

STORAGE NAME: h0307.cp
DATE: March 2, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 307
RELATING TO: Stalking
SPONSOR(S): Representative Villalobos
STATUTE(S) AFFECTED: Sections 784,048, F.S.
COMPANION BILL(S): SB 198(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

Current law defines the crime of stalking as willfully, maliciously, and repeatedly following or harassing another. Aggravated stalking occurs if a person stalks another and one of the following two elements are present:

1. The offender makes a credible threat with the intent to place [a victim] in reasonable fear of death or bodily injury, **or**
2. The offender previously received a court order to have no contact with the victim.

This bill provides that a person who commits the crime of stalking against a person under the age of 16 would be guilty of Aggravated Stalking, thus creating a third alternative way that a person can commit Aggravated Stalking. This addition to Chapter 784 reads as follows:

- ▶ Any person who willfully, maliciously, and repeatedly follows or harasses a minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.802, s. 775.083, or s. 775.084.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Stalking:

Section 784, F.S., defines the misdemeanor offense of Stalking:

- ▶ Any person who willfully, maliciously, and repeatedly follows or harasses another person commits the offense of stalking, a misdemeanor of the first degree...

Section 784.048, F.S., also creates the crime of Aggravated Stalking which takes place when an offender commits the crime of misdemeanor Stalking and in addition one of the two following are present:

1. The offender makes a credible threat with the intent to place [a victim] in reasonable fear of death or bodily injury, **or**
2. The offender previously received a court order to have no contact with the victim.

As a first degree misdemeanor stalking is punishable by up to one year in jail. Aggravated stalking with credible threat of bodily injury or death is listed as a level 6 offense for the purposes of the Sentencing Guidelines. Aggravated stalking which occurs after the offender previously received a court order to have no contact with the victim is listed as a level 7 offense. A level 6 offense gives the judge discretion to sentence a defendant up to 13.4 months in prison for aggravated stalking assuming no prior or additional offenses. The guidelines call for a "mandatory" prison sentence for a level 7 offense between 21 and 35 months assuming no other offenses. It should be noted that according to the Department of Corrections, over 40 percent of all cases that score prison time receive downward departures.

The Florida Supreme Court has upheld Section 784.048, F.S., against challenges for vagueness, overbreadth and the Free Speech Clause of the First Amendment. This new bill does not add any new language which would be more susceptible to a constitutional issue.

B. EFFECT OF PROPOSED CHANGES:

This bill amends Section 784.048, FS, and creates a third type of Aggravated stalking. Any person who commits the crime of Stalking against a 16 year old would be guilty of Aggravated Stalking. This bill does not assign a severity level for Aggravated stalking of a person under 16 years of age. All third degree felony offenses which are not listed in the offense severity chart are ranked as a level 1 offense. Level 1 is for the least serious felonies. An extensive criminal history would be necessary for an offender who is sentenced for a level one offense to qualify for prison time under the guidelines.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not Applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No. The bill increases the penalty for the crime of Stalking when the victim is under the age of 16.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

The Department of Corrections predicts that this bill will have no impact on the Department. A person sentenced for this level 1 offense is very unlikely to qualify for prison under the sentencing guidelines. The Criminal Justice Estimating Conference is scheduled to consider the bills impact on March 7, 1997.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The purpose of this bill is to impose a more serious penalty for the offense of Stalking when the victim of the crime is a child. That objective is consistent with an implicit public policy to give greater protection to children from those who would commit crimes against children. For example, Sexual Battery and Lewd and Lascivious acts are treated more seriously by statute if those offenses are committed against children. Laws prohibiting child abuse and contributing to the delinquency of a minor are additional examples of criminal laws that seek to protect children as a class.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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