

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill creates the offense of “domestic battery by strangulation” and makes it a third degree felony.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor¹, occurs when a person actually and intentionally touches or strikes another person against the will of the other; or intentionally causes bodily harm to another person. However, while battery is generally a first degree misdemeanor, battery is a third degree felony² if a person who has one prior conviction for battery, aggravated battery, or felony battery commits any second or subsequent battery.

Section 784.041, F.S., provides that a person commits felony battery, a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

Section 784.045, F.S., provides that a person commits aggravated battery, a second degree felony,³ if:

- In committing battery, the offender intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, the offender uses a deadly weapon; or
- 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.

Currently, Florida does not have a statute that specifically addresses strangulation as do, for example, North Carolina, Nebraska and Missouri.⁴ Non-fatal strangulations may not cause visible injuries, and therefore, may end up having to be charged as a simple battery, a first degree misdemeanor, because the prosecutor cannot establish great bodily harm, permanent disability, or permanent disfigurement.

Effect of the Bill

The bill provides that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the 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, 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 exception for acts of medical diagnosis, treatment, or prescription which are authorized under the laws of this state.

The bill defines “family or household member” by reference to the definition of the term in s. 741.28, F.S. Subsection (3) of s. 741.28, F.S., defines “family or household member” as “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

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. *See* ss. 775.082 and 775.083.

² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

³ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁴ *See* North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.

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.”

The bill defines “dating relationship” as “a continuing and significant relationship of a romantic or intimate nature.”

C. SECTION DIRECTORY:

Section 1. Amends s. 784.041, F.S., creating the offense of “domestic battery by strangulation.”

Section 2. Amends s. 921.0022, F.S., conforming the offense severity ranking chart of the Criminal Punishment Code.

Section 3. This bill takes effect October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 6, 2007, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted by the sponsor of the original bill.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 7, 2007, the Homeland Security & Public Safety Committee adopted one amendment and reported the bill favorably as amended. The amendment makes various technical changes to the bill and provides an exception for medical personnel.

On March 28, 2007, the Safety & Security Council reported the bill favorably with a council substitute. This analysis is drafted to the council substitute.