

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 721 Harassment of Election Workers

SPONSOR(S): Casello

TIED BILLS: IDEN./SIM. BILLS: SB 562

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently contains several provisions prohibiting various forms of threats and harassment. Section 104.0615, F.S., provides that it is a third-degree felony for a person to: directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to refrain from acting as a legally authorized election official or poll watcher; or knowingly use false information to induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.

Section 838.021, F.S., provides that it is a second-degree felony to harm, or a third-degree felony to threaten to harm, any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to: influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty; or cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

Section 784.048, F.S., provides that it is a first-degree misdemeanor to willfully, maliciously, and repeatedly follow, harass, or cyberstalk another person. The severity of the offense is increased to a third-degree felony if the offender also makes a credible threat to the person.

However, Florida law does not currently specifically prohibit a person from threatening or harassing an election worker with the intent to impede or interfere with the election worker’s official duties or to retaliate against the election worker for the performance of his or her official duties.

HB 721 creates s. 104.0614, F.S., to prohibit a person from intimidating, threatening, coercing, harassing, or attempting to intimidate, threaten, coerce, or harass an election worker with the intent to impede or interfere with the performance of the election worker’s official duties or with the intent to retaliate against such election worker for the performance of official duties. A violation of the prohibition is a third-degree felony.

The bill defines “election worker” as a member of a county canvassing board or an individual who is an election official or poll worker in connection with an election conducted in this state.

The bill may have a positive indeterminate impact on jail and prison beds by creating a new felony offense for harassment of election workers, which may result in more jail and prison admissions.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voter Intimidation or Suppression

Section 104.0615, F.S., prohibits a person, as a third-degree felony,^{1,2} from:

- Directly or indirectly using or threatening to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to refrain from acting as a legally authorized election official or poll watcher.³
- Knowingly using false information to induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.⁴

Threats Against a Public Servant

Under s. 838.021, F.S., it is unlawful to harm or threaten to harm any public servant,⁵ his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.⁶

A person commits a second-degree felony⁷ if he or she unlawfully harms a public servant or any person with whose welfare the public servant is interested and a third-degree felony if he or she threatens to unlawfully harm such a person.⁸

Stalking

Under s. 784.048, F.S., it is a first-degree misdemeanor to willfully, maliciously, and repeatedly follow, harass, or cyberstalk another person.⁹ The severity of the offense is increased to a third-degree felony if the offender also makes a credible threat to the person.¹⁰

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.¹¹

¹ A third-degree felony is punishable by up to five years' imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

² S. 104.0615(5), F.S.

³ S. 104.0615(2)(d), F.S.

⁴ S. 104.0615(3)(c), F.S.

⁵ Section 838.014(7), F.S., defines a “public servant” as: 1) any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee; 2) any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or 3) a candidate for election or appointment to any of the officer positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

⁶ S. 838.021(1), F.S.

⁷ A second-degree felony is punishable by a term of imprisonment not exceeding 15 years and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁸ S. 838.021(3)(a-b), F.S.

⁹ S. 784.048(2), F.S.

¹⁰ S. 784.048(3), F.S.

¹¹ S. 784.048(1)(a), F.S.

“Cyberstalk” means:

- To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or
- To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission.¹²

While current Florida law prohibits various forms of threats and harassment, it does not currently specifically prohibit a person from threatening or harassing an election worker with the intent to impede or interfere with the election worker’s official duties or to retaliate against the election worker for the performance of his or her official duties.

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹³ are listed in a single offense severity ranking chart (OSRC),¹⁴ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{15, 16} A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{17, 18} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.¹⁹

Effect of Proposed Changes

HB 721 creates s. 104.0614, F.S., to prohibit a person from intimidating, threatening, coercing, harassing, or attempting to intimidate, threaten, coerce, or harass an election worker with the intent to impede or interfere with the performance of the election worker’s official duties or with the intent to retaliate against such election worker for the performance of official duties. A violation of the prohibition is a third-degree felony.

The bill defines “election worker” as a member of a county canvassing board or an individual who is an election official or poll worker in connection with an election conducted in this state.

The bill does not rank the offense on the Criminal Punishment Code OSRC, and as such, the offense defaults to the statutorily assigned level as described in s. 921.0023, F.S. Accordingly, because the offense is punishable as a third-degree felony it will be ranked as a level 1 offense on the OSRC.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 104.0614, F.S., relating to harassment of election workers.

Section 2: Provides an effective date of July 1, 2024.

¹² S. 784.048(1)(d), F.S.

¹³ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁴ S. 921.0022, F.S.

¹⁵ S. 921.0022(2), F.S.

¹⁶ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

¹⁷ Ss. 921.0022 and 921.0024, F.S.

¹⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

¹⁹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by creating a new felony offense for harassment of election workers, which may result in more jail and prison admissions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES