

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 Committee on Communications, Energy, and Public Utilities

BILL: SB100

INTRODUCER: Senator Soto

SUBJECT: Assault or Battery on a Utility Worker

DATE: September 30, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB100 amends s. 784.07, F.S., on assault or battery of specified persons. This section currently provides that if an assault or battery is knowingly committed against one of these specified persons while the person is engaged in the lawful performance of his or her duties, the offense is reclassified and the penalty is increased. The bill defines the term “utility worker” and adds such a person to the list of specified persons, thereby increasing the penalty for assault or battery on a utility worker while lawfully engaged in the performance of his or her duties.

This bill substantially amends the following sections of the Florida Statutes: 784.07, 901.15, 943.051, 985.11, 985.644, and 921.0022.

II. Present Situation:

Section 784.07, F.S., provides that when a person is charged with knowingly committing an assault¹ or battery² upon one of a list of specified types of employees or persons while that employee or person is engaged in the lawful performance of his or her duties, the offense is to be reclassified. The list contains the following types of employees or persons:

¹ An “assault” is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. s. 784.011(1), F.S.

² The offense of “battery” occurs 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. s. 784.03(1)(a), F.S.

- a law enforcement officer,³
- a firefighter,⁴
- an emergency medical care provider,⁵
- a railroad special officer,⁶
- a traffic accident investigation officer as described in s. 316.640, F.S.,
- 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,⁷
- a traffic infraction enforcement officer as described in s. 316.640, F.S.,
- a parking enforcement specialist as defined in s. 316.640, F.S.,
- a person licensed as a security officer as defined in s. 493.6101, F.S., 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, and
- a public transit employee or agent.⁸

The section provides that when a person is charged with knowingly committing an assault or battery upon one of a list of specified types of employees or persons while that employee or person is engaged in the lawful performance of his or her duties, the offense is to be reclassified as follows:

³ “Law enforcement officer” includes 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 or the Department of Law Enforcement.

⁴ “Firefighter” means 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.

⁵ “Emergency medical care provider” means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under chapter 401, F.S., who is engaged in the performance of his or her duties. The term “emergency medical care provider” also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 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.

⁶ “Railroad special officer” means a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S.

⁷ “Law enforcement explorer” means 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.

⁸ It is unclear whether a public transit employee or agent is included. The section applies if someone is charged with knowingly committing an assault or battery upon an employee or person of a type contained in list 1 while that employee or person, identified here in list 2 by using terms different from those in list 1, is engaged in the lawful performance of his or her duties. The term “public transit employee or agent” is not included in list 1, but is in list 2. The section defines the term to mean “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.”

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

Reclassifying an offense has the effect of increasing the maximum sentence and fines that can be imposed for an offense. The maximum sentence or fine that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is 60 days of incarceration in a county jail; for a first degree misdemeanor, it is 1 year of incarceration in a county jail; for a third degree felony, it is 5 years of state imprisonment; for a second degree felony, it is 15 years of state imprisonment; and for a first degree felony, it is generally 30 years of state imprisonment.⁹ The maximum available fines also escalate based on the degree of the offense.¹⁰

The section also provides that a person who is convicted of battery upon one of those listed employees or persons and who during the commission of the offense possessed:

- A “firearm” or “destructive device” as those terms are defined in s. 790.001, F.S., shall be sentenced to a minimum term of imprisonment of 3 years.
- A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), F.S., or a machine gun as defined in s. 790.001, F.S., shall be sentenced to a minimum term of imprisonment of 8 years.

Finally, notwithstanding s. 948.01, F.S., adjudication of guilt or imposition of sentence cannot 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.

Section 901.15(15), F.S., provides that a law enforcement officer may make an arrest without a warrant when there is probable cause to believe that the person has committed an assault upon an officer specified in s. 784.07, F.S.

Sections 943.051(3)(b)6. and 985.11(1)(b)6., F.S., require fingerprinting of a minor who is charged with or found to have committed assault or battery upon one of those officers specified in s. 784.07, F.S.

⁹ s. 775.082, F.S.

¹⁰ s. 775.083, F.S.

Section 985.644(3)(a), F.S., requires that all employees of the Department of Juvenile Justice and all personnel of contract providers for any program for children undergo level 2 employment screening to ensure that they have not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to a violation of s. 784.07, F.S., or similar law in another jurisdiction.

Section 921.0022(3), F.S., sets out the offense severity ranking chart, including: battery under s. 784.07(2)(b), F.S., of one of those listed employees or persons, a third degree felony; aggravated assault under s. 784.07(2)(c), F.S., of one of those listed employees or persons, a second degree felony; and aggravated assault under s. 784.07(2)(d), F.S., of one of those listed employees or persons, a first degree felony.

III. Effect of Proposed Changes:

Section 1 amends s. 784.07, F.S. Currently this section provides for the reclassification (increase) of charges for knowingly committing an assault or battery upon specified employees or persons when they are engaged in the lawful performance of their duties. The bill adds a “utility worker” to this list of employees or persons, and defines the term utility worker to mean “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 result is that a person charged with such an assault or battery upon a utility worker will face increased periods of incarceration and increased fines.

Sections 2-5 amend ss. 901.15, 943.051, 985.11, and 985.644, F.S., to make conforming changes.

Section 6 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to incorporate the amendments to s. 784.07, F.S.

Section 7 provides that the bill takes effect October 1, 2014.

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 may have an insignificant prison bed impact (low volume).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following information was provided by the bill sponsor.

Data on assaults or batteries on utility workers						
Utility: Florida Power and Light						
Time Period Covered	Verbal Threats	Weapon displayed	Physical Assaults	Gun Discharge	Actual injuries	Fatalities
March 2011 - September 2013	1346	61	124	4	2	1
Utility: Tampa Electric Company						
Time Period Covered	Verbal Threats	Weapon displayed	Physical Assaults	Gun Discharge	Actual injuries	Fatalities
2012	13 total 6 to do bodily harm 4 to sic dog on employee 3 to shoot employee	0	0	0	0	0
2013	16 total 9 to do bodily harm 3 to sic dog on employee 1 to shoot employee 3 to "Kill" employee	0	0	0	0	0

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
