

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 1992

INTRODUCER: Senator Alexander

SUBJECT: Homeless Persons/Assault or Battery

DATE: March 20, 2006

REVISED: 03/29/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>JA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 1992 reclassifies the degree of assault and battery offenses when any of those offenses are committed against a homeless person, a term which the bill defines. The following reclassifications are provided:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Additionally, if a person is convicted of aggravated assault or aggravated battery upon a homeless person, the person shall be sentenced to a three-year minimum mandatory term of imprisonment, be fined not more than \$10,000, and be ordered to make restitution to the victim and to perform up to 500 hours of community service. Restitution and community service work are in addition to, and not in lieu of, any fine or sentence that may be imposed.

The offense would be reclassified regardless of whether the offender knew or had reason to know the housing status of the victim. The offense would be reclassified regardless of whether the offender was also homeless.

This bill creates section 784.0815 of the Florida Statutes.

II. Present Situation:

Currently, there is no law that specifically enhances penalties or reclassifies the felony or misdemeanor degree of any offense if the offense is committed against a homeless person. Crimes against the homeless are treated the same as crimes committed against most of the general population.

Assaults, aggravated assaults, batteries, and aggravated batteries are generally proscribed and punishable, as provided, respectively, in s. 784.011, F.S., s. 784.021, F.S., s. 784.03, F.S., s. 784.041, F.S., and s. 784.045, F.S.

Section 784.011, F.S., provides that it is a second degree misdemeanor¹ to commit an “assault,” which the statute defines as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

Section 784.021, F.S., provides that it is a third degree felony² to commit an “aggravated assault,” which the statute defines as an assault with a deadly weapon without intent to kill or an assault with an intent to commit a felony.

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor³, occurs when a person actually and intentionally touches or strikes another person against the will of the other; or intentionally causes bodily harm to another person.

While battery is generally a first degree misdemeanor, battery is a third degree felony if a person who has one prior conviction for battery, aggravated battery, or felony battery commits any second or subsequent battery. The term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Section 784.041, F.S., provides that a person commits felony battery, a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

Section 784.045, F.S., provides that a person commits aggravated battery, a second degree felony,⁴ if the person:

¹ The maximum penalty for a second degree misdemeanor is sixty days imprisonment. This is jail time, not state prison.

² The maximum penalty for a third degree felony is five years in state prison. s. 775.082, F.S.

³ The maximum penalty for a first degree misdemeanor is a term of imprisonment not exceeding one year. This is jail time, not state prison. s. 775.082

⁴ The maximum penalty for a second degree felony is fifteen years in state prison. s. 775.082.

- In committing battery, intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, uses a deadly weapon; or
- The person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

While this is the general scheme for punishing these crimes, penalties potentially can be more severe when these crimes are committed against certain persons. Two examples that illustrate the differences are s. 784.08, F.S., and s. 784.07(2), F.S. Section 784.08, F.S., provides that when a person is charged with committing assault, aggravated assault, battery, or aggravated battery against a victim age 65 or older, the degree of the offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Additionally, in the case of an aggravated assault or aggravated battery reclassified under this section, a three-year mandatory minimum term is imposed.

Section 784.07(2), F.S., reclassifies the degree of assault and battery offenses committed against any of a list of persons, including law enforcement officers. If the victim was a law enforcement officer and the offense reclassified was an aggravated assault, a three-year mandatory minimum term is imposed. If the victim was a law enforcement officer and the offense reclassified was an aggravated battery, a five-year mandatory minimum term is imposed.

Florida's hate crime statute, s. 775.085, F.S., also reclassifies offenses, though it does not provide for any mandatory minimum term of imprisonment. Unlike s. 784.08, F.S., and s. 784.07(2), F.S., it can be applied to *any* felony or misdemeanor if the commission of the felony or misdemeanor "evidences prejudice" based upon the victim's race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age. This requirement to prove animus is not a requirement of s. 784.08, F.S., or s. 784.07(2), F.S. To date, there is no court case holding that s. 784.08, F.S., requires that a person charged under this statute know that the victim is 65 years of age or older, and the plain language of the statute indicates otherwise. In contrast, the plain language of s. 784.07(2), F.S., indicates that "if a defendant was charged under subsection (2), the prosecution would clearly have to prove the defendant knew that his victim was an officer."⁵

⁵ *Thompson v. State*, 695 So.2d 691, 692 (Fla. 1997).

III. Effect of Proposed Changes:

Senate Bill 1992 reclassifies the degree of assault and battery offenses when any of those offenses are committed against a homeless person, a term which the bill defines. The following reclassifications are provided:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Additionally, if a person is convicted of aggravated assault or aggravated battery upon a homeless person, the person shall be sentenced to a three-year minimum mandatory term of imprisonment, be fined not more than \$10,000, and be ordered to make restitution to the victim and to perform up to 500 hours of community service. Restitution and community service work are in addition to, and not in lieu of, any fine or sentence that may be imposed.

The bill defines the term “homeless” by reference to the following definition of that term in s. 420.621, F.S., which contains the following definition of the term:

- an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:
- (a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
 - (b) An institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

The offense would be reclassified regardless of whether the offender knew or had reason to know the housing status of the victim. Therefore, in not requiring knowledge of the victim’s status, the new offense would be similar to the reclassification provision in s. 784.08, F.S.

The offense has the potential to sweep in the net for prosecution of homeless-on-homeless assaults and batteries because the plain language of the bill permits prosecution of any person who commits these crimes against a homeless person. This is a “potential” outcome because prosecutors have complete discretion in charging an offense, and in practice may not seek to use this reclassification provision in a case involving homeless-on-homeless assault or battery.

The bill takes effect on October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference states that the bill has an indeterminate but potentially minimal prison bed impact.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 124072 by Criminal Justice:

Reclassifies the degree of any offense if the offense evidences prejudice based on the victim's "homeless status," a term which is defined by reference to s. 420.621(4), F.S. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
