

STORAGE NAME: h0737a.jo.doc
DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 737
RELATING TO: Security of Medical Facilities
SPONSOR(S): Representative Lerner and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
 - (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (3) HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

HB 737 will make the theft of over \$300 worth of "medical equipment" from a hospital, ambulatory surgical center, mobile surgical facility, ambulance or air ambulance a first degree felony. The offense will be punishable in the same manner as theft of over \$100,000 of other types of property. The sentencing range for such an offense will be a minimum of 21 months to a maximum of 30 years in prison. Currently the severity of the offense of theft of medical equipment is based on the value of the equipment stolen.

Section 784.07, F.S. provides for enhanced penalties for assault or battery on an "emergency medical care provider". The bill expands the definition to include people who are employed to provide security for a hospital as well as physicians, employees, agents or volunteers who are employed or under contract by a hospital to perform duties directly associated with the care and treatment of patients.

The Committee on Crime Prevention, Corrections and Safety adopted an amendment which defines the term "emergency medical equipment" for purposes of the theft statute. The amendment also makes the offense a second degree felony, rather than a first degree felony. The offense will still be ranked as a Level 7 offense in the Offense Severity Ranking Chart. Therefore, the sentencing range for such an offense will be a minimum of 21 months to a maximum of 15 years, rather than 30 years.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Battery or Assault on Emergency Medical Care Providers

Section 784.087 provides for enhanced penalties for assault or battery offenses committed against law enforcement officers¹, firefighters, emergency medical care providers and public transit employees or agents.

The statute provides that whenever any person is convicted of knowingly committing an assault or battery upon a person in the above list while the person is engaged in the lawful performance of his or her duties, the offense for which the person is convicted shall be reclassified as follows:

- In the case of assault², from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery³ from a misdemeanor of the first degree to a felony of the first degree.
- In the case of aggravated assault⁴, from a felony of the third degree to a felony of the second degree. This offense also requires that a minimum mandatory three year prison sentence be imposed if the aggravated assault is committed against a law enforcement officer.

¹ The definition of "law enforcement officer" includes, among others, law enforcement officers, correctional officers, correctional probation officers, officers of the Parole Commission, law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection or the Department of Law Enforcement. s. 784.07(1)(a), F.S. See also s. 784.07(2), F.S. for list of additional officers covered by the provision.

² 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, F.S.

³ A battery occurs when a person in actually or intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. s. 784.03, F.S.

⁴ An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. s. 784.021, F.S.

- In the case of aggravated battery⁵, from a felony of the second degree to a felony of the first degree. This offense also requires that a minimum mandatory five year prison sentence be imposed if the aggravated battery is committed against a law enforcement officer.

s. 784.07(2), F.S.

The term "emergency medical care provider" is defined to include a broader class of people than those who strictly give "emergency" care. The term is defined as:

[A]n ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed under chapter 401 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, 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.

s. 784.07(1)(c), F.S.

Theft

The theft statute provides the following:

A person commits theft if he or she knowingly obtains or uses or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

1. Deprive the other person of a right to the property or a benefit from the property.
2. Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

s. 812.014, F.S.

The level of a theft offense depends on the value and type of property stolen as follows:

1. Petit Theft:

- a. The theft of property worth less than \$100 is a second degree misdemeanor. s. 812.014(3)(a), F.S.
- b. The theft of property worth between \$100 and \$300 is a first degree misdemeanor. s. 812.014(2)(e), F.S.

2. Grand Theft of the Third Degree: It is grand theft of the third degree, a third degree felony, if the property stolen is worth between \$300 and \$20,000. The offense is ranked in the

⁵ A person commits aggravated battery who in the committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement or uses a deadly weapon. s. 784.045, F.S.

Offense Severity Ranking Chart of the Criminal Punishment Code based on the value of the property as follows:

- a. Theft of property valued at more than \$300 but less than \$5,000 is a Level 2 offense. ss. 812.014(2)(c)1 and 921.0022(3)(b), F.S.
 - b. Theft of property valued at \$5,000 but less than \$10,000 is a Level 3 offense. ss. 812.014(2)(c)2 and 921.0022(3)(c), F.S.
 - c. Theft of property valued at \$10,000 or more but less than \$20,000 is a Level 4 offense. ss. 812.014(2)(c)3 and 921.0022(3)(d), F.S.
 - d. Theft of any of a list of specified items including: a will, a firearm, a motor vehicle, a commercially farmed animal, a fire extinguisher, any amount of citrus consisting of 2,000 or more individual pieces of fruit, or property taken from a designated construction site is a Level 4 offense regardless of the value of the property. ss. 812.014(2)(c)4-10 and 921.0022(3)(d), F.S.
3. Grand Theft of the Second Degree: It is grand theft of the second degree, a second degree felony, if the property stolen is valued at \$20,000 or more but less than \$100,000. This offense is ranked as a Level 6 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. ss. 812.014(2)(b) and 921.0022(3)(f), F.S.
4. Grand Theft of the First Degree: It is grand theft of the first degree, a first degree felony if:
- a. The property stolen is valued at \$100,000 or more or
 - b. If the offender commits any grand theft and in the course of committing the offense the offender uses a motor vehicle as a instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another or
 - c. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000.
- s. 812.014(2)(a), F.S.

This offense is ranked as a Level 7 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. The lowest permissible sentence for a Level 7 offense is 21 months in prison.

C. EFFECT OF PROPOSED CHANGES:

Assault or Battery of Emergency Medical Care Provider

Section 784.07, F.S. provides for enhanced penalties for assault or battery on a "emergency medical care provider". The term "emergency medical care provider" includes employees who provide security for a hospital's emergency department. The bill expands this definition to include employees who provide security for a hospital.

Currently, the term also includes physicians, employees, agents, or volunteers of hospitals who are employed, under contact or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department. The bill removes

reference to a “hospital’s emergency department” and broadens the definition to include any of the above listed people throughout the entire hospital who “perform duties directly associated with the care and treatment of patients.”

Theft of Medical Equipment

The bill makes the theft of any “medical equipment” that is taken from a hospital, ambulatory surgical center, mobile surgical facility⁶ or from an ambulance or air ambulance⁷ and is valued at \$300 or more a first degree felony. The offense will be punishable in the same manner as theft of over \$100,000 of other types of property. The offense will be ranked in Level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The possible sentencing range for such an offense is a minimum of 21 months and a maximum of 30 years in prison.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amending s. 784.07; relating to battery of an emergency medical care provider.

Section 2: Amending s. 812.014, F.S. ; creating an offense of theft of medical equipment and making offense a first degree felony.

Section 3: Amending s. 921.0022, F.S.; ranking newly created offense in Level 7 of Offense Severity Ranking Chart of Criminal Punishment Code.

Section 4: Providing effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

⁶ s. 395.002(17), F.S.

⁷ The terms “emergency services vehicle” and “air ambulance” are defined in s. 401.23, F.S.

D. FISCAL COMMENTS:

The Criminal Justice Impact Estimating Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates a first degree felony offense which is ranked in Level 7 of the Offense Severity Ranking Chart. The lowest permissible sentence for such an offense is 21 months in prison.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill does not define the term "medical equipment". A relevant definition of that term is also not contained elsewhere in Florida Statutes or in case law. The term is defined by the amendment adopted by the Committee on Crime Prevention, Corrections, and Safety.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections and Safety adopted an amendment that is traveling with the bill. The amendment defines the term "emergency medical equipment" to mean mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(10) or to treat medical emergencies." The amendment also provides that the theft of "emergency medical equipment" valued at \$300 or more is a second degree felony. This is the same level of offense as theft of property valued between \$20,000 and \$100,000. The offense will still be ranked in Level 7 of the Offense Severity Ranking Chart. The possible sentencing range for such an offense is a minimum of 21 months and a maximum of 30 years in prison.

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier

Staff Director:

Lynne Overton
