

STORAGE NAME: h0385a.cp  
DATE: March 12, 1997

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

**BILL #:** HB 385

**RELATING TO:** Sentencing

**SPONSOR(S):** Feeny

**STATUTE(S) AFFECTED:** Section 775.0845, F.S.

**COMPANION BILL(S):** SB 86 (identical); SB 154 (identical)

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

- (1) CRIME AND PUNISHMENT YEAS 9 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

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I. SUMMARY:

Section 775.0845, F.S., provides for "enhanced penalties" for any criminal offense committed while the offender was wearing a "hood, mask, or other device that conceals his identity." In Cabal v. State, 678 So. 2d 315 (Fla. 1996), the Florida Supreme Court found that the plain language of section 775.0845, F.S., "requires that the *penalty* be *increased* rather than the *offense reclassified*." Id. at 317 (emphasis in original). In other words, Cabal's second degree robbery conviction could not be reclassified and scored under the sentencing guidelines as a first degree felony. This holding limits the application of section 775.0845, to allow an enhanced penalty only for a departure sentence or when the offender's guideline points call for a sentence above the statutory maximum of the offense committed.

If this bill is enacted, criminal offenses committed with a mask or similar device will be reclassified upward by one offense degree. For example, a person convicted of a second degree felony while wearing a mask would have his or her offense reclassified as a first degree felony. The practical effect under the 1995 guidelines is to increase the offense severity ranking by one level.

Section 794.023, F.S., provides for enhanced penalties for a sexual battery committed by multiple perpetrators and contains the same definitive language as section 775.0845, F.S., which omits an express mention of reclassification. Consequently, if this bill amends section 775.0845, F.S., to clarify the legislative intent to reclassify and not merely to enhance a penalty, but does not do so for section 794.023, F.S., a Court will probably rule that section 794.023, F.S., is not a reclassification statute. See Comments, page 7.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 775.0845, F.S., provides for “enhanced penalties” for any criminal offense committed while the offender was wearing a “hood, mask, or other device that conceals his identity.” This statute does not apply to several misdemeanor offenses that already prohibit the wearing of a “hood, mask, or other device” in certain areas like on a highway or on public property, (sections 876.12-876.15, F.S.). Section 775.0845, F.S., does not *expressly* provide for “reclassification” of an offense from one degree to the next higher level. Rather, it provides for “enhanced penalties” by stating that the offense “shall be punishable as if it were . . .” the next higher level of offense. For example, “[a] felony of the second degree shall be punishable as if it were a felony of the first degree.” s. 775.0845 (2)(a), F.S. In 1995, section 775.0845, F.S., was amended to specify that a felony offense which is reclassified under this statute is to be ranked one level above the ranking established by the sentencing guidelines offense severity chart.

Last year, the Florida Supreme Court decided a case in which it construed section 775.0845, F.S. In Cabal v. State, 678 So. 2d 315 (Fla. 1996), the Court held that the 1993 version of section 775.0845, F.S., “is a penalty enhancement statute rather than a substantive reclassification statute”. Id. at 315. The Court found that the plain language of section 775.0845, F.S., “requires that the *penalty* be *increased* rather than the *offense reclassified*.” Id. at 317 (e.o.). In other words, Cabal’s second degree robbery conviction could not be reclassified and scored under the sentencing guidelines as a first degree felony. Id. at 316. The dissent pointed out that because of this interpretation:

...section 775.0845 will have little effect because it will only come into play in those isolated instances when there is a departure sentence or when the offender’s guideline points are so great as to call for a sentence above the statutory maximum of the offense committed.

Id. at 318.

There are other statutes which *expressly* provide for reclassification of offenses. For example, the use of a weapon during the course of a felony requires that the “*felony* ... be *reclassified*” as an offense to the next higher degree. s. 775.087, F.S. Also, section 775.0875, F.S., allows for an offense to “be reclassified” when a law enforcement officer’s firearm is taken during the commission of an offense. The Cabal Court referenced these statutes when it stated that the legislature would have expressly stated its intent to reclassify offenses if that is what it intended for section 775.0845, F.S. Id. at 317.

As stated above, the Cabal opinion addressed the 1993 version of section 775.0845, F.S. In 1995, the Legislature amended section 775.0845, F.S., by adding language which states: “For purposes of sentencing under chapter 921 ... a felony offense which is *reclassified* under this subsection is ranked one level above the ranking under s. 921.0012 or s. 921.0013 of the offense committed.” (emphasis added). In a footnote, the Cabal court stated that it would “not address whether this language acts to require reclassification of an offense to the next higher degree for offense committed after

1993.” Consequently, it is unclear how the courts will construe the current version of section 775.0845, F.S.

**B. EFFECT OF PROPOSED CHANGES:**

This bill amends section 775.0845, F.S., to expressly state that the degree of a felony or misdemeanor shall be reclassified to the next higher degree, as opposed to merely allowing a penalty enhancement when a offender wears a hood, mask or other concealing device during the commission of a criminal offense. This makes clear the legislature’s intent to provide for reclassification and not merely a penalty enhancement.

If this bill is enacted, criminal offenses committed with a mask or similar device will be reclassified upward by one offense degree. For example, a person convicted of a second degree felony while wearing a mask would have his or her offense reclassified as a first degree felony. The practical effect under the 1995 guidelines is to increase the offense severity ranking by one level.

**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?

Not applicable.

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?

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?

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

**D. SECTION-BY-SECTION ANALYSIS:**

1. Section One:

Amends section 775.0845, F.S., to expressly state that the degree of a felony or misdemeanor shall be reclassified to the next higher degree, as opposed to merely allowing a penalty enhancement.

2. Section Two:

Provides that the act shall take effect upon becoming a law.

**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:

Section 921.0012(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine its impact on the state prison system. The CJEC reviewed this bill on March 7, 1997, and determined that it would have no impact on the state prison system.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The 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:

SUBSTANTIVE CONSIDERATIONS:

In response to the Court's opinion in Cabal v. State, 678 So. 2d 315 (Fla. 1996), this bill expressly provides for reclassification to the next higher degree for a felony or misdemeanor offense committed while an offender wears a hood, mask, or other concealing device. As described above, there are several other statutes which expressly provide for reclassification of offenses, e.g., felony offenses committed with a weapon or firearm. This bill places the mask statute, section 775.0845, F.S., on the same footing with the weapons reclassification statute.

There exists one other statute, not amended by this bill, in which the legislature's intent could be questioned as in Cabal. Like section 775.0845, F.S., section 794.023, F.S., provides for enhanced penalties but does not expressly provide for reclassification of the offense. Section 794.023, F.S., provides for enhanced penalties for a sexual battery committed by multiple perpetrators and contains the same definitive language which omits an express mention of reclassification. Although an amendment referencing reclassification was added to 794.023, F.S., in 1995, as the court's footnote in Cabal indicates, there is no guarantee that a court would construe this amendment to allow reclassification. Consequently, if this bill amends section 775.0845, F.S., to clarify the legislative intent to reclassify and not merely to enhance a penalty, but does not do so for section 794.023, F.S., a Court will probably rule that section 794.023, F.S. is not a reclassification statute.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

AMENDMENT ONE:

Technical amendment which changes a reference on page 1, line 8, from "1995" to "1996".

AMENDMENT TWO:

The whereas clause of the original bill reads: "in these dicta the court did not address..." This technical amendment changes "these" to "this" in this sentence, (page 1, line 16). This amendment was adopted to remedy what appeared to be a grammatical error in using "these". However, "dicta" is the plural form of dictum, which means that the original bill is correct and this technical amendment is not.



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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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