

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 9, 1998 Revised: 03/13/98 \_\_\_\_\_

Subject: Obstruction of a Law Enforcement Officer

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

Senate Bill 782 increases by one felony degree the crimes of falsely personating and acting as a law enforcement officer (increased from a third degree felony to a second degree felony) and falsely personating an officer during the course of the commission of a felony (increased from a second degree felony to a first degree felony). The bill also specifically provides that the first degree felony offense of false personation of a law enforcement officer during the course of the commission of a felony resulting in the death or personal injury of another human being is punishable by a term of years not exceeding life imprisonment. The rankings of these offenses under the Criminal Punishment Code offense severity ranking chart are also increased.

This bill substantially amends the following sections of the Florida Statutes: 843.08 and 921.022.

II. Present Situation:

Section 843.08, F.S., does not make criminal the act of false personation of a law enforcement officer, rather someone who "takes it upon himself to act as such" is criminal. State v. Alecia, 692 So.2d 263 (Fla. 5th DCA 1997), quoting s. 843.08, F.S. (emphasis added). Section 843.085, F.S., punishes the unlawful use of police badges or other indicia of authority. Section 843.081, F.S., prohibits a person to use any flashing or rotating blue lights on any vehicle or vessel not owned by the government unless this person is a law enforcement officer or a special officer appointed by the Governor under the authority of Chapter 354 to protect any railroad or other common carrier.

Section 843.08, F.S., provides that a person who falsely assumes or pretends to be a sheriff or deputy sheriff, a police officer, a Florida Highway Patrol officer, a Game and Fresh Water Fish Commission officer, a Department of Environmental Protection officer, a Department of Transportation officer, a Department of Corrections officer or correctional probation officer, any

member of the Parole Commission or administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, a lottery special agent or investigator; a beverage enforcement agent, a watchman, a state attorney, or assistant state attorney, a state attorney investigator, a statewide prosecutor or assistant statewide prosecutor, or a coroner, and acts as this officer or requires another person to aid or assist him in a matter pertaining to the duty of such officer, commits a third degree felony, which is currently ranked for purposes of sentencing in Level 2 of the Criminal Punishment Code offense severity ranking chart. s. 921.0022(3)(b), F.S.

If the person falsely personates such officer during the course of the commission of a felony, the person commits a second degree felony. This offense is currently unranked in the Criminal Punishment Code offense severity ranking chart. Offenses not ranked in the ranking chart are ranked under a default section, s. 921.0023, F.S., that ranks these offenses based on their felony degree. A second degree felony ranked in the ranking chart is ranked as a Level 4 offense.

If the person falsely personates such officer during the course of the commission of a felony resulting in the death or personal injury of another human being, the person commits a first degree felony. This offense is unranked in the Criminal Punishment Code offense severity ranking chart, and is ranked under s. 921.0023, F.S. A first degree felony unranked in the ranking chart is ranked as a Level 7 offense.

### **III. Effect of Proposed Changes:**

Senate Bill 782 amends s. 843.08, F.S., which prohibits, in part, false personation of a law enforcement officer.

Currently, falsely personating a law enforcement officer and acting as such officer is a third degree felony ranked in Level 2 of the Criminal Punishment Code offense severity ranking chart. *Senate Bill 782 provides that this false personation offense is a second degree felony ranked in Level 4 of the Criminal Punishment Code offense severity ranking chart.* While the lowest permissible sentence, as scored under the Code worksheet, would appear to be a non-prison sanction, the judge is authorized under the Code to impose a sentence up to the statutory maximum penalty for a second degree felony, which is 15 years imprisonment. s. 775.082, F.S.

Currently, falsely personating an officer during the course of the commission of a felony is a second degree felony ranked by the default provisions of s. 921.0023, F.S., as a Level 4 offense. *Senate Bill 782 provides that this false personation offense is a first degree felony, and specifically ranks the offense in the Criminal Punishment Code offense severity ranking chart as a Level 7 offense.* The lowest permissible sentence for this offense would appear to be a prison sentence, assuming no mitigating circumstances are present. The length of the actual prison sentence would depend upon whether other sentence point enhancements are present such as a prior record and whether the judge chooses to sentence above the lowest permissible sentence. The maximum penalty for a first degree felony (where the first degree penalty is not punishable by imprisonment for a term of years not exceeding life) is 30 years imprisonment. s. 775.082, F.S.

Conceivably, the person could actually receive a longer sentence for the false personation offense than he receives for the connected felony offense. For example, the person may falsely personate a law enforcement officer (Level 7) during the course of the commission of armed trespass (Level 4).

Currently, falsely personating an officer during the course of the commission of a felony resulting in the death or personal injury of another human being is a first degree felony ranked by the default provisions of s. 921.0023, F.S., as a Level 7 offense. The maximum penalty for this first degree felony is 30 years imprisonment. s. 775.082. *Senate Bill 910 provides that this false personation offense is a first degree felony punishable by imprisonment for a term of years not exceeding life, and specifically ranks the offense in the Criminal Punishment Code offense severity ranking chart as a Level 9 offense.* The lowest permissible sentence for this offense is a prison sentence. The length of the actual prison sentence would depend upon whether other sentence point enhancements are present such as a prior record and whether the judge chooses to sentence above the lowest permissible sentence. Again, the sentence for the false personation offense could be greater than the connected felony offense in which death or injury to another human being resulted. For example, the person falsely personates a law enforcement officer (Level 9) during the course of the commission of an aggravated battery where great bodily harm is intentionally caused (Level 7).

The effective date of this act is October 1 of the year in which enacted, and the act applies to all offenses committed on or after that date.

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

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

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Staff has requested that the Criminal Justice Estimating Conference assess the fiscal impact of SB 782. The Conference had not met to consider the fiscal impact of this bill at the time this analysis was completed, so an analysis of the fiscal impact of SB 782 is presently unavailable.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Criminal Justice:

Provides that false personation offenses in s. 843.08, F.S., include false personation of an officer of the Department of Insurance. (WITH TITLE AMENDMENT)