

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 2680

INTRODUCER: Criminal Justice Committee and Senator Smith

SUBJECT: Homeless Persons

DATE: April 1, 2009

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Fav/CS
2. _____	_____	JU	_____
3. _____	_____	ED	_____
4. _____	_____	JA	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends Florida's hate crimes statute, to reclassify the degree of an offense in which prejudice based on the homeless status of the victim is evidenced.

This bill substantially amends s. 775.085, F.S.

II. Present Situation:

Section 420.621(4), F.S., defines the term "homeless" as follows:

- (4) "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.

Section 775.085, F.S., Florida's hate crimes statute, reclassifies¹ the degree of a felony or misdemeanor if the commission of the felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim. The reclassification occurs as follows:

- A second degree misdemeanor² is reclassified to a first degree misdemeanor.³
- A first degree misdemeanor is reclassified to a third degree felony.⁴
- A third degree felony is reclassified to a second degree felony.⁵
- A second degree felony is reclassified to a first degree felony.⁶
- A first degree felony is reclassified to a life felony.⁷

Section 775.085, F.S., also provides that it is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated in this section.

III. Effect of Proposed Changes:

The bill amends s. 775.085, F.S., Florida's hate crimes statute, to reclassify the degree of an offense in which prejudice based on the homeless status of the victim is evidenced. The bill states the term "homeless status" means that the victim is "homeless," as that term is defined in s. 420.621, F.S.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹ Generally, reclassification provisions increase a felony or misdemeanor by one degree. However, in the case of a first degree misdemeanor, reclassification by one degree makes the offense a felony (third degree). Reclassifications increase the maximum penalty for the offense and result in the accrual of more sentence points, which are used to determine the scored lowest permissible sentence. *See* s. 921.0024, F.S.

² Pursuant to s. 775.082, F.S., the maximum jail sentence for a second degree misdemeanor is 60 days in a county jail.

³ Pursuant to s. 775.082, F.S., the maximum jail sentence prescribed for a first degree misdemeanor is up to 1 year in a county jail.

⁴ Pursuant to s. 775.082, F.S., the maximum prison sentence for a third degree felony is 5 years.

⁵ Pursuant to s. 775.082, F.S., the maximum prison sentence for a second degree felony is 15 years.

⁶ Pursuant to s. 775.082, F.S., the maximum prison sentence for a first degree felony is generally 30 years.

⁷ Pursuant to s. 775.082, F.S., the maximum prison sentence for a life felony is life imprisonment.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides the official estimate of prison bed impact, if any, of legislation. CJIC has not met to consider the bill (as a CS). CS/HB 909 is identical to the Senate bill (as a CS). A preliminary estimate by staff of the Office of Economic and Demographic Research is that CS/HB 909 will have an insignificant prison bed impact.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 1, 2009:**

- Removes sections of the bill that:
 - Provide for a 3-year mandatory minimum sentence for aggravated assault or aggravated battery committed upon a homeless person.
 - Require the inclusion of housing status in crime reports that are to be included in the uniform crime reporting data maintained by the Florida Department of Law Enforcement (FDLE).
 - Require the FDLE to develop a telecourse on the plight of the homeless that must be made available to all law enforcement agencies in the state, and require every “state, local, and correctional law enforcement agency” to certify that each of its officers have taken the course.

⁸ E-mail from Kathy McCharen, Office of Economic and Demographic research to House staff, dated March 27, 2009.

- Require the FDLE to develop a protocol relating to hate crimes against homeless persons that law enforcement personnel are required to follow.
- Require that public school instructional staff teach the subject of homelessness, as specified in the bill.
- Require the Office of Program Policy Analysis and Government Accountability to conduct a study into the nature and scope of hate crimes or violent crimes committed against people experiencing homelessness.

B. Amendments:

None.