



The Florida Senate

Interim Project Report 2007-107

November 2006

Committee on Criminal Justice

REVIEW HOW FLORIDA AND SOME OTHER STATES PUNISH THE CRIME OF FALSELY PERSONATING A LAW ENFORCEMENT OFFICER

SUMMARY

This interim project report is intended to provide legislators with information to determine if Florida's laws relevant to impersonation of a law enforcement officer (and other impersonation-related offenses) permit effective prosecution of these offenses and provide appropriate punishment. The report presents staff's review of the impersonation laws of all 50 states and the District of Columbia as well as data regarding impersonation arrests, case dispositions, and sentencing in Florida. Based on the review of states' laws, staff finds that Florida's maximum penalties for impersonation of a law enforcement officer are among the toughest in the nation. However, staff also finds that several impersonation-related offenses appear to warrant classification as a third degree felony or first degree misdemeanor, or an increase in sentencing ranking, that is commensurate with greater penalties provided for crimes that do not appear to be more serious than these impersonation-related offenses. For example, staff finds that unlawfully showing or displaying a blue light in a vehicle, which is currently a noncriminal traffic violation, appears to warrant being made a first degree misdemeanor because this offense seems to be at least as serious as several current first degree misdemeanors, such as criminal mischief and bingo game violations.

Staff also finds that it is necessary to amend intent language in Florida's law that punishes unlawful use of a police badge because this language was held to be unconstitutional by the Florida Supreme Court. Staff further finds that, with one exception, it does not appear that there is a need at this time to adopt provisions of other states' impersonation laws. The exception is a provision of New Hampshire's impersonation law that authorizes driver's license suspensions for unlawful emergency light ("blue light") violations. Staff finds that the adoption of a similar provision in Florida's laws might deter "blue light" violators. Finally, staff finds that it would be beneficial

for the Florida Department of Law Enforcement, the Florida Highway Patrol, the Florida Sheriffs Association, and the Florida Police Chiefs Association to jointly assess whether any further law enforcement training and drivers' education measures are needed that are relevant to drivers' fear of being pulled over by an impersonator, and to also jointly assess whether there are any actions that law enforcement agencies can take that might limit impersonation offenses.

Recommendations of the report that would require legislation to implement include increasing sentencing rankings for some impersonation-related offenses, making some of these offenses a third degree felony or first degree misdemeanor, and requiring driver's license suspension for offenders convicted of "blue light" violations.

BACKGROUND

Impersonation of a law enforcement officer (also referred to as "impersonation" in this report) has the potential to detrimentally affect public safety by eroding the public's trust in law enforcement officers. While there are many reasons why a person impersonates a law enforcement officer,¹ this conduct can never be characterized as harmless because of its potential to make the public fearful of law enforcement officers, which makes it more difficult for these officers to perform their duties, and to also endanger

¹ Robert McCrie, a professor at John Jay College of Criminal Justice in New York, has stated that the power exercised by law enforcement officers attracts some impersonators. "Law enforcement officers are the only people in our society who have the right to deprive citizens temporarily of their liberty, with reasonable cause of course.... Even a judge, even an elected official, even a chief of industry has no such power. This is beguiling to some individuals, and they say they'd like to have that power too." Laws target criminals who pose as police, *Poughkeepsie Journal* (NY) (May 16, 2005).

the public.² Further, most children are taught to regard law enforcement officers as trusted authority figures; this trust could be used against them by impersonators.³

Impersonation is sometimes the means used to commit other offenses.⁴ “Perhaps the most notorious example of police impersonation involved the late Ted Bundy, a serial murderer who kidnapped and killed numerous women and girls in several states and was eventually executed in Florida. One victim of an attempted kidnapping identified Bundy as the man who claimed he was a police officer and tried to handcuff her.”⁵ More recently, facts uncovered by Jacksonville police in the investigation of the widely reported murder of Sarah Whitlock, a 23 year-old nursing student, appear to indicate that her murder may have been facilitated by the suspect impersonating a law enforcement officer.⁶ Another case that received national attention and sparked changes in Colorado’s laws involved the murder of Lacy Miller, a 20 year-old student at the University of North Colorado, by a man who, according to one news report, used a “flashing hazard

light” as a ruse to get Ms. Miller to pull over her vehicle.⁷

There is also the potential for terrorists to enter secure areas or facilities by means of impersonation. This concern was raised by Congress even before the terrorist attacks on September 11, 2001. In 2000, members of the Office of Special Investigations in the U.S. General Accounting Office, posing as plainclothes law enforcement officers, were able to enter 19 secure federal buildings and 2 major airports.⁸

Current Criminal Penalties in Florida

Florida law punishes impersonating a law enforcement officer (referred to in Florida and some other states as “false personation”) and other impersonation-related offenses. Section 843.08, F.S., provides that impersonating a law enforcement officer (or other specified person)⁹ is a third degree felony.¹⁰ This

² See Officer-For-A-Day/A Calgary teen nabs a hit-and-run suspect by impersonating a cop for a day, *Western Report*, Vol. 22, Issue 28, p. 21 (June 26, 1995). While this impersonation appears to lack criminal intent, it could have resulted in the teen or bystanders being shot if the suspect had been armed and dangerous.

³ See Beware the Cunning Molester, Parents are Told, *Orlando Sentinel* (July 29, 1990) (noting that a popular lure used by child molesters is to pose as a plainclothes police officer or other authority figure).

⁴ News articles from 2005-2006 included reported incidences in Florida of impersonation of a law enforcement officer in combination with murder, sexual battery, armed kidnapping, false imprisonment, armed robbery, home invasion robbery, robbery, aggravated battery, battery, burglary, unlawful traffic stops, and telephone scamming. Suspected impersonators included a registered sexual predator, several convicted felons, police academy graduates and trainees, a private investigator, a former sheriff’s chaplain, a debt collector, an emergency medical technician, a private security officer, and former law enforcement officers.

⁵ Bill Analysis (Senate Bill 444), Senate Fiscal Agency, Michigan Legislature (December 15, 2005). See Criminal case follows cop dreams - Police exam, guard job, bounty hunter tryout were dead ends for man accused of impersonating officer, *Beaumont Enterprise* (TX) (July 9, 2006) [noting impersonation by Caryl Chessman (the “Red Light Bandit”), the BTK killer, the Hillside Strangler, and John Wayne Gacy].

⁶ Slaying suspect has other felony arrests/Authorities to decide whether to charge the 17-year-old as an adult, *The Florida Times-Union* (Jacksonville) (March 21, 2006).

⁷ Experts: Beware of Phony Cops, *ABC News* (September 26, 2006) (<http://abcnews.go.com/GMA/story?id=1748806&page=1>); Phony Cops, Real Victims, *People*, Vol. 65, Issue 12, p. 64-67 (March 27, 2006).

⁸ Transcript of hearing (titled “Breaches of Security at Federal Agencies and Airports”), Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives (May 25, 2000) (http://commdocs.house.gov/committee/judiciary/hju65870.000/hju65870_0.htm). Impersonation of a law enforcement officer can be committed with relative ease. See Impersonating a cop is illegal - and dangerously easy, *Columbia News Service* (March 15, 2005) (“‘All many of the criminals needed was to know the jargon and to talk the talk,’ said Thomas Redmond, former commanding officer of the New York City Police Department’s Police Impersonation Investigation Unit. ‘All they needed was something shiny to get their foot in the door.’”). Staff conducted a 10-minute search on eBay® of items for sale and found mini-badges for 5 Florida law enforcement agencies and uniform patches for 38 Florida law enforcement agencies. Staff cannot determine if the badges and patches are authentic.

⁹ The statute applies to false personation of the following persons: sheriff; officer of the Florida Highway Patrol, Florida Fish and Wildlife Conservation Commission, Department of Environmental Protection, Department of Transportation, or Department of Corrections; correctional probation officer; deputy sheriff; state attorney or assistant state attorney; state attorney investigator; statewide prosecutor or assistant statewide prosecutor; coroner; police officer; lottery special agent or lottery investigator; beverage enforcement agent; watchman; member of the Florida Parole Commission and any administrative aide or supervisor of employed by the commission; or any personnel or representative of the Florida Department of Law Enforcement.

offense is ranked in Level 2 of the Criminal Punishment Code.¹¹ A person commits this offense by falsely assuming or pretending to be a law enforcement officer and acting as such or requiring another person to aid or assist the person in a matter pertaining to the duty of any such officer.¹² However, impersonation is a second degree felony if it occurs during the course of the commission of a felony, and a first degree felony if the commission of the felony results in the death or personal injury of another human being. The second degree felony is ranked in Level 4 and the first degree felony is ranked in Level 7.¹³

Section 843.081, F.S., provides that it is a first degree misdemeanor for a person to use in or on any nongovernmentally owned vehicle or vessel any flashing or rotating blue light unless such person is a law enforcement officer or is appointed by the

¹⁰ Provided are the maximum penalties (state prison sentences) that may be imposed for certain felonies: third degree felony: 5 years; second degree felony: 15 years; first degree felony (generally): 30 years. The maximum jail term for a first misdemeanor is 1 year. *See* s. 775.082, F.S.

¹¹ The Criminal Punishment Code (Code), s. 921.002, F.S., et seq., is Florida's general sentencing code. The Code contains a chart for ranking felonies (s. 921.0022, F.S.), excluding capital felonies, based on their seriousness or severity. The chart contains 10 offense severity levels (Level 10 is the most serious). Some felonies are assigned to a level in the chart (e.g., third degree felony impersonation); those not assigned to a level in the chart are assigned a level by "default" based on felony degree, as provided in s. 921.0023, F.S. (e.g., a Level 1 ranking for a third degree felony, a Level 4 ranking for a second degree felony, and a Level 7 ranking for a first degree felony). Points are prescribed for the ranking. These points, along with points prescribed for other factors, are used to calculate the lowest permissible sentence and the length of state imprisonment, if the defendant scores a state prison sentence. Absent mitigation of sentence, the sentencing range is generally the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S.

¹² *See State of Alecia*, 692 So.2d 263 (Fla. 5th DCA 1997), *rev. denied*, 699 So.2d 1371 (Fla.1997). Because the statute requires that the person *act* as a law enforcement officer (i.e., exercise any of the official duties of such officer), the statute does not sweep into the net for arrest and prosecution for any of the type of conduct protected by the First Amendment.

¹³ The second degree felony is ranked by "default" in Level 4 and the first degree felony is ranked by "default" in Level 7. A Level 7 ranking ensures that, absent sentencing mitigation, the lowest permissible sentence will be imprisonment for a first-time offender.

Governor pursuant to ch. 354, F.S.¹⁴ However, s. 316.2397, F.S., provides that it is a noncriminal traffic violation to show or display a blue light on any vehicle or equipment, except a police vehicle or a vehicle owned, operated, or leased by the Department of Corrections that is responding to an emergency.

Subsection 843.085(1), F.S., provides that it is a first degree misdemeanor for a person to wear or display any authorized indicia of a criminal justice agency or colorable imitation thereof, or any such item that displays the word "police" (or another statutorily-specified word), which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing such item.¹⁵ Subsection (2) of this section provides that it is a first degree misdemeanor to own or operate a motor vehicle marked or identified with lettering, marking, or insignia officially used to identify the vehicle as a law enforcement vehicle or vehicle used by a criminal justice agency, which could deceive a reasonable person into believing that such vehicle is authorized by the agency for use by the person operating the vehicle.¹⁶ Subsection (3) of this section provides that it is first degree misdemeanor to unlawfully sell, transfer, or give away the authorized badge or colorable imitation thereof, including miniatures, of a criminal justice agency, or such item that bears the word "police" (or another statutorily-specified word), which could deceive a reasonable person into believing that the item is authorized by such agency.¹⁷

¹⁴ Chapter 354, F.S., provides that the Governor may appoint special officers for the protection and safety of any railroad or common carrier. Section 843.081, F.S., also exempts salespersons, service representatives, or other employees of businesses licensed to sell or repair law enforcement equipment.

¹⁵ The subsection exempts persons who are appointed by the Governor pursuant to ch. 354, F.S., those who are authorized by the appropriate agency to display or wear such item, and those who display such item in a closed or mounted case as a collection or exhibit.

¹⁶ The statute does not apply if the motor vehicle is owned or operated by the appropriate agency, the local law enforcement agency authorizes the use of the motor vehicle, or the person is appointed by the Governor pursuant to ch. 354, F.S.

¹⁷ The statute does not apply to purchases by a criminal justice agency or upon presentation and recordation of both a driver's license and other identification showing a transferee to be a member of the agency. It also does not apply to persons appointed by the Governor pursuant to ch. 354, F.S.

In *Sult v. State*, 906 So.2d 1013 (Fla.2005), the Florida Supreme Court held that s. 843.085, F.S. (2001) is unconstitutional as overbroad and vague, and also violates the right to substantive due process. The Court only discusses subsection (1) of this section but the general intent language the Court found objectionable also appears in subsections (2) and (3) of this section.¹⁸ The Court's analysis appears to suggest that the adoption of a specific intent requirement may address the constitutional problems.

Subsection 843.0855(1), F.S., provides that it is a third degree felony to deliberately impersonate or falsely act as a law enforcement officer (or other specified person)¹⁹ in connection with or relating to any legal process affecting persons or property, or to otherwise take any action under color of law against persons or property. Subsection (2) of this section provides that it is a third degree felony to simulate legal process, knowing or having reason to know the contents of any legal document or proceeding or the basis for any action to be fraudulent. Subsection (3) of this section provides that it is a third degree felony to falsely under color of law attempt in any way to influence, intimidate, or hinder a public officer in the discharge of the officer's duties by means of, but not limited to, threats of or actual physical abuse, or harassment, or through the use of simulated legal process.²⁰ The offenses in s. 843.0855, F.S., are ranked in Level 1.²¹

Florida Impersonation Arrests, Cases, and Sentencing

Data regarding arrests, case dispositions, and sentencing for violations of s. 843.08, F.S. (false

personation of a law enforcement officer and other specified persons) present a partial picture of the number of impersonation offenses and their disposition and punishment by Florida's criminal justice system. The picture can only be "partial" because the data do not and cannot reveal the reasons for any particular case disposition or sentence.²²

According to the Florida Department of Law Enforcement (FDLE), for the calendar years 2001 through 2005, there were 806 arrest charges for a violation of s. 843.08, F.S.²³ The Office of the State Court Administrator (OSCA) reported that there were 470 cases filed regarding a violation of this statute for the 2001-2005 time period.²⁴ No disposition data was available for 36 of the 470 cases. Two hundred forty-six (246) of the 470 cases were disposed of by prosecutors (1 administratively dismissed, 146 dropped/abandoned, 17 no action, 76 nolle prosequi, and 6 transferred). Most of the cases disposed of by the prosecutors involved third degree felony impersonation (194).²⁵

One hundred eighty-eight (188) of the 470 cases were disposed of by the courts (4 acquitted, 1 acquitted/insanity, 109 adjudicated guilty, 70 adjudication withheld,²⁶ 2 dismissed, 1 mentally/physically unable

¹⁸ Prosecutors' opinions on requiring "specific intent" language in subsection (3) included the following: a specific requirement in this subsection would effectively render it a nullity because it does not appear that a prosecutor would be able to prove the intent of the seller; there is no "remedy" for subsection (3); and other requirements of the section might allow it to "pass muster" with the courts.

¹⁹ The statute applies to deliberately impersonating or falsely acting as a public officer or tribunal, or a public employee or utility employee, including but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting persons and property. The terms "public officer" and "public employee" are defined by reference to s. 112.061, F.S.

²⁰ The statute exempts an act of a law enforcement officer or legal tribunal that is performed under lawful authority.

²¹ The third degree felonies in s. 843.0855, F.S., "default" to a Level 1 ranking.

²² For example, it is not possible to make generalizations about case dispositions because the facts of a particular case will differ from the facts in any other case, and certain events, such as the failure of witnesses or victims to appear in court, insufficiency of evidence, or an unlawful stop or search, may warrant a disposition other than that originally intended by the prosecutor.

²³ The FDLE extracted arrest data from the Computerized Criminal History (CCH) database on August 1, 2006. Arrest/judicial records are subject to change. The FDLE also reported that there were 218 arrest charges for a violation of 843.0855, F.S., 87 arrest charges for a violation of s. 843.081, F.S., and 7 arrest charges for a violation of s. 843.085, F.S.

²⁴ The OSCA prepared the data during August of 2006. Clerks of court offices provided information via the Offender Based Transaction System (OBTS). Data provided do not account for filed cases in some circuits, so the data are not a complete accounting of filed cases and their dispositions. Eleven (11) counties (Duval, Flagler, Nassau, Osceola, Palm Beach, Pinellas, Putnam, St. Lucie, Seminole, Suwannee, and Walton) are currently not reporting data via the OBTS. Additionally, 2 counties (Hillsborough and Liberty) began reporting in 2005. Broward County began reporting in 2003.

²⁵ *Id.*

²⁶ It is unclear to what extent s. 775.08435, F.S., which was created in 2004, has had an impact on the withholding

to stand trial, and 1 pre-trial diversion). Most of the cases disposed of by the courts involved third degree felony impersonation (166).²⁷

Generally, impersonating a law enforcement officer does not result in a state prison sentence, though a prison sentence is an available sentencing option.²⁸ In a number of cases, impersonation is an additional offense, the penalty for which is subsumed by a primary offense with a greater penalty, which may increase the likelihood of imprisonment.²⁹ The Legislature's Office of Economic and Demographic Research (EDR) reported that, for the 2001-2005 time period, 161 offenders were sentenced for the primary offense of third degree felony impersonation (Level 2) and 18 of those offenders received a prison sentence (mean sentence length: 42.7 months). Thirty (30) offenders were sentenced for the primary offense of second degree felony impersonation (Level 4) and 3 of those offenders received a prison sentence (mean sentence length: 50.5 months). No offenders were sentenced to prison for the primary offense of first degree felony impersonation (Level 7).³⁰

Review of Other States' Impersonation Laws

Staff reviewed the laws of all 50 states and the District of Columbia to determine how these jurisdictions address and punish impersonating a law enforcement officer.³¹ Thirty-eight (38) states authorize a penalty of

of adjudication for a violation of s. 843.08, F.S. This statute precludes withholding adjudication in certain circumstances.

²⁷ See footnote 24.

²⁸ Impersonation offenses will vary in their degree of threat to the public, so sentencing will vary. While judicial discretion appears to be needed to account for variations (and for that reason, staff did not recommend mandatory minimum terms), it is nonetheless clear that a state prison sentence for impersonation of a law enforcement is the exception rather than the norm. Why this is so cannot be determined from the sentencing data.

²⁹ The EDR reported that, during the 2001-2005 time period, there were 144 cases in which an impersonation offense appeared as an additional offense where the primary offense involved sexual/lewd behavior (14), robbery (22), another violent offense (36), burglary (24), property theft or fraud (30), a drug offense (5), a weapons offense (3), or another offense (10).

³⁰ Data was prepared by the EDR on August 2, 2006. The EDR adjusted data for non-compliance in the completion of sentencing scoresheets, per the Department of Correction's report entitled *Sentencing Scoresheet Compliance Report* (various years).

³¹ A felony/misdemeanor comparison was not performed because not all states distinguish offenses as such and

at least one-year imprisonment.³² Three (3) states authorize a sentence exceeding 5-years imprisonment (without a special finding): Alabama (10 years), Texas (10 years), and Arkansas (6 years). Illinois allows for an extended term of 3-6 years; however, the usual prison or jail term is 1-3 years. Connecticut, Delaware, Florida, Georgia, Kentucky, Montana, and Oregon authorize a sentence of not more than 5-years imprisonment.

New Mexico authorizes imprisonment in excess of 6 months but less than one year and Wisconsin authorizes imprisonment for up to 9 months. Six (6) states³³ authorize up to 6 months imprisonment (the District of Columbia specifies up to 180 days imprisonment) and 3 states³⁴ authorize lesser imprisonment penalties, none of which exceed 90-days imprisonment. West Virginia appears to be the only state to limit punishment to a fine.

States differ on the elements of their impersonation offense. For example, the elements of Massachusetts impersonation offense³⁵ are very similar to Florida's impersonation offense but Georgia's impersonation law³⁶ applies to a person who "falsely holds himself out as a peace officer or other public officer or employee with intent to mislead another into believing that he is actually such officer" and Vermont's impersonation law³⁷ simply makes it a crime to impersonate or attempt

those that do differ regarding how they punish felonies and misdemeanors. To compare states' penalties, staff assumed these penalties would be imposed on first-time offenders convicted of *only* an impersonation offense that is comparable to Florida's third degree felony impersonation offense. In some states, penalties are not discernable from the statutory law (e.g., states with sentencing guidelines) so staff has relied on explanations of those penalties provided by legislative committee staff or criminal justice professionals in those states.

³² The states are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Virginia, Washington, and Wyoming. Some of these states require that the sentence be served in a jail rather than in a state prison.

³³ The states are Kansas, Maine, North Carolina, Tennessee, Vermont, and Utah.

³⁴ The states are Alaska, Minnesota, and Ohio.

³⁵ See § 268-33, Massachusetts General Laws.

³⁶ See § 16-10-23, Unannotated Georgia Code.

³⁷ See § 13-67-3002, Vermont Statutes.

to impersonate a police officer or other specified person without indicating what this impersonation entails.

Like Florida, some states specifically punish related acts, such as the unlawful use of an emergency light or the unlawful wearing of a police badge, as specific offenses.³⁸ Other states treat these acts as specific acts of impersonation in their impersonation statute.³⁹

Some of the other provisions staff found in other states' laws that are not in Florida's laws include a driver's license suspension for an emergency light violation,⁴⁰ a rebuttable presumption of impersonation,⁴¹ the preclusion of certain defenses,⁴² and specific aggravated penalties for repeat impersonation offenses and for impersonation with a deadly weapon.⁴³

Training and Drivers' Education Measures

Law enforcement training and drivers' education measures appear to be relevant to the "blue light" offenses in ss. 843.081 and 316.2397, F.S. Wendy Cohen, the mother of Lacy Miller, stated to staff: "It is so important to take away the tools that allow these imposters to pull the public over. It is also important to make citizens aware of the procedures and policies. I would also advocate special training for state troopers and law enforcement to be sensitive to citizens who are afraid to pull over."

According to staff of the Florida Sheriffs Association (FSA), the FSA "has not generated a statewide education program" on how drivers may respond if

they fear they are being pulled over by an impersonator but "most if not all of the individual sheriff's offices across the state have done so either by a press release when made aware of a local event and/or community safety talks." The Florida Police Chiefs Association provided comments from several police chiefs, which indicated that there is training at one of the police academies (staff could not determine from the chiefs' comments if training occurs in other academies). Further, education on how drivers should respond to perceived impersonator situations is provided at some of the Citizen's Police Academies and through a Statewide Public Awareness Campaigns class, which includes a "'simulated' traffic stop with that scenario and how the officer/citizen react[s]."

Florida Highway Patrol (FHP) staff stated that there is academy training on how to respond when a vehicle does not pull over, which may occur in the impersonator situation or in other situations, such as when the driver is drugged or intoxicated. There is an "unwritten" policy for the officer to continue to follow the vehicle and remain patient. FHP staff also indicated that there are traffic safety "tips" in brochures at their local offices and on the FHP's website to educate drivers on how to respond if the driver is asked to pull over.⁴⁴

FDLE General Counsel stated: "Most agencies that do traffic stops include in one form or another a reminder that citizens may not accept law enforcement authority when a stop is engaged by a plain clothes, unmarked unit." Further, "FDLE does not allow its agents to make traffic infraction stops because they are in plain clothes and in unmarked cars. They call in assistance of a marked agency when a stop is needed. FDLE can make a stop for criminal traffic violations endangering the public, but even then we try to have the agent wear a 'POLICE/FDLE' windbreaker or do something similar to help establish his/her authority."

METHODOLOGY

Staff reviewed data regarding offenses in s. 843.08, F.S., and other impersonation-related offenses, which were provided by the Florida Department of Law Enforcement (FDLE) (arrest data), the Office of the State Court Administrator (data on disposition of filed cases), and the Legislature's Office of Economic and Demographic Research (sentencing data). Staff also

³⁸ See e.g., § 18-8-112, 24-33.5-219, and 14-4-238, Colorado Revised Statutes.

³⁹ See e.g., § 5-37-208, Arkansas Revised Statutes.

⁴⁰ See § 625:9, New Hampshire Revised Statutes

⁴¹ Hawaii allows for a rebuttable presumption that an impersonation has occurred based on a person simply wearing an officer's uniform. See § 710-1016, Hawaii Revised Statutes. However, Florida law requires that a person not only falsely assume or pretend to be a law enforcement officer but *act* as such.

⁴² See e.g., § 13-2411, Arizona Revised Statutes.

Prosecutors did not indicate to staff that any defense to impersonation (assuming there is such a defense) has impeded prosecutions.

⁴³ See e.g., Vermont statute (footnote 37) and § 720-5/32-5.1-1, Illinois Compiled Statutes. Florida does not have these specific aggravated penalties but aggravated penalties are available for almost all repeat felony offenders (ss. 775.082 and 775.084, F.S.) and for possession or discharge of a firearm during the course of the commission of a felony (s. 775.087, F.S.).

⁴⁴ Staff reviewed "Traffic Safety Tips" on the FHP's website. The "tips" do not mention the impersonator situation but do include a suggestion that, at night, the driver can "stop in a well lit area."

reviewed news articles and Florida case law. Staff communicated with staff of the FDLE, the Florida Highway Patrol, the Florida Sheriffs Association, and the Florida Police Chiefs Association regarding law enforcement training and drivers' education issues. Staff also sent a request to Florida's 20 state attorneys for information regarding prosecution-related legal issues. Responses were received from the state attorney offices in the 6th, 11th, 13th, 17th, and 20th Judicial Circuits.

FINDINGS

The current felony degrees of impersonation offenses in s. 843.08, F.S., appear to reflect their seriousness (i.e., the potential threat they pose to the public's safety). Florida's maximum penalties for impersonation of a law enforcement officer are among the toughest in the nation. However, third degree felony impersonation, which currently ranks in Level 2 of the Criminal Punishment Code, and second degree felony impersonation, which currently ranks in Level 4, when compared to other ranked offenses and viewed in light of their seriousness, appear to warrant an increase in ranking to Level 3 and Level 5 respectively.⁴⁵

Third degree felony impersonation seems to be a more serious offense than several current Level 3 offenses, such as soliciting someone to commit a violation of the Marine Turtle Protection Act or altering a certificate of title on a motor vehicle or mobile home. Also, since battery of a law enforcement officer is a Level 4 offense, the proposed ranking of third degree felony impersonation would not be the same as the ranking of an arguably more serious offense.

The second degree felony impersonation offense, which requires that the impersonation occur during the course of the commission of a felony, seems to be at least as serious as several current Level 5 offenses, such as submitting false information to avoid a worker's compensation premium or dealing in stolen property. Since aggravated assault of a law enforcement officer is a Level 6 offense, the proposed ranking of second degree felony impersonation would

⁴⁵ Proposed penalties for violations of s. 843.08, F.S., and s. 843.0855, F.S., apply to impersonations of law enforcement officers but also apply to impersonations of other persons specified in those statutes. Applying the same penalties to all such impersonations is consistent with current legislative policy, which does not, for example, treat impersonation of an assistant state attorney differently than impersonation of a law enforcement officer.

not be the same as the ranking of an arguably more serious offense.⁴⁶

Offenses currently punished as first degree misdemeanors in s. 843.081, F.S. (unlawful use of a flashing/rotating blue light) and s. 843.085(1)-(3), F.S. (unlawful use of a police badge, etc.) appear to warrant being made third degree felonies with a Level 3 ranking. These offenses seem to be at least as serious as third degree felony impersonation and more serious than some current third degree felonies, such as tampering with an odometer or molesting a stone crab trap. The same reasons provided for ranking third degree felony impersonation in Level 3 appear to support a Level 3 ranking for third degree felonies in s. 843.0855, F.S. (criminal actions under color of law or through use of simulated process). This section covers impersonation-related acts, e.g., impersonating a law enforcement officer and serving a fake warrant on an unsuspecting person.

Due to the Florida's Supreme Court's holding in the *Sult* case regarding s. 843.085, F.S., staff finds that it is necessary to amend s. 843.085 (1) and (2), F.S., to include a specific intent requirement so that prosecutions may be made under this statute. Based on the opinions of some prosecutors, it does not appear that subsection (3) can be amended to require specific intent without making this subsection a nullity. Perhaps if there are future prosecutions for violations of this subsection or further opinions of the courts in which the holding in *Sult* is discussed, it will become clearer whether it is necessary to amend this subsection, and if so, how to do so.

Currently, s. 316.2397, F.S., provides that it is a noncriminal traffic violation to unlawfully show or display a blue light in a vehicle. This offense seems to be at least as serious as several current first degree misdemeanors, such as criminal mischief and bingo game violations, and so appears to warrant being made a first degree misdemeanor.

If Florida were to enact a provision similar to a provision of New Hampshire's emergency light law that provides for a driver's license suspension for a violation of that law, this might deter some "blue light"

⁴⁶ The proposed Level 5 ranking is the same as the ranking for resisting an officer with violence; however, "violence" for the purpose of this offense could be just a push or shove. If violence escalates to injury, the primary offense will likely be a more serious and higher-ranked offense.

violators from committing new offenses and would punish those who do. For example, if a “blue light” offender received probation and committed a new “blue light” violation while his or her driver’s license was suspended, this would constitute a violation of the person’s probation and a new offense (driving with a suspended license). Consistent with the different proposed degrees of “blue light” offenses, it may be appropriate to require the suspension of the driver’s license of a person who violates s. 843.081, F.S. (proposed third degree felony) for a period of at least 1 year for a first violation and for a period of more than 1 year but not more than 5 years for a second or subsequent violation. In contrast, it may be appropriate to require the suspension of the driver’s license of a person who violates s. 316.2397, F.S. (proposed first degree misdemeanor) for a period of at least 3 months but not more than 6 months for a first violation and for a period of at least 6 months but not more than 1 year for a second or subsequent violation.

There does not appear to be a need at this time to include in Florida’s laws certain provisions available in some other states’ laws. Specific aggravated penalties for repeat impersonations and for impersonation with use of a firearm are unnecessary because Florida’s laws punish repeat felony offenders and possession or discharge of a firearm during the course of the commission of a felony. Staff did not find any evidence that substantiates a need at this time to include defense preclusions in Florida law. Hawaii’s rebuttable presumption of impersonation appears to be inconsistent with the elements of Florida’s impersonation offense.

Information received by staff is too limited for staff to assess whether further law enforcement training and drivers’ education measures are needed that are relevant to drivers’ fear of being pulled over by an impersonator. However, it would be beneficial for law enforcement agencies to jointly assess whether there is such a need, and to also jointly assess whether there are additional measures they can take that might limit impersonation offenses. For example, the agencies and associations might determine that there is a need for more uniformity in the safety advice or “tips” provided to drivers on how they should respond if they fear they are going to be victimized by an impersonator, and the agencies and associations might also determine that policies need to be clearer on officers selling uniform patches and other items or there needs to be more restrictions on the issuance of honorary badges.

RECOMMENDATIONS

The Legislature should consider increasing from Level 2 to Level 3 the offense severity ranking for third degree felony impersonation in s. 843.08, F.S., and should also consider increasing from Level 4 to Level 5 the ranking for second degree felony impersonation in s. 843.08, F.S.

The Legislature should consider making violations of s. 843.081, F.S. (unlawful use of a flashing/rotating blue light) and s. 843.085(1)-(3), F.S. (unlawful use of a police badge, etc.) third degree felonies ranked in Level 3. Currently, these offenses are first degree misdemeanors. Regarding the “blue light” offense, the Legislature should also consider requiring suspension of the offender’s driver’s license, perhaps for a period of at least 1 year for a first violation and for a period of more than 1 year but not more than 5 years for a second or subsequent violation.

The Legislature should consider increasing from Level 1 to Level 3 the ranking of third degree felonies in s. 843.0855, F.S. (criminal actions under color of law or through use of simulated legal process).

The Legislature should consider amending s. 843.085(1) and (2), F.S., to include a specific intent requirement.

The Legislature should consider making it a first degree misdemeanor to violate s. 316.2397, F.S. (unlawful showing or displaying of a blue light in a vehicle), which is currently a noncriminal traffic violation, and should also consider requiring suspension of the offender’s driver’s license, perhaps for a period of at least 3 months but not more than 6 months for a first violation and for a period of at least 6 months but not more than 1 year for a second or subsequent violation.

The Florida Department of Law Enforcement, the Florida Highway Patrol, the Florida Sheriffs Association, and the Florida Police Chiefs Association should jointly assess whether any further law enforcement training and drivers’ education measures are needed that are relevant to drivers’ fear of being pulled over by an impersonator, and should also jointly assess whether there are any actions that law enforcement agencies can take that might limit impersonation offenses.