

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: January 29, 1998 Revised: 02/18/98 _____

Subject: Emergency Medical Services

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</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 540 would expand and clarify the definition of an emergency medical care provider for purposes of reclassification of offenses of assault or battery upon such persons. The bill would take effect October 1, 1998.

This bill substantially amends the following section of the Florida Statutes: 784.07.

II. Present Situation:

In Florida, penalties are enhanced for assault and battery committed upon law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers pursuant to §784.07, Florida Statutes. Penalties are enhanced by reclassifying such offenses.

In 1996, "emergency medical care providers" were added to §784.07, Florida Statutes, in order to offer such persons increased protection from physical violence as they carry out their duties. See, Ch. 96-293, §1, 1996 Fla. Laws 1260, 1261 (CS/HB's 459, 931, 1407, and 301 (1996)). Pursuant to this 1996 change, "emergency medical care provider" is expressly defined as:

an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in §401.23, medical director as defined in §401.23, or any person authorized by an emergency medical service licensed under chapter 401. Id.

Under §401.23 (6), Florida Statutes, "ambulance driver" is defined as any person who meets the requirements of 401.281, Florida Statutes. Under §401.23 (11), Florida Statutes, "emergency medical technician" means a person who is certified by the Department of Health to perform basic

life support pursuant to Part III of Chapter 401, *Florida Statutes*. Under §401.23 (17), *Florida Statutes*, “paramedic” is defined as a person who is certified by the department to perform basic and advanced life support pursuant to Part III of Chapter 401, *Florida Statutes*. Under §401.23 (20), *Florida Statutes*, “registered nurse” is defined as a practitioner who is licensed to practice professional nursing pursuant to Chapter 464, *Florida Statutes*. “Physician” is defined as a practitioner who is licensed under the provisions of Chapter 458 or Chapter 459, *Florida Statutes*, or a practitioner employed by the United States Department of Veteran’s Affairs for the purpose of providing medical direction for the treatment of patients immediately prior to or during transportation to a United States Department of Veterans Affairs medical facility under §401.23 (19), *Florida Statutes*.

Current law does not expressly provide protection under §784.07, *Florida Statutes*, for reclassification of assault and battery for physician assistants, emergency room orderlies, and security officers in emergency rooms. Whenever any person is charged with knowingly committing an assault or battery upon an emergency medical care provider, as defined above, while engaged in the lawful performance of his or her duties, the offense for which the person is charged is reclassified as follows:

- (a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- (b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- (c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- (d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. §784.07, *Florida Statutes*.

If any person who is convicted of battery under §784.07 (2) (b), *Florida Statutes*, is found to be in possession of a firearm or destructive device during the commission of the offense, such person must be sentenced to a 3-year minimum mandatory term of imprisonment. §784.07 (3) (a), *Florida Statutes*. If any person who is convicted of battery under §784.07 (2) (b), *Florida Statutes*, is found to be in possession of a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun during the commission of the offense, such person must be sentenced to an 8-year minimum mandatory term of imprisonment. §784.07 (3) (b), *Florida Statutes*.

The act of assault of an emergency medical care provider is a first degree misdemeanor which is punishable by up to one year in jail and up to a \$1,000 fine.

The act of battery upon an emergency medical care provider is a third degree felony, which is ranked as a Level 4 offense under the sentencing guidelines. Unless there is a significant prior

record, victim injury points, and/or accompanying offenses, a Level 4 offense would not result in a prison sanction. However, under the Criminal Punishment Code, effective for crimes committed on or after October 1, 1998, the penalty for such an offense would range from a non-prison sanction to a maximum of 5 years in prison.

Aggravated assault of an emergency medical care provider is a second degree felony, which is ranked as a Level 6 offense under the sentencing guidelines. Absent other factors such as a significant prior criminal record or accompanying offenses, an offender may score a prison sentence but is likely to receive a non-prison sanction. However, under the Criminal Punishment Code, effective for crimes committed on or after October 1, 1998, the penalty for such an offense would range from a non-prison sanction to a maximum of 15 years in prison.

Aggravated battery of an emergency medical care provider is a first degree felony, which is ranked as a Level 7 offense under the sentencing guidelines. Even though there may not be other factors that weigh on an offender's sentence score, a prison sentence would be mandated if sentenced under the sentencing guidelines. Prior criminal history, accompanying offenses, and victim injury points would also affect the length of sentence an offender would serve. Under the Criminal Punishment Code, effective for crimes committed on or after October 1, 1998, the penalty for such an offense would range from approximately 3 years to a maximum of 30 years in prison.

III. Effect of Proposed Changes:

The definition of an "emergency medical care provider" would be expanded for purposes of reclassifying assaults and batteries committed upon such persons so criminal penalties may be enhanced. The reclassification statute would explicitly apply to: physician assistants, emergency room orderlies, and emergency room security guards who are engaged in the performance of their official duties. Protection under this statute would apply whether such persons are within or outside the confines of an emergency room.

If assault, battery, aggravated assault, or aggravated battery are committed upon physician assistants, emergency room orderlies, and emergency room security guards who are engaged in the performance of their official duties and the perpetrator was in possession of a firearm or destructive device during the commission of the offense, such person would be sentenced to a 3-year minimum mandatory term of imprisonment. Similarly, if assault, battery, aggravated assault, or aggravated battery are committed upon physician assistants, emergency room orderlies, and emergency room security guards who are engaged in the performance of their official duties and the perpetrator was in possession of a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun during the commission of the offense, such person would be sentenced to an 8-year minimum mandatory term of imprisonment.

The reclassification and enhanced penalties would apply to offenses committed on or after October 1, 1998. Such offenses would be sentenced pursuant to the Criminal Punishment Code.

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:

Any prison-bed impact this bill may have is anticipated to be insignificant. An official impact will be determined by the Criminal Justice Impact Conference.

VI. Technical Deficiencies:

Section 401.23, *Florida Statutes*, does not provide definitions for “physician assistant,” “emergency room orderly,” and “emergency room security guard.” Albeit the grammatical syntax was probably not as it should have been, all other emergency medical care providers listed in the definition in paragraph (c), in addition to physicians and medical directors, are defined in §401.23, *Florida Statutes*. The definition of “emergency medical providers” should probably be reconfigured to reflect which terms are defined in Chapter 401, *Florida Statutes*. Therefore, to be technically correct, the inclusion of these three additions to §784.07 (1) (c), *Florida Statutes*, should be after the reference to “medical director as defined in s. 401.23.”

Furthermore, it is unknown by staff whether there would be any difficulty in determining who would be “emergency room orderlies.” This term may be broadly defined or defined differently among hospitals or jurisdictions to result in it not being consistent enough to provide equal protection and to provide adequate notice under constitutional challenge.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Removes the proposed language that would have specifically included “physician assistant, emergency room orderly, or emergency room security guard” in the context of Chapter 401 and technical changes are made to the requirement that such persons be engaged in the performance of their duties. “Physicians, employees, agents, or volunteers” of hospitals who are employed, under contract or are otherwise authorized by a hospital to perform duties that are directly associated with the care and treatment rendered in a hospital’s emergency department are specifically included. Enhanced offender penalties for assault and battery would also be extended to persons who are directly associated with the security of a hospital’s emergency department.

(WITH TITLE AMENDMENT)