

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Regulation Committee

BILL: CS/SB 184

INTRODUCER: Criminal Justice Committee and Senators Dockery and Fasano

SUBJECT: Domestic Battery by Strangulation

DATE: February 28, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Wilson</u>	<u>HR</u>	<u>Favorable</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

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 other person’s nose or mouth.

The bill defines “family or household member” and “dating relationship.”

The bill exempts statutorily-authorized medical diagnosis, treatment, or prescription.

This bill substantially amends section 784.041, Florida Statutes.

**II. Present Situation:**

**Battery**

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor,<sup>1</sup> 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,

<sup>1</sup> The maximum penalty for a first degree misdemeanor is a term of imprisonment not exceeding one year. Imprisonment would be in a jail, not in a state prison. (s. 775.082, F.S.)

while battery is generally a first degree misdemeanor, battery is a third degree felony<sup>2</sup> 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,<sup>3</sup> if the person:

- In committing battery, intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, 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.<sup>4</sup> 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.

### **The Practice of Medicine**

Chapter 458, F.S., governs the regulation of the practice of medicine by the Board of Medicine. Section 458.305, F.S., defines the “practice of medicine” to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. The chapter exempts from the medical licensure requirements: other duly licensed health care practitioners acting within their scope of practice authorized by statute, and any person furnishing medical assistance in case of an emergency.<sup>5</sup>

Emergency medical personnel – medical directors, paramedics, and emergency medical technicians – are regulated by the Department of Health.<sup>6</sup> Emergency medical services are performed by emergency medical personnel to provide life saving medical intervention. In addition to licensed personnel, laypersons may render emergency care or treatment. Florida law provides immunity from civil damages to any person who gratuitously and in good faith provides emergency medical care or treatment under specified circumstances.<sup>7</sup> A number of procedures that are routinely used in the rendering of emergency care and treatment by both laypersons and

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<sup>2</sup> The maximum penalty for a third degree felony is five years in state prison. (s. 775.082, F.S.)

<sup>3</sup> The maximum penalty for a second-degree felony is fifteen years in state prison. (s. 775.082, F.S.)

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

<sup>5</sup> See paragraphs (a) and (e) of subsection (1) of s. 458.303, F.S.

<sup>6</sup> See part II of ch. 401, F.S.

<sup>7</sup> See s. 768.13, F.S.

emergency medical services personnel and that are authorized under Florida law would impede the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.

### **Medical Consent Laws**

Section 766.103, F.S., the Florida Medical Consent Law, provides immunity from civil damages for physicians treating, examining, or operating on patients without the patient's informed consent under non-emergency circumstances, subject to two conditions. The first condition is that the physician attempt to obtain consent from the patient or from a person authorized to give consent on behalf of the patient by applying accepted standards of medical practice among members of the medical profession or community that would be sufficient to give a reasonable person a general understanding of the procedure, acceptable alternative treatments, and the substantial risks and hazards inherent in the proposed treatment that have been recognized by members of the profession. The second condition is that the patient could reasonably be anticipated, under all the surrounding circumstances, to have consented to the treatment had he been advised by the physician as required under the first condition.

### **III. Effect of Proposed Changes:**

The bill amends s. 784.041, F.S., to provide 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 other person's nose or mouth.

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 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."

The bill exempts statutorily-authorized medical diagnosis, treatment, or prescription.

The bill amends s. 921.0022, F.S., to add domestic battery by strangulation to the list of Level 6 third degree felonies in the offense severity ranking chart.

The bill takes effect on October 1, 2007.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC), which provides a final, official estimate of the prison bed impact, if any, of legislation, had not met to consider this bill at the time this analysis was completed. However, the Legislature's Office of Economic and Demographic Research (EDR) notes that similar legislation filed last year was estimated by the CJIC to have an indeterminate impact. The EDR states that it is possible the bill may have an insignificant impact but the CJIC has not made that determination.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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