious injury from the seriousness of the injuries alone. See e.g., Hardwick v. State, 630 So.2d 1212, (5th DCA 1994) (Evidence supported finding on element of aggravated battery that defendant acted with specific intent to do requisite permanent harm to victim if necessary to obtain her purse; defendant forcibly pulled on victim's purse, jerked her around and ripped her purse off her hand with sufficient force to severely break her finger).

However, in some cases a judge or jury would prefer to have direct evidence of the person's subjective intent. For example, in a case where a defendant delivers only one punch to the victim's face, the defendant may argue that he only intended minor or moderate harm and not the serious injury which resulted. If the jury believed the defendant and the state had no other proof, it should return a verdict of simple battery under current law even if the victim had suffered severe injuries to the face or eye.

B. EFFECT OF PROPOSED CHANGES:

Last session the Legislature created felony battery, a third degree felony occurring when a defendant commits a simple battery after having been previously convicted of 2 or more simple batteries. This bill creates a second type of felony battery. It makes it a third degree felony for a person to intentionally touch or strike another in a manner which causes great bodily harm, permanent disability, or permanent disfigurement. The person's subjective intent to cause serious injury is not an element of the felony battery created by this bill. If the state is able to prove a person has the subjective intent to cause serious injury, the offense is presently aggravated battery, a second degree felony.

This bill ranks the new *felony battery* in Level 6 of the sentencing guidelines *Offense Severity Ranking Chart*. Under the sentencing guidelines, a first-time offender would receive a recommended state prison sentence, ranging from:

- ▶ 1.6 to 2.7 years, if the offense involved moderate victim injury; or
- ▶ up to 5 years, if the offense involved severe victim injury.

Note: According to the Department of Corrections, in about 56 % of cases where the guidelines recommend state prison, defendants receive a mitigated sentence (downward departure). This figure includes mitigation attributable to plea agreements, a valid downward departure reason. In some cases, a judge could depart from the sentencing guidelines and impose a sentence of up to 5 years in prison, the statutory maximum. [s. 775.082, F.S.] However, such a departure is restricted to circumstances described in statutes and case law. See s. 921.0016, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No. Although the bill creates a new crime, the activity it prohibits is presently unlawful i.e., a simple battery. The bill increases the severity of punishment for a special class of simple battery offenses. To that extent, the bill could be

viewed as creating a greater government sanction, but it does not create *new* government interference.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section 1: Creates section 784.041, F.S., as described in section I, B, above.
2. Section 2: Amends section 921.0012, F.S., by ranking the new *felony battery* in Level 6 of the sentencing guidelines *Offense Severity Ranking Chart*.
3. Section 3: Provides an effective date of October 1, 1997 for offenses committed on or after that date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:
See fiscal comments.
2. Recurring Effects:
See fiscal comments.
3. Long Run Effects Other Than Normal Growth:
See fiscal comments.
4. Total Revenues and Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:
See fiscal comments.
2. Recurring Effects:
See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

This bill is identical to HB 1407, which was passed by the House last year, but which failed to pass in the Senate. The Criminal Justice Estimating Conference (CJEC) reviewed HB 1407 to determine its impact on the state prison system. On March 29, 1996, the CJEC determined that the bill had an indeterminate, but probably, minimal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt for the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. LESSER INCLUDED OFFENSE MIGHT CREATE DOUBLE-EDGE SWORD:

This bill creates another lesser included offense of aggravated battery. Presently, simple battery is a lesser included offense of aggravated battery because the state must prove the elements of a simple battery in order to obtain a conviction for aggravated battery. When the state has failed to prove that a person had the specific intent to cause serious injury or had possession of a deadly weapon, the jury may convict the person of the lesser included simple battery.

This bill creates a felony battery offense which falls between simple battery and aggravated battery. It is a lesser included offense of aggravated battery because it contains all the elements except for the specific intent requirement. This might create a double-edge sword for prosecutors and defenders alike. On the one hand, a jury that is vacillating on whether the state has proved the specific intent element of aggravated battery will be inclined to convict a person of the new felony battery offense, an increase in punishment from simple battery. On the other hand, a jury that would have otherwise resolved that doubt in favor of an aggravated battery verdict, might be more inclined to settle on the lesser felony battery when offered this mid point compromise.

B. FELONY BATTERY OFFENSE REQUIRES PROOF OF TOUCHING OR STRIKING:

Aggravated battery requires proof of the commission of a simple battery. Simple battery may be proved one of two ways: (1) by showing that the person actually and intentionally touched or struck another; or (2) by showing that the person intentionally causes bodily harm to another. [s. 784.03(1)(a)1. and 2., F.S. (1996 Supp.)] The statute defining aggravated battery does not reference either alternative, it simply requires proof of the commission of "battery". Consequently, if the state proves a simple battery by either of the two alternatives listed above, it may also obtain a conviction for aggravated battery if it proves the aggravating elements of specific intent or use of a deadly weapon. [s. 784.045, F.S.]

In contrast to aggravated battery, the definition of felony battery provided in this bill specifically tracks only the first method of proving simple battery (actual and intentional touching or striking), but not the second (intentionally causing bodily harm). This creates a loophole for those cases where the state is only able to prove a case by the second method. That is, where the state is only able to prove that the defendant intentionally caused bodily harm, but did not actually touch or strike, it will not be able to obtain a conviction for felony battery. The vast majority of battery cases involve proof of intentional touch or striking by a person. Nonetheless, the second method of proving simple battery captures those cases where a person does not actually touch or strike another, but nevertheless intentionally commits an act which causes bodily injury to another. For example, one could take a chair out from under another and never actually strike or touch. This act would still be a simple battery if it causes bodily harm. However, as the bill is presently written, this action would not constitute a felony battery even if it caused great bodily harm, because it does not involve an actual touching or striking.

C. SEPARATE FELONY BATTERY OFFENSE SUBSECTION MAY CREATE CONFUSION:

The bill creates a second type of felony battery in a new subsection to be inserted between the simple battery and aggravated battery statutes. Last year, the Legislature amended the simple battery statute to provide a felony battery offense for repeat simple battery offenders. The catch line to the simple battery statute now reads: "Battery; felony battery". The creation of another felony battery offense in a different subsection may create some confusion among practitioners. To remedy this, the felony battery created by this bill could be placed along side either the already existing felony battery subsection or the aggravated battery subsection.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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