

The Florida Senate
PROFESSIONAL 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 1458

INTRODUCER: Senator Joyner

SUBJECT: Assault/Battery on Homeless Person

DATE: March 7, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.			JU	
3.			JA	
4.				
5.				
6.				

I. Summary:

Senate Bill 1458 reclassifies the degree of any offense if the commission of 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.

Further, it provides for a minimum mandatory sentence in cases where the defendant commits aggravated assault or aggravated battery against a homeless person.

The effective date of the bill is October 1, 2007.

This bill substantially amends section 775.085, and creates a new section 784.0815 of the Florida Statutes.

II. Present Situation:

The term “homeless” is defined in s. 420.621, F.S., which states:

“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.

Florida's hate crime statute, s. 775.085, F.S., reclassifies offenses, though it does not provide for any mandatory minimum term of imprisonment. 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.

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.

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, F.S.

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

- 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 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.

III. Effect of Proposed Changes:

Senate Bill 1458 adds persons who fall within the statutory definition of “homeless” to the list of citizens in Florida’s Hate Crime statute, s. 775.085, F.S. This means that when a misdemeanor or felony crime is committed against a homeless person, if the commission of such crime evidences

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

prejudice based on the person's "homeless status," the crime can be reclassified to the next highest degree for sentencing purposes. For example, a first degree misdemeanor theft may be reclassified to a third degree felony. The definition of "homeless" is set forth in s. 420.621, F.S., and is referenced in the bill.

The bill also provides that if a person is found to have committed an aggravated assault or aggravated battery against a homeless person, the adjudication of guilt may not be withheld by the court, and a minimum mandatory three-year prison sentence must be imposed. Additionally, the bill requires, as part of the sentence, a fine of not more than \$10,000, restitution to the victim and up to 500 hours of community service.

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 has considered this bill and determined that any prison bed impact the bill may carry would likely be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
