

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 506
INTRODUCER: Senator Ring
SUBJECT: Crimes Against Homeless Persons
DATE: December 21, 2009 **REVISED:** _____

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

I. Summary:

The bill amends Florida’s hate crimes statute, to reclassify the degree of a felony or misdemeanor offense in which prejudice based on the homeless status of the victim is evidenced.

This bill substantially amends section 775.085, Florida Statutes.

II. Present Situation:

Section 420.621(5), F.S.,¹ provides one definition of the term “homeless”:

(5) “Homeless,” applied to an individual, or “individual experiencing homelessness” means an individual who lacks a fixed, regular, and adequate nighttime residence and includes an individual who:

- (a) Is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- (b) Is living in a motel, hotel, travel trailer park, or camping ground due to a lack of alternative adequate accommodations;
- (c) Is living in an emergency or transitional shelter;
- (d) Has a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

¹ Section 420.621, F.S., is the definitions section for various terms used in ss. 460.621 - 460.28, F.S. Chapter 420, F.S., relates to housing. Sections 460.621 - 460.28, F.S., pertain to the homeless, homelessness, and funding and other assistance for the homeless.

- (e) Is living in a car, park, public space, abandoned building, bus or train station, or similar setting; or
- (f) Is a migratory individual who qualifies as homeless because he or she is living in circumstances described in paragraphs (a)-(e).

The terms do not refer to an individual imprisoned pursuant to state or federal law or to individuals or families who are sharing housing due to cultural preferences, voluntary arrangements, or traditional networks of support. The terms include an individual who has been released from jail, prison, the juvenile justice system, the child welfare system, a mental health and developmental disability facility, a residential addiction treatment program, or a hospital, for whom no subsequent residence has been identified, and who lacks the resources and support network to obtain housing.

Section 775.085, F.S., Florida's hate crimes statute, reclassifies² the degree of a felony or misdemeanor offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability,³ or advanced age⁴ of the victim. The reclassification occurs as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.
- A first degree felony is reclassified to a life felony.⁵

Section 775.085, F.S., also provides that it is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated in this section.

Finally, the section provides that a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of the section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in this civil action, the plaintiff may recover attorney's fees and costs.

² Generally, reclassification provisions increase a felony or misdemeanor by one degree. However, in the case of a first degree misdemeanor, reclassification by one degree makes the offense a felony (third degree). Reclassifications increase the maximum penalty for the offense and result in the accrual of more sentence points, which are used to determine the scored lowest permissible sentence. See s. 921.0024, F.S.

³ Section 775.085(1)(b)1., F.S., defines "mental or physical disability" as "the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living."

⁴ Section 775.085(1)(b)2., F.S., defines "advanced age" as "the victim is older than 65 years of age."

⁵ Pursuant to s. 775.082, F.S., the maximum county jail sentences for misdemeanors are as follows: second degree misdemeanor: 60 days; first degree misdemeanor: 1 year. Pursuant to this same section, the maximum state prison sentences for felonies are as follows: third degree felony: 5 years; second degree felony: 15 years; first degree felony: generally 30 years; life felony: generally life imprisonment or a term of imprisonment not exceeding life imprisonment.

III. Effect of Proposed Changes:

The bill amends s. 775.085, F.S., Florida's hate crimes statute, to reclassify the degree of an offense in which prejudice based on the homeless status of the victim is evidenced.

The bill provides the following definition of the term "homeless status":

3. "Homeless status" means that the victim:
- a. Lacks a fixed, regular, and adequate nighttime residence; or
 - b. Has a primary nighttime residence that is:
 - (I) A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
 - (II) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The effective date of the bill is October 1, 2010.

Other Potential Implications:

The proposed inclusion of homeless status in the Florida hate crimes statute has resulted in some debate as evinced by these comments reported in the Fort Lauderdale *Sun-Sentinel*:

Andrew Rosenkranz, Florida regional director of the Anti-Defamation League, which fights anti-Semitism, said homelessness isn't a category that belongs in the hate-crimes law.

"There's no doubt that attacks on the homeless is a serious issue, especially in Florida," Rosenkranz said. But, he said, the hate-crimes law covers "specific identifying factors or immutable characteristics" such as race, and homelessness isn't that kind of characteristic.

[Florida Representative Ari] Porth disagrees.

"When you commit a crime against one member of that class it reverberates against the whole community. If you go after me because I'm Jewish, and you say hateful things about me when you're beating me down, the fear spreads through the whole community," he said. "So it's not just a crime committed against the one person. If you commit a crime against a homeless person, then the whole homeless community is going to feel the same way."⁶

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ Anthony Man, "Two Seek Protections For Homeless; Expand Hate-Crimes Law To Cover Attacks On Transients," *Sun-Sentinel* (Fort Lauderdale, Florida), Section: Local: Pg. 4B. Bracketed insert provided by Senate professional staff.

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 Criminal Justice Impact Conference (CJIC) provides the official estimate of prison bed impact, if any, of legislation. CJIC has not met to consider the bill. A preliminary estimate by staff of the Office of Economic and Demographic Research is that the bill will probably have an insignificant prison bed impact.⁷

The Florida Department of Corrections made the following comments in its analysis of the bill:

The Department cannot readily discern from its offender and inmate populations how many offenses involve “homeless” persons; hence, impact is indeterminate.

Final impact to be determined by the Criminal Justice Impact Conference.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to an executive summary of the 2008 Hate Crimes in Florida Report, which was submitted by the Florida Attorney General in accordance with the 1989 Hate Crimes Reporting Act, hate crimes in Florida continue to decrease:

Of the 415 participating agencies, 72 agencies reported hate crimes in 2008, a slight decrease from the 73 agencies that reported hate crimes the previous year. This year’s

⁷ E-mail from Kathy McCharen, Office of Economic and Demographic Research to Senate professional staff, dated December 18, 2009. Bracketed insertions provided by Senate professional staff.

⁸ Analysis of SB 506, Florida Department of Corrections, dated November 9, 2009.

total represents 17.3 percent of agencies that participate in the UCR reporting system. One year ago, the annual Hate Crimes in Florida Report showed a total of 193 reported hate crimes. The 182 reported hate crimes in 2008 represents the lowest annual total since 1997.

The report shows not only the number of hate crimes committed, but also the nature of the factors motivating the offenses. During 2008, hate crimes motivated by the victim's race represented 47.3 percent of all reported hate crimes, followed by religion at 20.9 percent; sexual orientation at 19.2 percent; ethnicity/national origin at 12.1 percent; and mental disability at 0.5 percent. No hate crimes were reported under the categories of physical disability or advanced age.

There are two categories of hate crime offenses: crimes against persons and crimes against property. Reports for 2008 showed a slight decrease in the number of hate crimes directed at persons and property than in the previous year. Crimes against persons accounted for 65.9 percent of all incidents reported in 2008, down slightly from 66.8 percent in 2007, while crimes against property accounted for the remaining 34.1 percent, up slightly from 33.2 percent in 2007.⁹

According to a 2009 report by the National Coalition for the Homeless (Coalition), an advocacy group, in 2008, 106 homeless persons were victims of violent attacks and 27 of those 106 persons were killed as a result of those attacks. The Coalition states that Florida had the most attacks committed (30).¹⁰

It appears that one state -Maryland- passed legislation in 2009 to punish hate crimes against the homeless.¹¹ According to the National Coalition for the Homeless, "Maryland was the first and only state to non-discretionally add homelessness to its hate crimes law. Legislation is currently pending in California, Florida, and South Carolina."¹²

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁹ See the following link:

http://myfloridalegal.com/_85256CC5006DFCC3.nsf/0/EBF9E590CD85740785257657005D86F2?Open&Highlight=0,hate_crimes

¹⁰ Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness 2008, August 2009, National Coalition for the Homeless. See the following link:

http://www.nationalhomeless.org/publications/hatecrimes/hate_report_2008.pdf

¹¹ SB 151 (2009 Regular Session), Maryland General Assembly. See the following link:

<http://mlis.state.md.us/2009rs/billfile/sb0151.htm>

¹² See the following link: http://www.nationalhomeless.org/publications/hatecrimes/model_state.html

B. Amendments:

None.

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