

STORAGE NAME: h1447s1.hcc.doc

DATE: February 27, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS**

BILL #: CS/HB 1447

RELATING TO: Assault/Medical Care Provider

SPONSOR(S): Council for Healthy Communities and Representative Harrell

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

Authorizes a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, other described officers or employees of receiving facilities engaged in the performance of their duties.

In addition, the further expands the scope of warrantless arrest power to include assaults and batteries upon any employee of a "receiving facility" which is defined in section 394.455, F.S., as "any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail."

The effective date of this bill is July 1, 2002.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

The bill addresses warrantless arrests which are statutorily constricted as provided for in section 901.15, F.S. Under current law there are fifteen (15) categories of offenses for which a law enforcement officer may make an arrest without a warrant:

- (1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- (2) A felony has been committed and he or she reasonably believes that the person committed it.
- (3) He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- (4) A warrant for the arrest has been issued and is held by another peace officer for execution.
- (5) A violation of the chapter 316, the State Uniform Traffic Code, has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit.
- (6) There is probable cause to believe that the person has committed certain criminal acts which violates an injunction for protection against domestic violence.
- (7) There is probable cause to believe that the person has committed an act of domestic violence.
- (8) There is probable cause to believe that the person has committed child abuse.
- (9) There is probable cause to believe that the person has committed any battery upon another person or an act of criminal mischief or a graffiti-related offense.
- (10) The officer has probable cause to believe that the person has knowingly committed an act of repeat violence in violation of an injunction for protection from repeat violence.

(11) The officer has determined that he or she has probable cause to believe that a misdemeanor has been committed, based upon a signed affidavit provided to the officer by a law enforcement officer of the United States Government.

(12) A law enforcement officer of the Florida National Guard, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, has probable cause to believe a felony was committed on state military property or when a felony or misdemeanor was committed in his or her presence on such property.

(13) A State of Florida law enforcement officer reasonably believes that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing the felony or that while engaged in the exercise of his or her state law enforcement duties, the officer reasonably believes that a felony has been or is being committed; or that a felony warrant for the arrest has been issued and is being held for execution by another peace officer.

(14) There is probable cause to believe that the person has committed an act that violates a condition of pretrial release.

(15) There is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas.

Section 784.07(1)(c), Florida Statutes provides for enhanced maximum penalties for assault or battery committed against:

- law enforcement officers,
- firefighters,
- public transit employees or agents, and
- emergency medical care providers¹.

The enhanced penalties apply when the offender knew the status of the victim.

The definitions of assault, battery, aggravated assault and aggravated battery are as follows:

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. § 784.011, F.S.

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

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. § 784.03, F.S.

¹ An "Emergency Medical Care Provider" means an 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. Section 784.07(1)(c), F.S.

An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Or, if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill expands the authorization of law enforcement to arrest a person without a warrant when there is probable cause to believe that a person has committed an assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other described officers. In addition, the bill further expands the scope of warrantless arrest power to include assaults and batteries upon any employee of a "receiving facility" which is defined in section 394.455, F.S., as "any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail."

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. above.

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

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill on the Department of Corrections.

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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike all amendment was adopted by the Crime Prevention, Corrections & Safety committee that limits the scope of the bill to an expansion of warrantless arrests to include when there is probable cause that a person has committed an assault on a:

- Law enforcement officer,
- Firefighter,
- Emergency medical care provider,
- Public transit employee or agent, or
- Other specified officers

The amendment also expands the scope of permitted warrantless arrests to include assaults or batteries upon any employee of a "receiving facility" which is defined in section 394.455, F.S., as "any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail."

This bill as amended became a council substitute by the Council for Healthy Communities.

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VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Eric S. Haug

Trina Kramer

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Eric S. Haug

David M. De la Paz