

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 640

INTRODUCER: Senator Garcia

SUBJECT: False Personation of a Law Enforcement Officer

DATE: March 4, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.			JA	
3.				
4.				
5.				
6.				

I. Summary:

This bill addresses the problem of impersonating an officer by amending the offense severity ranking chart of the Criminal Punishment Code to rank or increase the ranking of impersonation offenses and offenses involving or facilitating impersonation. Other changes include:

- Increasing from a noncriminal violation to a first degree misdemeanor the offense of unlawfully showing or displaying a blue light on a vehicle;
- Increasing from a first degree misdemeanor to a third degree felony the offense of unlawfully using a flashing or rotating blue light;
- Increasing from a first degree misdemeanor to a third degree felony the offenses of unlawfully using or selling a police badge (or other specified badge) and unlawfully owning or operating a vehicle marked with the word ‘police’ (or other specified words); and
- Providing specific intent language in the section relating to unlawful use of police badges to replace general intent language that was determined by the Florida Supreme Court to be unconstitutional.

All of these changes were recommendations from a 2006 interim report of the Senate Committee on Criminal Justice: *Review How Florida and Some Other States Punish the Crime of Falsely Personating a Law Enforcement Officer*, Interim Project 2007-107 (November 2006).

This bill substantially amends the following sections of the Florida Statutes: 316.2397, 843.08, 843.081, 843.085, and 921.0022.

II. Present Situation:

In November of 2006, an interim project report prepared by staff of the Senate Committee on Criminal Justice was released: *Review How Florida and Some Other States Punish the Crime of Falsely Personating a Law Enforcement Officer*, Interim Project 2007-107 (November 2006). This report discusses offenses involving “false personation” (impersonation) of a law enforcement officer (or other specified person) and other offenses involving or facilitating impersonation. The report includes arrest, case disposition, and sentencing data and also includes results of a survey of the impersonation laws of all 50 states and the District of Columbia.

The report indicates that impersonation crimes have the potential to detrimentally affect public safety by eroding the public’s trust in law enforcement officers. Impersonation has also been used as the means to facilitate the commission of other crimes. There is also the potential for terrorists to enter secure areas or facilities by means of impersonation.

Results of the survey of states indicate that Florida’s impersonation and impersonation-related laws are among the most comprehensive in the country, and that only a handful of states impose greater penalties for impersonation of a law enforcement officer than Florida.

The report contains numerous findings and recommendations; those pertinent to the bill are noted as follows:

- *Recommendation: “The Legislature should consider increasing from Level 2 to Level 3 the offense severity ranking for third degree felony impersonation in s. 843.08, F.S., and should also consider increasing from Level 4 to Level 5 the ranking for second degree felony impersonation in s. 843.08, F.S. Increase the sentencing ranking of offenses involving impersonation of a law enforcement officer or other specified person.”*

Findings of the report:

The current felony degrees of impersonation offenses in s. 843.08, F.S., appear to reflect their seriousness (i.e., the potential threat they pose to the public’s safety). Florida’s maximum penalties for impersonation of a law enforcement officer are among the toughest in the nation. However, third degree felony impersonation, which currently ranks in Level 2 of the Criminal Punishment Code, and second degree felony impersonation, which currently ranks in Level 4, when compared to other ranked offenses and viewed in light of their seriousness, appear to warrant an increase in ranking to Level 3 and Level 5 respectively.

Third degree felony impersonation seems to be a more serious offense than several current Level 3 offenses, such as soliciting someone to commit a violation of the Marine Turtle Protection Act or altering a certificate of title on a motor vehicle or mobile home. Also, since battery of a law enforcement officer is a Level 4 offense, the proposed ranking of third degree felony impersonation would not be the same as the ranking of an arguably more serious offense.

The second degree felony impersonation offense, which requires that the impersonation occur during the course of the commission of a felony, seems to be at least as serious as several current Level 5 offenses, such as submitting false information to avoid a worker's compensation premium or dealing in stolen property. Since aggravated assault of a law enforcement officer is a Level 6 offense, the proposed ranking of second degree felony impersonation would not be the same as the ranking of an arguably more serious offense.

- *Recommendation: "The Legislature should consider making violations of s. 843.081, F.S. (unlawful use of a flashing/rotating blue light) and s. 843.085(1)-(3), F.S. (unlawful use of a police badge, etc.) third degree felonies ranked in Level 3. Currently, these offenses are first degree misdemeanors."*

Findings of the report:

Offenses currently punished as first degree misdemeanors in s. 843.081, F.S. (unlawful use of a flashing/rotating blue light) and s. 843.085(1)-(3), F.S. (unlawful use of a police badge, etc.) appear to warrant being made third degree felonies with a Level 3 ranking. These offenses seem to be at least as serious as third degree felony impersonation and more serious than some current third degree felonies, such as tampering with an odometer or molesting a stone crab trap.

- *Recommendation: "The Legislature should consider increasing from Level 1 to Level 3 the ranking of third degree felonies in s. 843.0855, F.S. (criminal actions under color of law or through use of simulated legal process)."*

Findings of the report:

The same reasons provided for ranking third degree felony impersonation in Level 3 appear to support a Level 3 ranking for third degree felonies in s. 843.0855, F.S. (criminal actions under color of law or through use of simulated process). This section covers impersonation-related acts, e.g., impersonating a law enforcement officer and serving a fake warrant on an unsuspecting person.

- *Recommendation: "The Legislature should consider amending s. 843.085(1) and (2), F.S., to include a specific intent requirement."*

In *Sult v. State*, 906 So.2d 1013 (Fla. 2005), the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutional as overbroad and vague, and also violates the right to substantive due process. The language the Court reviewed is still in s. 843.085, F.S. The Court only discussed subsection (1) of this section but the general intent language the Court found objectionable also appears in subsections (2) and (3) of this section. The Court's analysis appears to suggest that the adoption of a specific intent requirement may address the constitutional problems.

Findings of the report:

Due to the Florida Supreme Court's holding in the *Sult* case regarding s. 843.085, F.S., staff finds that it is necessary to amend s. 843.085 (1) and (2), F.S., to include a specific

intent requirement so that prosecutions may be made under this statute. Based on the opinions of some prosecutors, it does not appear that subsection (3) can be amended to require specific intent without making this subsection a nullity. Perhaps if there are future prosecutions for violations of this subsection or further opinions of the courts in which the holding in *Sult* is discussed, it will become clearer whether it is necessary to amend this subsection, and if so, how to do so.

- *Recommendation: “The Legislature should consider making it a first degree misdemeanor to violate s. 316.2397, F.S. (unlawful showing or displaying of a blue light in a vehicle), which is currently a noncriminal traffic violation....”*

Findings of the report:

Currently, s. 316.2397, F.S., provides that it is a noncriminal traffic violation to unlawfully show or display a blue light in a vehicle. This offense seems to be at least as serious as several current first degree misdemeanors, such as criminal mischief and bingo game violations, and so appears to warrant being made a first degree misdemeanor.

III. Effect of Proposed Changes:

This bill addresses the problem of impersonating an officer by doing the following:

- Amending s. 316.2397, F.S., to increase from a noncriminal violation to a first degree misdemeanor the offense of unlawfully showing or displaying a blue light on a vehicle;
- Amending s. 843.08, F.S., to create a subsection for each false impersonation offense so that these offenses can be separately referenced in the offense severity ranking chart of the Criminal Punishment Code;
- Amending s. 843.081, F.S., to increase from a first degree misdemeanor to a third degree felony the offense of unlawfully using a flashing or rotating blue light;
- Amending s. 843.085, F.S., to increase from a first degree misdemeanor to a third degree felony the offenses of unlawfully using or selling a police badge (or other specified badge) and unlawfully owning or operating a vehicle marked with the word ‘police’ (or other specified words);
- Amending s. 843.085, F.S., to replace general intent language that was determined by the Florida Supreme Court in *Sult v. State, infra*, to be unconstitutional with specific intent language in order to cure the constitutional defect; and
- Amending s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank or increase the ranking of impersonation offenses and offenses involving or facilitating impersonation as follows:
 - Third degree felony impersonation is ranked in Level 3 (currently ranked in Level 2).
 - Second degree felony impersonation is ranked in Level 5 (currently ranked in Level 4).¹

¹ Second degree felony impersonation is not listed in the offense severity ranking chart. Unlisted second degree felonies are assigned a Level 4 ranking pursuant to s. 921.0023, F.S. Further, the bill ranks first degree felony impersonation in Level 7 in the offense severity ranking chart. This is not a substantive change. Currently this offense is not listed in the chart. However, unlisted first degree felonies are assigned a Level 7 ranking pursuant to s. 921.0023, F.S.

- Proposed third degree felonies involving unlawful use of a flashing or rotating blue light and proposed third degree felonies in s. 843.085, F.S., are ranked in Level 3 (currently first degree misdemeanors).
- Third degree felony violations involving criminal actions under color of law or through use of simulated legal process are ranked in Level 3 (currently ranked in Level 1).²

All of these changes were recommendations from a 2006 interim report of the Senate Committee on Criminal Justice: *Review How Florida and Some Other States Punish the Crime of Falsely Personating a Law Enforcement Officer*, Interim Project 2007-107 (November 2006).

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill increases from a first degree misdemeanor to a third degree felony several offenses, and increases the rankings of third degree felony impersonation, second degree felony impersonation, and third degree felony violations involving criminal actions under color of law or through use of simulated legal process (see “Effect of Proposed Changes” section of this analysis). However, the Criminal Justice Impact Conference estimates that these changes will have an insignificant prison bed impact.

² These third degree felonies are not listed in the offense severity ranking chart. Unlisted third degree felonies are assigned a Level 1 ranking pursuant to s. 921.0023, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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