

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 809 CS Assault or Battery on Homeless Persons
SPONSOR(S): Taylor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u>Kramer</u>	<u>De La Paz</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly known as the "hate crime" statute. HB 809, referred to as the "Norris Act", amends this statute to include offenses evidencing prejudice based on the homeless status of the victim.

The bill also creates a new section of statute which reclassifies assault or battery offenses that are committed upon a homeless person 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.

Under the newly created statute, 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. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The bill also requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. In addition, the bill authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service.

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, but minimal, fiscal impact on the prison bed population in the Department of Corrections.

This bill takes effect October 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0809f.JC.doc
DATE: 4/7/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: HB 809 will have the effect of increasing the maximum sentence which may be imposed for assault or battery offenses committed against a homeless person.

Provide limited government: The bill increases the maximum sanctions for offenses committed against a homeless person and will require the imposition of minimum mandatory sentences in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Background

Hate Crime Statute: Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly referred to as a "hate crime" statute. Offenses are reclassified as follows:

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

There is currently no section of statute that specifically applies to criminal offenses committed against a homeless person.

Assault or Battery on Victim Age 65 or Older: Currently, section 784.08 provides that when a person is charged with committing assault¹, aggravated assault², battery³ or aggravated battery⁴ against a victim age 65 or older, the assault or battery 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.

¹ An assault is 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. § 784.011, F.S.

² An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

³ A battery 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. § 784.03, F.S.

⁴ An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if 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. § 784.045, F.S.

The section also requires the imposition of a three year minimum mandatory sentence⁵ against an offender who has been convicted of aggravated assault or aggravated battery against an elderly person.

There are a number of other sections of statute that reclassify assault or battery offenses if they are committed against specified types of victims.⁶

Effect of HB 809

HB 809 provides that the act may be cited as the "Norris Act".

Hate crime statute: HB 809 amends section 775.085, F.S. to reclassify the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the *homeless status* of the victim.

Newly created section: HB 809 creates a new section of statute which reclassifies assault or battery offenses that are committed upon a homeless person in the same manner as assault or battery offenses committed on a victim age 65 or older, discussed above. The offense will 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 the housing status of the offender.

As a result of the bill, assault will be reclassified from a second degree misdemeanor to a first degree misdemeanor; battery will be reclassified from a first degree misdemeanor and a third degree felony; aggravated assault will be reclassified from a third degree felony to a second degree felony and aggravated battery will be reclassified from a second degree felony to a first degree felony if the offense is committed on a homeless person. The bill requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. The bill also authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service. The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor is one year of incarceration; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.⁷

The bill defines the term "homeless" in conformity with s. 420.621, F.S. which contains the following definition:

"Homeless" refers to 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

⁵ s. 784.08(1), F.S.

⁶ Section 784.07(2), F.S. reclassifies assault and battery offenses committed against a list of people such as law enforcement officers, firefighters, emergency medical care providers and public transit employees and requires the imposition of a three year minimum mandatory sentence for aggravated assault of a law enforcement officer and a five year minimum mandatory sentence for aggravated battery of a law enforcement officer. See also, ss. 784.074, 784.081, 784.082, 784.083, F.S.

⁷ s. 775.082, F.S.

(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.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.085, F.S., to include a definition for "homeless status" and creates s. 784.0815, F.S. relating to assault or battery on homeless persons.

Section 2. Provides effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, but minimal, fiscal impact on the Department of Corrections prison bed population. Although it is estimated that there are approximately 68,000 to 75,000 homeless persons in the state, the number of reported cases of assault or battery offenses committed on homeless persons has been minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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:

The bill amends the "hate crime" statute to provide for the reclassification of a criminal offense if the commission of the offense evidences prejudice based on the homeless status of the victim. The bill also creates a new section of statute which reclassifies the felony or misdemeanor degree of an assault or battery offense if it is committed on a homeless person. The section also provides for the imposition of a three year minimum mandatory sentence for aggravated assault or aggravated battery committed against a homeless person. This section applies regardless of whether the offender knew that the victim was homeless and regardless of whether the offender was also homeless. For the offenses of assault or battery against a homeless person, it appears likely that an offender would be charged under the newly created section of statute rather than the hate crime statute so that the state would not have to prove that the act evidenced prejudice based on the homeless status of the victim or that the offender knew that the victim was homeless. Also, if the offender was charged under the newly created section of statute with aggravated battery or aggravated assault against a homeless person, the three year minimum mandatory provision would apply.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 24, 2006, the Criminal Justice Appropriations Committee adopted an amendment by Representative Taylor, the bill sponsor, which amended the hate crime statute to include offenses committed against homeless victims. The amendment also names the act the "Norris Act".