

STORAGE NAME: h0183.cp

DATE: January 19, 1999

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

BILL #: HB 183

RELATING TO: Sexual Battery

SPONSOR(S): Representative Fasano

COMPANION BILL(S):

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

- (1) CRIME AND PUNISHMENT
 - (2) CORRECTIONS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends Section 775.085 to provide 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 bill amends Section 794.023 to provide that sexual battery committed by more than one person shall be reclassified to the next higher degree instead of being "punishable as if it were a felony of the next highest degree.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Prior to 1997, Section 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, it is similar to the old statute enhancing penalties for the wearing of a mask in section 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 775.0845, F.S., which was held to 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 bill amends Section 775.085 to provide 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 bill amends Section 794.023 to provide that sexual battery committed by more than one person shall be reclassified to the next higher degree instead of being "punishable as if it were" a felony of the next highest degree.

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:

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 Criminal Justice Estimating Conference has not met and determined if the bill has a fiscal 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:

The bill and current law only provide for an additional penalty for sexual battery that is either a second or a first degree felony. This excludes attempted sexual battery on a person over 12 years of age without force likely to cause serious bodily injury, which is a third degree felony.

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While the bill will cause sexual battery by multiple perpetrators to be ranked one level higher for the purposes of the punishment code, by giving meaning to current law, there is not a similar provision in current law for hate crimes. The bill would only increase the length of sentence for a hate crime beyond its current enhanced status if the hate crime in one of the uncommon crimes that are not ranked in the offense severity chart for the criminal punishment code. Unranked offenses are ranked by default based on the degree of the offense. Section 921.0023, F.S. Thus an unranked second degree felony under the code is ranked as a level four offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

It is anticipated that technical amendments will be filed to clarify the bill so that "penalties" are not reclassified, but rather the degree of the offense is to be reclassified. [page 1, line 15 and 16; and page 2, lines 9,14, and 16]

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

Bill Blocker

J. Willis Renuart