

**STORAGE NAME:** h0183a.cor

**DATE:** March 3, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CORRECTIONS  
ANALYSIS**

**BILL #:** CS/HB 183

**RELATING TO:** Sexual Battery

**SPONSOR(S):** Committee on Crime & Punishment and Representative Fasano

**COMPANION BILL(S):** SB 912

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

- (1) CRIME AND PUNISHMENT YEAS 5 NAYS 0
  - (2) CORRECTIONS YEAS 5 NAYS 0
  - (3) CRIMINAL JUSTICE APPROPRIATIONS
  - (4)
  - (5)
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**I. SUMMARY:**

CS/HB 183 amends s. 775.085 to reclassify the penalties for commissions of felonies or misdemeanors evidencing prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.

The bill provides that crimes evidencing prejudice shall be reclassified to the next highest degree instead of being "punishable as if it were" a felony of the next highest degree.

The committee substitute amends s. 794.023 to provide that sexual battery committed by multiple perpetrators shall be reclassified to the next higher degree instead of being "punishable as if it were" a felony of the next highest degree.

The bill's effective date is July 1 of the year in which enacted.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Reclassification**

Prior to 1997, s. 775.0845, F.S., provided that the penalty for a crime committed by a person wearing a mask shall be "punishable as if it were" a crime of the next higher degree. For example, the statute provided that a third degree felony would be punishable as if it were a second degree felony. The Florida Supreme Court in Cabal v. State, 678 So. 2d 315 (Fla. 1996), held that the legislature intended to increase the penalty, but the legislature did not intend to reclassify the degree of the offense. Ordinarily, this distinction would not be of great significance. An offender who commits a third degree felony such as aggravated assault and has that offense reclassified to a second degree felony may be sentenced exactly the same as a person whose aggravated assault is enhanced to be punishable as if it were a second degree felony. The only difference would be that the offender who committed the reclassified aggravated assault would have a second degree felony on his or her record, and the offender who committed the aggravated assault with the enhanced penalty would have a third degree felony on his or her record. However, the statute creating the enhanced penalty also provided that offenses reclassified by the statute are ranked one level higher in the offense severity chart for the purposes of the sentencing guidelines, thus increasing the permissible sentencing range. Since the statute only provided for enhanced penalties and not reclassification, the provision providing for a higher ranking could not be applied.

During the 1997 Session, the Legislature responded to the Florida Supreme Court's decision in Cabal by amending Section 775.0845, F.S. to provide that for an offender who commits a crime while wearing a mask "the offense is reclassified" to a felony of the next higher degree. Recently, the Third District Court of Appeals held that this rewritten statute did serve to reclassify crimes committed while wearing a mask, McDonald v. State, 714 So. 2d 643 (Fla. 3rd DCA 1998).

**Hate Crimes**

Section 775.085, F.S., popularly known as the "Hate Crimes" statute, imposes increased penalties for those who commit bias-motivated crimes. Using the term "enhanced penalties" in the title and the phrase, "shall be punishable as if" in the pertinent sub-paragraphs, is similar to the old statute enhancing penalties for the wearing of a mask in s. 775.0845, F.S. (1989). Unlike the section providing for increased penalties for wearing a mask, the hate crimes statute does not contain a similar provision which reclassifies felony offenses one level above their current ranking in the offense severity chart for the purposes of the new sentencing code that has replaced the guidelines.

**Sexual Battery by Multiple Perpetrators**

Section 794.023, F.S., imposes increased penalties for individuals who, in concert with one or more persons, are proven to commit sexual battery on another. Here again the section uses the term "enhanced penalties" in the title and the phrase "shall be punishable as if" in the pertinent sub-paragraphs. It also reads much like the old statute enhancing penalties for wearing a mask in s. 775.0845, F.S., which was held to be an enhancement statute and not a reclassification statute by the Florida Supreme Court. The statute that enhances penalties for gang rape also provides that a felony that is reclassified pursuant to that section is ranked one level higher in the offense severity ranking chart.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute amends s. 775.085, F.S. as it pertains to crimes evidencing prejudice based on the following.

- race
- color
- ancestry
- ethnicity
- religion

- sexual orientation
- national origin
- mental or physical disability
- advanced age of the victim

CS/HB 183 provides that these crimes evidencing prejudice shall be reclassified to the next highest degree instead of being “punishable as if it were” a felony of the next highest degree.

The committee substitute amends s. 794.023, F.S. to provide that sexual battery committed by multiple perpetrators shall be reclassified to the next higher degree instead of being “punishable as if it were” a felony of the next highest degree.

Specifically, CS/HB 183 clarifies the Legislature’s intent to reclassify the penalties of the specified offenses for crimes evidencing prejudice and for acts of sexual battery committed by more than one person.

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:

Sections 775.085 and 794.023, F.S.

E. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Reclassifies the penalties relating to offenses evidencing prejudice while

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**Section 2:** Reclassifies the penalties for offenses involving multiple perpetrators of sexual battery.

**Section 3:** Provides for an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None..

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

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:

On January 29, 1999, the Criminal Justice Estimating Conference determined that this bill would have no prison bed impact.

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 the 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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee Substitute differs from the original bill through technical amendments which clarified that the affected statutes reclassified the degree of offenses and do not enhance penalties.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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