

STORAGE NAME: h3139a.cp

DATE: February 12, 1998

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

BILL #: HB 3139

RELATING TO: Offenses Which Evidence Prejudice

SPONSOR(S): Rep. Ogles and Rep. Heyman

COMPANION BILL(S): SB 154

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

- (1) CRIME AND PUNISHMENT YEAS 8 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill enhances the penalty for crimes which evince prejudice against the elderly or the mentally or physically disabled.

For example, a battery committed against an ordinary citizen is currently penalized as a misdemeanor. Under the bill, if the same offense is committed against a mentally disabled person, it would be punished as a third-degree felony, as long as there is evidence it was motivated by prejudice against the mentally disabled.

The bill provides an effective date of **October 1, 1998.**

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Protecting Classes Which, Historically, Have Been the Target Of Hate Crimes

Section 775.085(1), F.S., reclassifies any offense at the next higher felony degree if the commission of that offense evinces prejudice based upon the victim's race, color, ancestry, ethnicity, religion, sexual orientation, or national origin.

It is an essential element of this offense that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the protected class.

In ***State v. Stalder*, 630 So.2d 1072 (Fla. 1994)**, the Florida Supreme Court construed s. 775.085 as applying only to "bias-motivated crimes," which it defined as "any crime wherein the perpetrator intentionally selects the victim because of the victim's 'race, color, ethnicity, religion, or national origin.'" *Id.* at 1077.

The essence of criminality under section 775.085 is that prejudice be a significant factor in bringing about the commission of the underlying crime, i.e. but for the racial enmity, the underlying crime would not have occurred.

State v. Hart*, 677 So.2d 385, 387 (Fla. 4th DCA 1996)**, citing ***Stalder.

Other Enhancement Statutes

◆ **Chapter 784** provides for a number of enhancements to the classification of a violent offense that depends upon the status of the victim. The enhancement generally allows the degree of the offense to be reclassified as follows:

- (1) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.
- (2) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- (3) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- (4) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the third degree.

If the victim falls into one of the following categories, then the offense is reclassified as shown in (1) through (4) above:

1. Law enforcement officer.
2. Firefighter.
3. Emergency medical car provider.

4. Parking enforcement specialist.
5. Traffic infraction enforcement officer.
6. Security officer employed by a community college.
7. A person 65 years of age or older.
8. An employee of a school district or a private school.
9. An employee of a state university or any other entity of the state system of public education.
10. An employee of a university developmental research school or the Florida School for the Deaf and the Blind.
11. An employee of The Department of Children and Family Services.

* A victim in categories one through six must be engaged in the lawful performance of his or her legal duties in order for the crime to be enhanced.

* In addition to those listed above, there is a category of enhancements that only apply to the misdemeanor offense of battery. A person who commits a battery against one of the following two categories of people shall have that battery reclassified as a third degree felony:

1. Intake counselor, case manager, or other staff of a detention center or juvenile commitment facility.
2. Providers of health services to delinquent children.

◆ **Sections 794.011(4)(e) & (f), F.S.**, enhance the penalty for **sexual battery** on a mentally or physically disabled person from a second-degree felony to a first-degree felony.

◆ **Section 784.08, F.S.**, enhances the penalty for assault or battery on a person over 65 years of age from a misdemeanor to a third-degree felony.

B. EFFECT OF PROPOSED CHANGES:

Adding New Classes To the Protected Group

The bill amends Section 775.085, F.S., by adding the **disabled** (mental or physical) and the **elderly** as new classes which will be protected under the statute. Crimes committed against the new classes will be reclassified to the next felony level if:

- 1) the person knew or had reasonable grounds to know the victim was a member of the protected class, and
- 2) commission of the crime evinces prejudice against the protected class.

Enhanced Penalties

Penalties are enhanced by reclassifying the crime committed at the next higher felony degree. For example, a battery is classified as a misdemeanor. Under the bill, a battery committed upon a disabled person would be reclassified as a third-degree felony. If the crime were a third-degree felony, it would be reclassified as a second-degree felony. The highest reclassification possible is from a second-degree felony to a first-degree felony. That is, the bill does not allow for a first-degree felony, or a life-felony, to be reclassified to the next higher felony level.

New Classes defined

“Mental or physical disability” means that 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.

“Advanced age” means that the victim is older than 65 years of age.

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?

N/A.

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

N/A

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

N/A

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?

No.

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

No.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

- 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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

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

III. FISCAL RESEARCH & 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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference had not reviewed this bill as of this date. Nonetheless, because the bill does not create a new offense, but merely enhances certain offense for a new, limited, group of victims, the bill is expected to have insignificant or no fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Because this bill concerns a criminal statute, it is exempt from the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

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

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The Fourteenth Amendment of the United States Constitution guarantees equal protection of the laws. This means that similarly situated people may not be treated differently under the law. For example, the Legislature may not impose harsher penalties for batteries committed against police officers, when they are off-duty, just because they are police officers. Rather, Section 784.07 (Battery Against Law Enforcement Officers) only allows harsher penalties for batteries committed against police officers who are "engaged in the lawful performance of his or her duties." Because the statute limited the enhanced penalties to those crimes which interfered with the performance of an officer's duties, the statute only protects officers in a different class from ordinary civilians. And because protecting police officers in the lawful performance of their duties is rationally related to a legitimate state interest, law enforcement, the statute does not violate constitutional principles of due process.

In *State v. Stadler*, supra, the Florida Supreme Court ruled Section 775.085(1) did not violate equal protection because the statute was rationally related to achieving a legitimate state objective, i.e. providing more protection to groups which, historically, have been the targets of hate crimes. This begs the question, then, whether adding the disabled or the elderly to this protected class is rationally related to a legitimate state interest because neither the disabled or the elderly have been, historically, the targets of hate crimes. While these classes may be at a higher risk (they are more vulnerable to crime), it is questionable as to whether hatred is the motivating impetus for such crimes.

If the purpose of the bill is to compensate for the unique vulnerabilities to crime shared by the disabled and the elderly, then the law must represent a rational means of compensating for those vulnerabilities. For example, the law already increases the penalty for a sexual battery committed upon the mentally or physically disabled. See, Section 794.011(4), F.S. Similarly, a battery (ordinarily punished as a misdemeanor) committed upon a person over 65 years of age is enhanced to a third-degree felony by Section 784.08, F.S. These laws are a rational means of addressing the special vulnerabilities these classes have to rape and battery. However, it would be another matter altogether to enhance the penalties for all crimes committed against these classes without regard to those vulnerabilities.

For example, enhancing the penalty for auto-theft simply because the owner of the vehicle is over 65 would not be rationally related to the unique vulnerabilities of people over 65. This is so because the class of people under 65 are exactly as vulnerable to auto-theft as the class of people over 65. Because they are similarly situated as to auto-theft, and to many other crimes, there is no rational basis for distinguishing between the two in order to offer different levels of protection for all crimes. In conclusion, because the disabled and the elderly, historically, have not been the subject of hate crimes, they may not be eligible for this type of protected-class status for all crimes which might be committed against them.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed favorably out of the Crime & Punishment Committee with no amendments, on February 3, 1998.

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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