



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the penalties for certain criminal offenses.

Promote personal responsibility -- This bill deters wrongful conduct by increasing the penalties for certain criminal offenses.

### B. EFFECT OF PROPOSED CHANGES:

The Constitution classifies crimes into two general classes: misdemeanors and felonies. Current general law further classifies misdemeanors and felonies. The classification generally determines the maximum possible punishment. Note that some crimes have a specific maximum punishment in excess of these:

Maximum Punishment for Criminal Offenses (in general)		
Classification	Incarceration	Fine
Infraction	none	\$500
2nd degree misdemeanor	90 days county jail	\$500
1st degree misdemeanor	1 year county jail	\$1,000
3rd degree felony	5 years state prison	\$5,000
2nd degree felony	15 years state prison	\$10,000
1st degree felony	30 years state prison	\$10,000
Life felony	Life in state prison	\$15,000
Capital felony	Death	none

The statutory definition of a criminal offense provides the classification of the offense.<sup>1</sup>

Several statutes currently reclassify an offense to an increased class based on the commission of certain activities during the crime, or based on the status of the victim. Examples of reclassification provided for under current law includes:

- Wearing a mask while committing offense, s. 775.0845, F.S.
- Wearing bulletproof vest while committing certain offenses, s. 775.0846, F.S.
- Evidencing prejudice while committing offense, s. 775.085, F.S.
- Possession or use of a weapon while committing offense, s. 775.087, F.S.
- Committing crime while in possession of weapon taken from a law enforcement officer, s. 775.0875, F.S.

Reclassifications can be “stacked”, that is, they can be added to one another.

### Effect of Bill

This bill creates the Freedom to Worship Safely Act.

This bill creates s. 775.0861, F.S., which provides for the reclassification of certain felony offenses committed on the property of a religious institution while the victim is on the property for the purpose of

<sup>1</sup> The few felonies not specifically classified are considered a third degree felony, and the few misdemeanors not specifically classified are considered a second degree misdemeanor. Section 775.081, F.S.

attending or participating in a religious service. The term "religious service" is defined as a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion. The definition covers more than just traditional worship services, it covers activities such as daily prayers, weddings, and funerals.

The bill references the definition of religious institution at s. 496.404, F.S. Section 496.404(19), F.S., provides that the term "religious institution" means "any church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship. 'Religious institution' also includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation."

The definitions of religious institution and religious service are non-denominational.

The reclassification applies to any offense that involves the use or threat of physical force or violence against an individual, and includes the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- Assault;
- Aggravated assault; and
- Battery.

The reclassification is as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.
- A first degree felony is reclassified to a life felony.

The reclassification of these offenses will have the effect of increasing the maximum sentence that a court may impose for the offense, and may also increase the minimum sentence required under the Criminal Punishment Code.

The Criminal Punishment Code<sup>2</sup> prescribes a mathematical formula for calculating the minimum sentence for any offense. Offenses are categorized into 10 levels, higher numbered levels result in a

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<sup>2</sup> Sections 921.002 - 0027, F.S.

higher minimum sentence. An unclassified third degree felony, such as a misdemeanor reclassified to a third degree felony, defaults to Level 1. This bill provides that such reclassified misdemeanor is a Level 2 offense.

This bill also references the incentive gain-time provisions of ch. 944, F.S. However, the offense level has no relevance to the awarding of incentive gain-time for any offense committed after October 1, 1995.

The bill also makes corresponding changes to section 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code.

This bill applies to crimes committed on or after July 1, 2005.

C. SECTION DIRECTORY:

Section 1 creates a popular name for this act.

Section 2 creates s. 775.0861, F.S., reclassifying criminal offenses.

Section 3 amends s. 921.0022, F.S., to add a necessary cross-reference in the offense severity chart.

Section 4 provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference evaluated this bill on March 5, 2005, and estimates that the prison bed impact of this bill will be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill references gain-time eligibility, referring to the gain-time provisions in effect for 1994-1995. However, a 1995 amendment makes the reference to gain-time eligibility in this bill inconsequential.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 23, 2005, the Criminal Justice Committee adopted one amendment to this bill. The amendment:

- Reorganized the bill for clarity.
- The original bill provided a reclassification for any of the enumerated offenses if the offense occurred on the property of a religious institution while any service or activity was occurring. The amendment provides that the reclassification applies if the victim is on the property and is coming or going to a religious service, thereby covering a crime of violence that may occur, for instance, in the parking lot immediately before or after the service.
- The original bill provided a reclassification for any of the enumerated offenses if the offense occurred on the property of a religious institution while any service or activity was occurring. The amendment removed activity. Accordingly, reclassification will not apply if the victim happened to be on religious property without intending to attend or participate in a religious service.
- Added a reclassification of first degree felonies.
- Added a definition of religious service.
- Removed one of the references to gain-time eligibility.

The bill was then reported favorably with a committee substitute.