

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: HB 11 will have the effect of increasing the maximum sentence which may be imposed for certain offenses committed against a homeless person.

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

B. EFFECT OF PROPOSED CHANGES:

Hate Crime Statute: Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor offense 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.

Reclassification of an offense has the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is 60 days in jail; for a first degree misdemeanor is one year in jail; 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.¹

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

Effect of HB 11

HB 11 amends section 775.085, F.S., the "hate crime" statute, to reclassify the felony or misdemeanor degree 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 requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault² or aggravated battery³ upon a homeless person. This section does not require proof that the offender was aware of the homeless status of the victim. The bill authorizes the judge to impose a fine of up to \$10,000 and to

¹ s. 775.082, 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 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.

order the defendant to perform up to 500 hours of community service.⁴ The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

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

(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., relating to evidencing prejudice while committing offense.

Section 2. Creates s. 784.0815, F.S. relating to aggravated assault or aggravated battery on homeless persons.

Section 3. Provides effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 6, 2007, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁴ This provision is similar to section 784.08, F.S. which requires the imposition of a three year minimum mandatory sentence for an aggravated assault or aggravated battery committed on a victim age 65 or older. There are a number of other sections of statute that reclassify assault or battery offenses if they are committed against specified types of victims. 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.

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:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES