

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761

Trespass on the Property of a Certified Domestic Violence Center

SPONSOR(S): Carroll

TIED BILLS:

IDEN./SIM. BILLS: SB 488

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|--------|----------|----------------|
| 1) Criminal Justice Committee | | Ferguson | Kramer |
| 2) Future of Florida's Families Committee | | | |
| 3) Criminal Justice Appropriations Committee | | | |
| 4) Justice Council | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

Trespass is the unauthorized entry onto the property of another. In prosecuting trespass, the state must prove that the offender knew, or should have known, that entry onto the property is unauthorized.

HB 761 amends section 810.09, F.S., to increase criminal penalties for trespassing upon a domestic violence center from a first degree misdemeanor to a third degree felony.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- This bill provides criminal penalties for trespassing upon a domestic violence center.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Florida Department of Children and Families, “domestic violence is a pattern of behaviors that adults or adolescents use against their intimate partners or former partners to establish power and control. It may include physical abuse, sexual abuse, emotional abuse, and economic abuse. It may also include threats, isolation, pet abuse, using children and a variety of other behaviors used to maintain fear, intimidation and power over one's partner. Domestic violence knows no boundaries. It occurs in intimate relationships, regardless of race, religion, culture or socioeconomic status.”¹

Domestic violence centers

In 1998, “the Legislature recognize[d] that certain persons who assault, batter, or otherwise abuse their spouses and the persons subject to such domestic violence are in need of treatment and rehabilitation. It is the intent of the Legislature to assist in the development of domestic violence centers for the victims of domestic violence and to provide a place where the parties involved may be separated until they can be properly assisted.”²

A domestic violence center is defined as an agency that provides services to victims of domestic violence, as its primary mission.³

Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

Section 741.28, F.S., defines “family or household member” to mean spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Effective of bill

Section 810.09, F.S., currently provides that it is a first degree misdemeanor to commit trespass on lands.⁴ The offense level is increased to a third degree felony in certain circumstances. For example, it is a third degree felony if the offender is armed during the trespass; if the property trespassed is a posted construction site; if the property is posted as commercial property designated for horticultural

¹ <http://www.dcf.state.fl.us/domesticviolence/whatisdv.shtml>

² Section 39.901, F.S.

³ See section 39.902(2), F.S.

⁴ Trespass in a dwelling, structure or conveyance is considered a more serious offense.

products; if the property trespassed is posted as a designated agricultural site for testing or research purposes; or if a person knowingly propels any potentially lethal projectile over or across private land without authorization while taking, killing, or endangering specified animals. See ss. 810.09(2)(a)-(g), F.S

HB 761 amends section 810.09, F.S., to increase criminal penalties from a first degree misdemeanor to a third degree felony for trespassing upon a domestic violence center.⁵ In order for the felony penalties to apply, the domestic violence center must be certified under section 39.905, F.S. and must be legally posted and identified in substantially the following manner: THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.

C. SECTION DIRECTORY:

Section 1 amends section 810.09, F.S., to provide criminal penalties for trespassing on a domestic violence center.

Section 2 provides an effective date of July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates a third degree felony offense. The offense is not ranked in the offense severity ranking chart. As such, it is expected that the conference will determine that the bill will have insignificant prison bed impact.

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:

⁵ As a result, the maximum penalty for the offense will be increased from one year in county jail to five years in prison. See section 775.082, F.S.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES