

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 Judiciary Committee

BILL: SB 506

INTRODUCER: Senator Ring

SUBJECT: Crimes Against Homeless Persons

DATE: February 17, 2010

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 2. | <u>Sumner</u> | <u>Maclure</u> | <u>JU</u> | Favorable |
| 3. | _____ | _____ | <u>JA</u> | _____ |
| 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:

The State Office on Homelessness housed within the Department of Children and Family Services provides certain outreach services to the homeless community in Florida.¹ “Homeless” is defined, for purposes of identifying the population entitled to receive these services, as an individual who lacks a fixed, regular, and adequate nighttime residence. This definition includes an individual who:

- Is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- Is living in a motel, hotel, travel trailer park, or camping ground due to a lack of alternative adequate accommodations;
- Is living in an emergency or transitional shelter;
- 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;
- Is living in a car, park, public space, abandoned building, bus or train station, or similar setting; or

¹ Section 420.622, F.S.

- Is a migratory individual who qualifies as homeless because he or she is living in circumstances as described in the previous five paragraphs.²

“Homeless” for these purposes does “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.”³

The term does 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.”⁴

Florida’s hate crimes statute, s. 775.085, F.S., reclassifies⁵ 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,⁶ or advanced age⁷ 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.⁸

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 Section 420.621(5), F.S.

³ *Id.*

⁴ *Id.*

⁵ 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.

⁶ 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.”

⁷ Section 775.085(1)(b)2., F.S., defines “advanced age” as “the victim is older than 65 years of age.”

⁸ 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 Florida's hate crimes statute, s. 775.085, F.S., to reclassify the degree of an offense in which prejudice based on the homeless status of the victim is evidenced.

The bill defines "homeless status" to mean that the victim:

- Lacks a fixed, regular, and adequate nighttime residence; or
- Has a primary nighttime residence that is:
 - A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
 - 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 evidenced by comments by Andrew Rosenkranz, Florida regional director of the Anti-Defamation League (an organization founded to fight "defamation of the Jewish people and to secure justice and fair treatment to all"⁹), and Florida Representative Ari Porth in a July 8, 2009, Fort Lauderdale *Sun-Sentinel* article.¹⁰

Although Rosenkranz agreed that attacks on the homeless are a serious issue, he stated that the hate crimes law addresses "specific identifying factors or immutable characteristics' such as race, and homelessness isn't that kind of characteristic."

Representative Porth disagreed stating, "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, 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."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ Anti Defamation League, *About The Anti-Defamation League*, www.adl.org/about.asp?s=topmenu.

¹⁰ Anthony Man, *Two Seek Protections for Homeless; Expand Hate-Crimes Law to Cover Attacks on Transients, Officials Urge*, SUN-SENTINEL (Fort Lauderdale, Florida), July 8, 2009, at 4B (on file with the Senate Committee on Judiciary).

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. The 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.¹¹

In its analysis of the bill, the Florida Department of Corrections stated that the impact is indeterminate because it could not readily discern from its offender and inmate populations how many offenses involve homeless persons. It noted that the final impact would be determined by the CJIC.¹²

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 total represents 17.3 percent of agencies that participate in the UCR¹³ 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.

¹¹ E-mail from Kathy McCharen, Office of Economic and Demographic Research, to Senate professional staff, dated December 18, 2009.

¹² Memorandum to Joe McVane, Senate Policy and Steering Committee on Ways and Means, from Tommy Maggita, Office of Legislative Affairs (November 9, 2009) (on file with the Senate Committee on Judiciary).

¹³ "UCR" stands for Uniform Crime Reporting.

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 2007.¹⁴

A 2009 report by the National Coalition for the Homeless (Coalition), an advocacy group, found that 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).¹⁵

It appears that one state – Maryland – passed legislation in 2009 to punish hate crimes against the homeless.¹⁶ 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.”¹⁷

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.

¹⁴ Office of the Florida Attorney General, *Hate Crimes in Florida January 1, 2008 – December 31, 2008*, 5, <http://myfloridalegal.com/civilrights>.

¹⁵ National Coalition for the Homeless, *Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness 2008*, 10 (August 2009), www.nationalhomeless.org/publications/hatecrimes/hate_report_2008.pdf.

¹⁶ SB 151 (2009 Regular Session), Maryland General Assembly, <http://mlis.state.md.us/2009rs/billfile/sb0151.htm>.

¹⁷ National Coalition for the Homeless, *Model City/County/State Legislation/Resolutions*, http://www.nationalhomeless.org/publications/hatecrimes/model_state.html.