

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 Assault or Battery on Utility Worker

SPONSOR(S): Fullwood

TIED BILLS: **IDEN./SIM. BILLS:** SB 344

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---------|--|
| 1) Criminal Justice Subcommittee | | Cox | Cunningham |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Section 784.07, F.S., reclassifies the felony and misdemeanor degree of assault and battery offenses committed against law enforcement officers, firefighters, and other specified persons, as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of an aggravated assault, from a third degree felony to a second degree felony.
- In the case of an aggravated battery, from a second degree felony to a first degree felony.

The bill amends s. 784.07, F.S., to add utility workers to the list of specified persons. As a result, a defendant who commits an assault or battery against a utility worker would be subject to the reclassified penalties described above.

The bill defines "utility worker" as a person who bears at least one patch or emblem that is visible at all times and that clearly identifies the employing or contracting utility and that clearly identifies the person as a utility worker under contract with or employed by an entity that owns, operates, leases, or controls a plant, property, or facility for the generation, transmission, or furnishing to or for the public of electricity, natural or manufactured gas, water, telephone, or communications service, including two or more utilities rendering joint service.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, because the bill expands the application of s. 784.07, F.S., to include utility workers to the list of persons, which if assaulted or battered, result in a defendant being subject to the reclassified felony penalties, it may have a negative prison bed impact on the Department of Corrections.

Additionally, the bill reclassifies assault on a utility worker from a second to a first degree misdemeanor which may have a negative jail bed impact on local governments. However, the bill also reclassifies battery on a utility worker from a misdemeanor to a felony, which may have a positive jail bed impact.

The bill provides an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Assault

An "assault," which is classified as a second degree misdemeanor,¹ occurs when a person intentionally and unlawfully threatens by word or act to do violence to another person, coupled with an apparent ability to commit violence, and an action which creates a well-founded fear in such other person that violence is imminent.²

An "aggravated assault," which is classified as a third degree felony,³ is an assault:

- With a deadly weapon without intent to kill; or
- With an intent to commit a felony.⁴

Battery

A "battery," which is classified as a first degree misdemeanor,⁵ occurs when a person actually and intentionally touches or strikes another person against their will or intentionally causes bodily harm to another person.⁶

An "aggravated battery," which is classified as a second degree felony,⁷ occurs when a person, in committing battery:

- Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
- Uses a deadly weapon.⁸

Penalty Enhancements for Assault and Battery under s. 784.07, F.S.

Currently, s. 784.07, F.S., provides that when a person is charged with knowingly committing assault, aggravated assault, battery, or aggravated battery against a law enforcement officer;⁹ firefighter;¹⁰ emergency medical care provider;¹¹ traffic accident officer as described in s. 316.640, F.S.; nonsworn law enforcement agency employee certified as an agency inspector, blood alcohol analyst, or breath test operator;¹² law enforcement explorer;¹³ or public transit employee¹⁴ who is engaged in the lawful performance of his or her duties, the offense is reclassified as follows:

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

² Section 784.011, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 784.021, F.S.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁶ Section 784.03(1)(a), F.S.

⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 784.045(1)(b), F.S., states a person also commits aggravated battery if 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.

⁹ Section 784.07, F.S., defines "law enforcement officer" to also include a correctional officer; a correctional probation officer; an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S.; a 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; and law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

¹⁰ Section 784.07(1)(b), F.S., defines "firefighter" as 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.

¹¹ Section 784.07(10)(a), F.S., defines "emergency medical care provider" as an ambulance driver, emergency medical technician, paramedic, registered nurse, physician, or medical director as defined in s. 401.23; or any person authorized by an emergency medical service licensed under ch. 401, F.S., who is engaged in the performance of his or her duties. It also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof.

¹² Employee must be in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI. Section 784.07(2), F.S.

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.¹⁵
- In the case of battery, from a first degree misdemeanor to a third degree felony.¹⁶
- In the case of an aggravated assault, from a third degree felony to a second degree felony.¹⁷
- In the case of an aggravated battery, from a second degree felony to a first degree felony.¹⁸

Additionally, a person charged with a violation of s. 784.07, F.S., is not eligible for:

- Their adjudication of guilt to be withheld;
- Their sentence to be suspended or deferred;¹⁹ or
- Statutory gain-time under s. 944.275, F.S., or any form of discretionary release, prior to serving the minimum sentence.²⁰

Effect of the Bill

The bill amends s. 784.07, F.S., to add “utility worker” to the list of officers and persons described above. Thus, a defendant who commits an assault or battery offense against a utility worker will be subject to the reclassified penalties described above.

The bill defines “utility worker” as a person who bears at least one patch or emblem that is visible at all times and that clearly identifies the employing or contracting utility and that clearly identifies the person as a utility worker under contract with or employed by an entity that owns, operates, leases, or controls a plant, property, or facility for the generation, transmission, or furnishing to or for the public of electricity, natural or manufactured gas, water, telephone, or communications service, including two or more utilities rendering joint service.

The bill makes conforming changes to ss. 901.15, 943.051, 985.11, 985.644, and 921.0022, F.S., to correct terminology and statutory cites.

B. SECTION DIRECTORY:

Section 1. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 4. Amends s. 985.11, F.S., relating to fingerprinting and photographing.

¹³ Section 784.07(1)(c), F.S., defines “law enforcement explorer” as any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.

¹⁴ Section 784.07, F.S., defines “public transit employees or agents” as bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S.

¹⁵ Section 784.07(2)(a), F.S.

¹⁶ Section 784.07(2)(b), F.S. Section 784.07(d), F.S., states that a person convicted of battery under s. 784.07(2)(b), F.S., is subject to mandatory minimum terms of imprisonment if during the commission of the offense, the person possessed a firearm or destructive device as defined in s. 790.001, F.S. (three-year mandatory minimum imprisonment); semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), F.S., or machine gun as defined in s. 790.001, F.S. (eight-year mandatory minimum imprisonment).

¹⁷ Section 784.07(2)(c), F.S.

¹⁸ Section 784.07(2)(d), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁹ Section 784.07, F.S., states that this is notwithstanding when a court may place a defendant on probation or community control under s. 948.01, F.S.

²⁰ This does not apply if the early release is as a result of pardon or executive clemency, or conditional medical release under s. 947.149, F.S.

Section 5. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.

Section 6. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 7. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, because the bill expands the application of s. 784.07, F.S., to include utility workers to the list of persons, which if assaulted or battered, result in a defendant being subject to reclassified penalties, it may have a negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill reclassifies assault on a utility worker from a second to a first degree misdemeanor which may have a negative jail bed impact on local governments. However, the bill also reclassifies battery on a utility worker from a first degree misdemeanor to a third degree felony, which may have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES