

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 47 Offenses Against Brokers, Broker Associates, or Sales Associates

**SPONSOR(S):** Criminal Justice Subcommittee; Passidomo and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	9 Y, 0 N	Smith	Lloyd
3) Judiciary Committee	15 Y, 0 N	Keegan	Havlicak

### SUMMARY ANALYSIS

Over the past several years, news outlets have reported on a number of violent crimes allegedly committed against brokers, broker associates, and sales associates (hereafter “real estate professionals”), while they were showing real property to prospective buyers. Florida law currently provides for criminal charges to be increased in severity when assault or battery is committed against various protected groups of people. Law enforcement officers, firefighters, sports officials, code inspectors, and people 65 years of age and older are some examples of protected groups. Florida law does not currently include real estate professionals as a protected group.

The bill reclassifies specific offenses committed against a real estate professional while he or she is engaged in showing real property or holding an open house of real property. The reclassified offenses include felony or misdemeanor violations of:

- Section 784.011, relating to assault;
- Section 784.021, relating to aggravated assault;
- Section 784.03, relating to battery and felony battery;
- Section 784.041(1), relating to felony battery;
- Section 784.045, relating to aggravated battery; or
- Section 794.011, relating to sexual battery.

The offenses listed above are reclassified by an increase of one degree, as follows:

- A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree;
- A misdemeanor of the first degree is reclassified as a felony of the third degree;
- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

This bill reclassifies certain misdemeanors to felonies. Therefore this bill may decrease commitments to local jails.

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Violent Crimes against Real Estate Professionals**

Over the past several years, news outlets have reported on a number of violent crimes allegedly committed against real estate brokers, broker associates, and sales associates (hereafter “real estate professionals”), while they were showing real property to prospective buyers.<sup>1</sup> The process for showing real estate often causes a real estate professional to be alone at a property with a prospective buyer, yet background checks cannot be completed on each prospective buyer before showing a property. A number of reported violent crimes have occurred against Florida real estate professionals while alone with prospective buyers in Manatee<sup>2</sup> and Pinellas<sup>3</sup> counties.

##### **Criminal Penalties**

###### Assault

Assault is 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.<sup>4</sup> Assault is typically a second degree misdemeanor.<sup>5</sup> However, if a perpetrator commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the crime constitutes aggravated assault<sup>6</sup> and is punishable as a third degree felony.

###### Battery

Battery is to actually and intentionally touch or strike another person against the will of that person or intentionally causing bodily harm to another person.<sup>7</sup> Battery is typically a first degree misdemeanor.<sup>8</sup> However, battery can be enhanced to felony battery when a perpetrator commits a battery and causes great bodily harm, permanent disability, or permanent disfigurement to the victim,<sup>9</sup> or when the perpetrator has one or more prior convictions for battery, aggravated battery, or felony battery, and commits a subsequent battery.<sup>10</sup> Both forms of felony battery are third degree felonies.

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<sup>1</sup> WFTS Webteam & Michael Paluska, *Search on for Man Who Attacked Real Estate Agent*, ABC ACTION NEWS, WFTS TAMPA BAY (Aug. 11, 2015), <http://www.abcactionnews.com/news/region-sarasota-manatee/search-on-for-man-who-attacked-manatee-realtor> (last visited Oct. 21, 2015); Garrison, Trey, *After One Week, Missing Realtor’s Trail Goes Cold*, HOUSING WIRE (June 24, 2015), <http://www.housingwire.com/articles/34293-after-one-week-missing-realtors-trail-goes-cold> (last visited Oct. 21, 2015); Ford, Dana, *Risky Business: Real Estate Agent’s Killing Hits Home for Realtors*, CNN (Oct. 1, 2014), <http://www.cnn.com/2014/10/01/us/real-estate-risks/> (last visited Oct. 21, 2015).

<sup>2</sup> Conlon, Kendra, *Realtor Attacked during Showing in Bradenton*, 10 NEWS TAMPA BAY SARASOTA (Aug. 11, 2015), <http://www.wtsp.com/story/news/local/2015/08/10/realtor-attacked-during-showing-bradenton/31444577/> (last visited Oct. 21, 2015).

<sup>3</sup> ABC News, *Florida Cops Fear Repeat of Attacks on Real Estate Agents*, ABC NEWS (June 5, 2015), <http://abcnews.go.com/US/florida-cops-fear-repeat-attacks-real-estate-agents/story?id=31547919> (last visited Oct. 21, 2015); Krueger, Curtis, *Man Who Attacked Realtor in St. Petersburg Home Gets Life Sentence*, TAMPA BAY TIMES (Jan. 13, 2012), <http://www.tampabay.com/news/courts/criminal/man-who-attacked-realtor-in-st-petersburg-home-gets-life-sentence/1210628> (last visited Oct. 21, 2015).

<sup>4</sup> s. 784.011, F.S.

<sup>5</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>6</sup> s. 784.021, F.S.

<sup>7</sup> s. 784.03, F.S.

<sup>8</sup> s. 784.03(1)(b), F.S. A first degree misdemeanor is punishable by up to one year in county jail and \$1000 fine. ss. 775.082 and 775.083, F.S.

<sup>9</sup> s. 784.041(1), F.S.

<sup>10</sup> s. 784.03(2), F.S.

### Sexual Battery

Section 794.011, F.S., contains a variety of offenses relating to sexual battery. Depending on various factors, such as whether a deadly weapon is used or the victim is physically incapacitated, these offenses can be punishable as a third degree felony, a second degree felony, a first degree felony, a life felony, or a capital felony.

### Criminal Offense Ranking Chart

Sections 775.082 and 775.083, F.S., establish the following penalties applicable to felony offenses:

- A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole;
- A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine;
- A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine;
- A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; and
- A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>11</sup> Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense.<sup>12</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>13</sup>

A defendant's sentence is calculated based on points assigned for factors including the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.<sup>14</sup> A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.<sup>15</sup> The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense (the statutory maximum sentences for felonies are described above).<sup>16</sup>

### Reclassification of Offenses in Florida

Florida law currently provides for criminal charges to be increased in severity when assault or battery is committed against various protected groups of people. Law enforcement officers,<sup>17</sup> firefighters,<sup>18</sup> sports officials,<sup>19</sup> code inspectors,<sup>20</sup> and people 65 years of age and older<sup>21</sup> are examples of such protected groups. However, Florida law does not currently include real estate professionals as a protected group.

### **Effect of the Bill**

The bill reclassifies specific offenses committed against a broker, broker associate, or sales associate while he or she is engaged in showing real property or holding an open house of real property. The reclassified offenses include felony or misdemeanor violations of:

- Section 784.011, relating to assault;
- Section 784.021, relating to aggravated assault;
- Section 784.03, relating to battery and felony battery;
- Section 784.041(1), relating to felony battery;
- Section 784.045, relating to aggravated battery; or

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<sup>11</sup> s. 921.002, F.S.

<sup>12</sup> s. 921.0022, F.S.

<sup>13</sup> s. 921.0023, F.S.

<sup>14</sup> s. 921.0024, F.S.

<sup>15</sup> *Id.* Section 921.0026, F.S., prohibits a judge from imposing a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."

<sup>16</sup> s. 921.0024(2), F.S.

<sup>17</sup> s. 784.07, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> s. 784.081, F.S.

<sup>20</sup> s. 784.083, F.S.

<sup>21</sup> s. 784.08, F.S.

- Section 794.011, relating to sexual battery.

The offenses listed above are reclassified by an increase of one degree, as follows:

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- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The bill defines “broker,” “broker associate,” and “sales associate” in accordance with the definitions provided s. 475.01, F.S.

The bill provides that for the purposes of sentencing and calculation of gain-time, any felony offense that is reclassified under the bill must be ranked one level above the ranking under ss. 921.0022 or 921.0023, F.S., of the offense committed.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 775.0863, F.S., relating to offenses against brokers, broker associates, or sales associates; reclassification of offenses.

Section 2. Provides an effective date of October 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

In total, 10,153 were sentenced in fiscal year 2014-2015 with 3,709 sentenced to prison for assault and battery. (Incarceration rate: 36.5%).

The number of violent offenders to real estate professionals in the State of Florida is not currently known.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

This bill reclassifies certain misdemeanors to felonies. Therefore this bill may decrease commitments to local jails.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This 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:**

The bill does not appear to create the need for rulemaking or rulemaking authority.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute:

- Specifies the criminal offenses subject to increased penalties under the bill, and provides cross-references to the sections of statute relating to the specified offenses; and
- Clarifies language in the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.