

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1375 Battery by Strangulation
SPONSOR(S): Criminal Justice Subcommittee, Baker and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1334

FINAL HOUSE FLOOR ACTION: 111 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1375 passed the House on April 20, 2023, and subsequently passed the Senate on May 1, 2023.

A 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 another person. Battery is generally a first-degree misdemeanor, however, if an offender has a prior conviction for battery, felony battery, or aggravated battery, or commits a battery in furtherance of a riot or an aggravated riot, a battery offense may be enhanced to a third-degree felony. Felony battery occurs when a person actually and intentionally touches or strikes another person against the will of the other person and, in so doing, causes great bodily harm, permanent disability, or permanent disfigurement; or commits domestic battery by strangulation.

Under s. 784.041, F.S., domestic battery by strangulation, a third-degree felony, occurs when a person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, such that he or she creates a risk of or causes great bodily harm by applying pressure on the throat or neck of the person or by blocking the nose or mouth of the person.

A "family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. A "dating relationship" means a continuing and significant relationship of a romantic or intimate nature.

Without a showing of great bodily harm, permanent disability, or permanent disfigurement, Florida law does not currently classify battery by strangulation as a felony in scenarios where the offender and victim do not share a domestic or dating relationship.

The bill creates s. 784.031, F.S., to prohibit battery by strangulation as a third-degree felony and rank the offense as a level 4 offense on the Criminal Punishment Code offense severity ranking chart. Under the bill, a person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. The bill provides an exemption for any act of medical diagnosis, treatment, or prescription. The newly created crime makes strangulation of any victim regardless of the offender-victim relationship a third degree felony.

The Criminal Justice Impact Conference reviewed the bill on March 27, 2023, and determined the bill may have a positive indeterminate impact on jail and prison beds by creating a new felony offense for battery by strangulation, which may result in more jail and prison admissions.

The bill was approved by the Governor on June 14, 2023, ch. 2023-237, L.O.F., and will become effective on October 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Battery

A 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 another person.¹

Battery is generally punishable as a first-degree misdemeanor,² however, if an offender has a prior conviction for battery, felony battery, or aggravated battery, or commits a battery in furtherance of a riot or an aggravated riot, a battery offense may be enhanced to a third-degree felony.^{3, 4}

Felony battery occurs when a person actually and intentionally touches or strikes another person against the will of the other person and, in so doing, causes great bodily harm, permanent disability, or permanent disfigurement; or commits domestic battery by strangulation.⁵

Aggravated battery, a second-degree felony, occurs when a person committing a battery:

- Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- Uses a deadly weapon; or
- Knows or should have known that the victim was pregnant at the time of the offense.^{6, 7}

Domestic Battery by Strangulation

Domestic battery by strangulation, a third-degree felony, occurs when a person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, such that he or she creates a risk of or causes great bodily harm by applying pressure on the throat or neck of the person or by blocking the nose or mouth of the person.^{8, 9}

A "family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household

¹ S. 784.03(1)(a), F.S.

² A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

³ "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. S. 784.03(2-3), F.S.; A battery committed in furtherance of a riot or an aggravated riot is a Level 2 offense on the offense severity ranking chart (OSRC). S. 921.0022(3)(b), F.S.

⁴ A misdemeanor battery offense may also be reclassified as a felony offense when committed upon specified persons or specified persons engaged in the lawful performance of their duties, such as a law enforcement officer, a person older than 65 years of age, or a code inspector. See ss. 162.04(2), 784.07, 784.074, 784.08, 784.081, 784.082, 784.083, and 1000.04, F.S.

⁵ S. 784.041, F.S.; Felony battery is a Level 6 offense on the OSRC. S. 921.0022(3)(f), F.S.

⁶ S. 784.045, F.S.; Aggravated battery is a Level 7 offense on the OSRC. S. 921.0022(3)(g), F.S.

⁷ Additionally, an aggravated battery committed by a person acting in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S., is ranked one level above the ranking under s. 921.0022, F.S., for the offense committed.

⁸ S. 784.041(2), F.S.; Domestic battery by strangulation is a Level 6 offense on the OSRC. S. 921.0022(3)(f), F.S.

⁹ "[S]ection 784.041(2)(a) merely requires that a defendant *impede* the victim's breath, not cut it off entirely. The state need not present evidence that the victim became unconscious or suffered injury based on lack of circulation. Evidence that the victim's 'norm al breathing' was impeded is sufficient." *Dennis v. State*, 338 So. 3d 279, 282 (Fla. 4th DCA 2022).

members must be currently residing or have in the past resided together in the same single dwelling unit.¹⁰

A “dating relationship” means a continuing and significant relationship of a romantic or intimate nature.¹¹

Without a showing of great bodily harm, permanent disability, or permanent disfigurement, Florida law does not currently classify battery by strangulation as a felony in scenarios where the offender and victim do not share a domestic or dating relationship.¹²

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹³ are listed in a single offense severity ranking chart (OSRC),¹⁴ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{15, 16} A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{17, 18} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.¹⁹

Effect of the Bill

The bill creates s. 784.031, F.S., to prohibit battery by strangulation as a third-degree felony²⁰ and rank the offense as a level 4 offense on the OSRC. Under the bill, a person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. The bill provides an exemption for any act of medical diagnosis, treatment, or prescription.

The newly created crime makes strangulation of any victim regardless of the offender-victim relationship a third degree felony.

The effective date of this bill is October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹⁰ S. 741.28(3), F.S.

¹¹ S. 784.041(2)(b)2., F.S.

¹² *U.S. v. Bullard*, No. 4:11CR65-RH/CAS, 2014 WL 4681728, at 2 (N.D. Fla. Sept. 18, 2014).

¹³ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁴ S. 921.0022, F.S.

¹⁵ S. 921.0022(2), F.S.

¹⁶ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

¹⁷ Ss. 921.0022 and 921.0024, F.S.

¹⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

¹⁹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

²⁰ A third-degree felony is punishable by imprisonment not exceeding five years and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference reviewed the bill on March 27, 2023, and determined the bill may have a positive indeterminate impact on jail and prison beds by creating a new felony offense for battery by strangulation, which may result in more jail and prison admissions.²¹

²¹ Criminal Justice Impact Conference, CS/HB 1375 – Battery by Strangulation, March 27, 2023, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB1375.pdf> (last visited May 2, 2023).