



## 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.

#### 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.<sup>1</sup>

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

HB 11 amends 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 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.

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<sup>1</sup> s. 775.082, F.S.

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. 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.

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

The bill sponsor did not submit a statement regarding the original bill. The council chair chose not to submit a sponsor regarding the council substitute.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

The Safety & Security Council adopted an amendment which removed language from the original bill which created a new section of statute that required the imposition of a three year minimum mandatory sentence for the offense of aggravated assault or aggravated battery against a homeless person. The council reported the bill favorably as a council substitute.