

**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 Rules Subcommittee on Ethics and Elections

BILL: SB 532

INTRODUCER: Senator Fasano

SUBJECT: Public Corruption

DATE: March 2, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	<b>Favorable</b>
2.	_____	_____	RC	_____
3.	_____	_____	CJ	_____
4.	_____	_____	BC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill reclassifies most criminal offenses committed “under color of law” up one degree of severity (2nd degree misdemeanor is reclassified as a 1st degree misdemeanor, 1<sup>st</sup> degree misdemeanor is reclassified as a 3<sup>rd</sup> degree felony, etc.); “under color of law” means conduct based on public authority or position, or the assertion of public authority or position. The bill, however, does not reclassify a life felony to a capital felony. Also, the reclassification does not apply to criminal offenses where the underlying offense requires acting “under color of law” as a necessary element of the crime (i.e., official misconduct, bid tampering). For purposes of the felony sentencing guidelines in Chapter 921, F.S., the bill also designates such reclassified offenses one level above their current ranking.

The bill takes effect July 1, 2011.

This bill creates section 775.0876 of the Florida Statutes.

**II. Present Situation:**

The Florida Criminal Code generally classifies felonies as criminal offenses punishable by more than one year in the state penitentiary; a misdemeanor is a criminal offense punishable by up to one year in a county correctional facility.<sup>1</sup>

<sup>1</sup> Section 775.08, F.S.

Felonies are further classified as:

- Capital: punishable by death or life imprisonment without parole.
- Life: for most offenses, punishable by life imprisonment, and a fine of up to \$15K.
- 1<sup>st</sup> Degree: punishable by imprisonment for a term not exceeding 30 years, or when specified by statute not exceeding life imprisonment, and a fine of up to \$10K.
- 2<sup>nd</sup> Degree: punishable by imprisonment not exceeding 15 years, and a fine of up to \$10K.
- 3<sup>rd</sup> Degree: punishable by imprisonment not exceeding 5 years, and a fine of up to \$5K.

Misdemeanors are further classified as:

- 1<sup>st</sup> Degree: punishable by imprisonment not exceeding 1 year, and a fine of up to \$1K.
- 2<sup>nd</sup> Degree: punishable by imprisonment not exceeding 60 days, and a fine of up to \$500.

The Criminal Punishment Code applies to all but capital felonies, and contains an offense severity ranking chart that designates offenses into certain “levels” from 1 to 10 based on severity, that are then used to determine sentencing guidelines in a particular case.

Though there was a similar bill filed last year<sup>2</sup>, it was not adopted. Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law” where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. It is noteworthy that the Nineteenth Statewide Grand Jury recently recommended that the Legislature consider reclassification of such offenses.<sup>3</sup>

### III. Effect of Proposed Changes:

The bill reclassifies felony and misdemeanor criminal offenses committed “under color of law” up one degree of severity, unless conduct committed “under color of law” is a necessary element of the underlying crime:

- 2<sup>nd</sup> degree misdemeanor → 1<sup>st</sup> degree misdemeanor
- 1<sup>st</sup> degree misdemeanor → 3<sup>rd</sup> degree felony
- 3<sup>rd</sup> degree felony → 2<sup>nd</sup> degree felony
- 2<sup>nd</sup> degree felony → 1<sup>st</sup> degree felony
- 1<sup>st</sup> degree felony → life felony

The bill, however, does not reclassify a life felony to a capital felony.

The term “under color of law” means conduct based on public authority or position or the assertion of such authority or position.

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<sup>2</sup> SB 734 (2010).

<sup>3</sup> Nineteenth Statewide Grand Jury, First Interim Report (December 17, 2010). Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf)

So, for example, violating the criminal offense of official misconduct in s. 838.022, F.S., which necessarily requires corrupt conduct by a “public servant” in the performance of certain public duties, would not result in a reclassification while a public employee who uses his or her public position to aid or abet someone in the commission of Medicaid provider fraud in violation of s. 409.920, F.S., would be reclassified.

For purposes of the felony sentencing guidelines in Chapter 921, such reclassified offenses are designated one level above their current ranking.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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 reviewed this bill on March 2, 2011, and found its impact to be indeterminate.

**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.)

None.

- B. **Amendments:**

None.

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

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