

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 Committee on Criminal Justice

BILL: SB 446

INTRODUCER: Senator Rodriguez

SUBJECT: Offenses Committed Upon Assistant State Attorneys

DATE: March 10, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Stokes	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 446 adds assistant state attorney to the definition of “law enforcement officer” in s. 784.07, F.S., which provides for the reclassification of the misdemeanor or felony degree of assault, battery, aggravated assault, and aggravated battery when the offense is knowingly committed against a law enforcement officer or other specified professional who is engaged in the lawful performance of his or her duties. This statute also provides for certain mandatory minimum terms when the victim is a law enforcement officer.

By reclassifying assaults and batteries committed against these professionals (including, under the bill, assistant state attorneys), the maximum penalty available for these offenses is increased. In the case of felonies, more sentence points are accrued under the Criminal Punishment Code. These points are used to determine if the minimum sentence recommended is state prison and, if prison is recommended, the minimum prison sentence length. Further, sentence points are multiplied by 1.5 under s. 921.0024(1)(b), F.S., if the offense is battery and, during the commission of the offense, the offender possessed a firearm, destructive device, or other specified weapon.

The Legislature’s Office of Economic and Demographic Research preliminary estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

The Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may be added or multiplied for other factors such as victim injury, commission of certain drug trafficking offenses, and certain violent offenses committed against listed criminal justice professionals performing their duties. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence *in prison* months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁴

Absent mitigation,⁵ the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.⁶ However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.⁷ Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.⁸

Section 784.07, F.S., and the LEPA Multiplier under s. 921.0024, F.S.

Section 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of assault, battery, aggravated assault, and aggravated battery and mandatory minimum terms when the offense is knowingly committed against a law enforcement officer or other specified professional who is engaged in the lawful performance of his or her duties.

¹ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

² See chs. 97-194 and 98-204, L.O.F.

³ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁵ The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

⁶ Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed one year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

⁷ Fla. R. Crim. P. 3.704(d)(26).

⁸ See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

The following professionals are currently covered by s. 784.07, F.S.:

- A law enforcement officer;⁹
- A firefighter;¹⁰
- An emergency medical care provider;¹¹
- A railroad special officer;¹²
- A traffic accident investigation officer as described in s. 316.640, F.S.;
- A nonsworn law enforcement agency employee who is certified as an agency inspector;
- A blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;¹³
- A traffic infraction enforcement officer as described in s. 316.640, F.S.;
- A parking enforcement specialist as defined in s. 316.640, F.S.;
- A public transit employee or agent;¹⁴
- A person licensed as a security officer as defined in s. 493.6101, F.S., and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer; and
- A security officer employed by the board of trustees of a community college.¹⁵

⁹ The term “law enforcement officer” includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law enforcement officer as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement. Section 784.07(1)(d), F.S.

¹⁰ “Firefighter” means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires. Section 784.07(1)(b), F.S.

¹¹ “Emergency medical care provider” means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under ch. 401, F.S., 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 ch. 395, F.S., 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)(a), F.S.

¹² “Railroad special officer” means a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. Section 784.07(1)(f), F.S.

¹³ “Law enforcement explorer” means any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents. Section 784.07(1)(c), F.S.

¹⁴ “Public transit employees or agents” means bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S. Section 784.07(1)(e), F.S.

¹⁵ Section 784.07(1) and (2), F.S.

The specific reclassifications and mandatory minimum terms are described as follows:

- Assault is reclassified from a second degree misdemeanor¹⁶ to a first degree misdemeanor.¹⁷
- Battery is reclassified from a first degree misdemeanor to a level 4¹⁸ third degree felony¹⁹ and a 6-month mandatory minimum term applies to battery of a law enforcement officer committed in furtherance of a riot or an aggravated riot.
- Aggravated assault is reclassified from a level 6²⁰ third degree felony to a level 6²¹ second degree felony²² and a 3-year mandatory minimum term applies to aggravated assault of a law enforcement officer.
- Aggravated battery is reclassified from a level 7²³ second degree felony to level 7 first degree felony²⁴ and a 5-year mandatory minimum term applies to battery of a law enforcement officer.²⁵

Further, the following mandatory minimum terms apply to a person who commits battery against a listed professional (as previously described) and, during the commission of the offense, possessed a firearm, destructive device, or other specified weapon:

- A 3-year mandatory minimum term if the weapon possessed is a firearm or destructive device; and
- An 8-year mandatory minimum term if the weapon possessed is a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.²⁶

Code sentence points are multiplied by 1.5 under s. 921.0024(1)(b), F.S., if the offense is battery and, during the commission of the offense, the offender possessed a firearm, destructive device, or other specified weapon.²⁷

¹⁶ A second degree misdemeanor is punishable by not more than 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.0833, F.S.

¹⁷ A first degree misdemeanor is punishable by not more than one year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.0833, F.S.

¹⁸ Section 921.0022(3)(d), F.S.

¹⁹ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

²⁰ Section 921.0022(3)(f), F.S.

²¹ *Id.*

²² A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²³ Section 921.0022(3)(g), F.S.

²⁴ A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. When specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

²⁵ Section 784.07(2), F.S.

²⁶ Section 784.07(3), F.S.

²⁷ For aggravated assault and aggravated battery of an assistant state attorney, sentence points are also multiplied by 1.5. *See* ss. 775.0823(10) and (11) and 921.0024, F.S.

III. Effect of Proposed Changes:

The bill adds assistant state attorney, as described in s. 27.181, F.S.,²⁸ to the definition of “law enforcement officer” in s 784.07, F.S.,²⁹ which provides for the reclassification of the misdemeanor or felony degree of assault, battery, aggravated assault, and aggravated battery when the offense is knowingly committed against a law enforcement officer or other specified professional who is engaged in the lawful performance of his or her duties. This statute also provides for certain mandatory minimum terms when the victim is a law enforcement officer.

By reclassifying assaults and batteries committed against these professionals (including, under the bill, assistant state attorneys), the maximum penalty available for these offenses is increased. In the case of felonies, more sentence points are accrued under the Code. These points are used to determine if the minimum sentence recommended is state prison and, if prison is recommended, the minimum prison sentence length. Further, sentence points are multiplied by 1.5 under s. 921.0024(1)(b), F.S., if the offense is battery and, during the commission of the offense, the offender possessed a firearm, destructive device, or other specified weapon.

The specific reclassifications and mandatory minimum terms are described as follows:

- Assault is reclassified from a second degree misdemeanor to a first degree misdemeanor.
- Battery is reclassified from a first degree misdemeanor to a level 4 third degree felony and a 6-month mandatory minimum term applies to battery of a law enforcement officer committed in furtherance of a riot or an aggravated riot.
- Aggravated assault is reclassified from a level 6 third degree felony to a level 6 second degree felony and a 3-year mandatory minimum term applies to aggravated assault of a law enforcement officer.
- Aggravated battery is reclassified from a level 7 second degree felony to a level 7 first degree felony and a 5-year mandatory minimum term applies to battery of a law enforcement officer.³⁰

Further, the following mandatory minimum terms apply to a person who commits battery against a listed professional (as previously described) and, during the commission of the offense, possessed a firearm, destructive device, or other specified weapon:

- A 3-year mandatory minimum term if the weapon possessed is a firearm or destructive device; and
- A 8-year mandatory minimum term if the weapon possessed is a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

²⁸ An assistant state attorney appointed by a state attorney serves during the pleasure of the state attorney appointing him or her. Each assistant state attorney appointed by a state attorney has all of the powers and discharge all of the duties of the state attorney appointing him or her, under the direction of that state attorney. Section 27.181(1) and (2), F.S.

²⁹ The inclusion of “assistant state attorney” in the definition of “law enforcement officer” does not create any conflict because the definition of “law enforcement officer” is effectively nothing more than a list that includes deputies, police officers, and others. The definition does contain duties or powers associated with deputies and police officers such as the power to make arrests or require training or certification as a law enforcement officer. Further, there is precedent for inclusion of “assistant state attorney” in the definition of “law enforcement officer.” Prosecutors are included in the definition of “investigative or law enforcement officer” in s. 934.02(6), F.S. Chapter 934, F.S., is Florida’s wiretap law.

³⁰ See “Present Situation” section of this analysis for a discussion of maximum penalties and offense severity level ranking under the Code relevant to these reclassified offenses.

Finally, Code sentence points are multiplied by 1.5 under s. 921.0024(1)(b), F.S., if the offense is battery and, during the commission of the offense, the offender possessed a firearm, destructive device, or other specified weapon.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill

will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).³¹ The EDR provides the following additional information regarding its estimate:

Large numbers come to prison each year with these offenses as primary. In FY 18-19, there were 400 new commitments to prison for these offenses and in FY 19-20, there were 286 new commitments. In FY 20-21, there were 260 new commitments, and there were 320 new commitments in FY 21-22. It is unknown how large the assistant state attorney victim pool is, but simple battery is the most common felony offense and the incarceration rate is low (16.2% in FY 18-19, 14.4% in FY 19-20, 16.7% in FY 20-21, and 14.4% in FY 20-21). [The Criminal Justice Impact Conference] ... has heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.07 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

³¹ *HB 369 – Offenses Committed on Assistant State Attorneys (Identical SB 446)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

³² *Id.*