

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 Marine Turtle Protection
SPONSOR(S): Altman
TIED BILLS: IDEN./SIM. **BILLS:** SB 1228

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| 1) Natural Resources & Public Lands Subcommittee | 13 Y, 0 N | Gregory | Shugar |
| 2) Criminal Justice Subcommittee | 8 Y, 0 N | Homburg | White |
| 3) Government Accountability Committee | 23 Y, 0 N | Gregory | Williamson |

SUMMARY ANALYSIS

Five species of marine turtles (sea turtles) spend a portion of their lives in Florida's waters and nest on Florida's beaches. The federal government lists these turtles as endangered or threatened and these species receive special protections under the federal Endangered Species Act (ESA) and Florida's Marine Turtle Protection Act (MTPA). Except as authorized under the ESA or under the MTPA, a person, firm, or corporation may not knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtles.

Prior to 2016, the MTPA did not specify that possession of a sea turtle, or parts thereof, was a violation. At least one court case found a defendant "not guilty" because "possession" of sea turtles was not specifically listed in law. In 2016, HB 7013 (ch. 2016-107, L.O.F.) provided that possession of a sea turtle, hatchling, or parts thereof without authorization from the Fish and Wildlife Conservation Commission under the MTPA or from the federal government under the ESA is a third degree felony. This change created a new subparagraph 6. to s. 379.2431(1)(d), F.S. The former subparagraph 6., which makes solicitation or conspiracy to commit a violation of the MTPA a third degree felony, became subparagraph 7.

The 2016 legislation, however, did not correct the reference to former subparagraph 6. on the Offense Severity Ranking Chart (OSRC) in the Criminal Punishment Code. Currently, the OSRC lists solicitation or conspiracy to commit a violation of the MTPA with the old subparagraph 6. cross-reference. Further, the new provision providing that possession of a sea turtle, or parts thereof, is not listed on the OSRC. Thus under current law, judges must treat sentencing for the possession of a sea turtle, or parts thereof, as a level one violation under s. 921.0023(1), F.S., which ranks all felonies not listed for purposes of sentencing.

The bill amends the OSRC to correct the numbering for the solicitation or conspiracy to commit a violation of the MTPA. Further, the bill adds possession of a sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species as a level three violation on the OSRC. This change is consistent with the offense severity ranking for taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtles, sea turtle eggs, or sea turtle nests in violation of the MTPA and soliciting to commit or conspiring to commit a violation of the MTPA.

The Criminal Justice Impact Conference anticipates the bill would have a positive insignificant impact on the state, meaning an increase of fewer than 10 beds.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Marine Turtle Protection Act

Five species of marine turtles (sea turtles) spend a portion of their lives in Florida waters and nest on Florida beaches.¹ The federal government lists these turtles as endangered or threatened,² and these species receive special protections under the federal Endangered Species Act (ESA).³

In order to implement the state's responsibilities under the U.S. Fish and Wildlife Service's species recovery plans, the Legislature passed the Marine Turtle Protection Act (MTPA).⁴ Except as authorized under the MTPA or under the ESA, a person, firm, or corporation may not knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtles.⁵

Section 379.2431, F.S., provides the following penalties for violation of the MTPA:

| Sea Turtle Violations ⁶ | Type of Infraction | Civil Penalty or Jail Time |
|--|------------------------------------|--|
| 1 st offense for possession of 11 or fewer sea turtle eggs | 1 st Degree Misdemeanor | Max. \$1000 ⁷ and Max. 1 year ⁸ |
| 2 nd and subsequent offense for possession of 11 or fewer sea turtle eggs | 3 rd Degree Felony | Max. \$5000 ⁹ or Max. 5 years ¹⁰ |
| 1 st offense for possession of more than 11 sea turtle eggs | 3 rd Degree Felony | Max. \$5000 or Max. 5 years |
| Illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species | 3 rd Degree Felony | Max. \$5000 or Max. 5 years |
| Possession of any sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species | 3 rd Degree Felony | Max. \$5000 or Max. 5 years |
| Soliciting or conspiring to commit a violation of the MTPA | 3 rd Degree Felony | Max. \$5000 or Max. 5 years |
| Additional penalty for each egg associated with the above violations | | \$100 per egg ¹¹ |

¹ These species are the loggerhead, green turtle, leatherback, Kemps Ridley, and hawksbill. FWC, *Species of Sea Turtles Found in Florida*, <http://myfwc.com/research/wildlife/sea-turtles/florida/species/> (last visited March 2, 2017). See also s. 379.2431(1)(b), F.S.

² U.S. Fish and Wildlife Service, *Listed Animals*, http://ecos.fws.gov/tess_public/reports/ad-hoc-species-report?kingdom=V&kingdom=I&status=E&status=T&status=EmE&status=EmT&status=EXPE&status=EXPN&status=SAE&status=SAT&mapstatus=3&frithab=on&fstatus=on&fspecrule=on&finvpop=on&fgroup=on&header=Listed+Animals (last visited March 2, 2017).

³ 16 U.S.C. § 1531 et seq.

⁴ Section 379.2431(1)(b), F.S.

⁵ Section 379.2431(1)(d), F.S.

⁶ Section 379.2431(1)(e), F.S.

⁷ Section 775.083(1)(d), F.S.

⁸ Section 775.082(4)(a), F.S.

⁹ Section 775.083(1)(c), F.S.

¹⁰ Section 775.082(3)(e), F.S.

¹¹ Section 379.2431(1)(e), F.S.

The ESA also makes it unlawful to import, export, take, possess, sell, deliver, carry, transport, ship, or offer for sale an endangered or threatened fish or wildlife species without authorization.¹² Violators of this prohibition face a \$50,000 criminal penalty or up to one year in jail or a \$25,000 civil penalty.¹³

HB 7013 (2016)

Prior to 2016, the MTPA did not specify that possession of a sea turtle, or parts thereof, was a violation.¹⁴ At least one court case found a defendant “not guilty” because “possession” of sea turtles was not specifically listed in law.¹⁵

In 2016, HB 7013 (ch. 2016-107, L.O.F.) provided that possession of a sea turtle, hatchling, or parts thereof without authorization from the Fish and Wildlife Conservation Commission under the MTPA or from the federal government under the ESA is a third degree felony. The bill also provided that illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtle hatchlings, or parts thereof, is a third degree felony.

This change created a new subparagraph 6. to s. 379.2431(1)(d), F.S. The former subparagraph 6., which makes solicitation or conspiracy to commit a violation of the MTPA a third degree felony, became subparagraph 7.

HB 7013 did not correct the reference on the Offense Severity Ranking Chart (OSRC) in the Criminal Punishment Code.¹⁶ Judges must use the OSRC with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.¹⁷ The OSRC has 10 offense levels, ranked from least severe, which are level one offenses, to most severe, which are level 10 offenses. Each felony offense is assigned to a level according to the severity of the offense.

Currently, the OSRC lists solicitation or conspiracy to commit a violation of the MTPA with the old subparagraph 6. This could cause confusion when using the sentencing guidelines.

Further, the new provision providing that possession of a sea turtle, or parts thereof, is not listed on the OSRC. Thus, judges would treat sentencing for possession of a sea turtle, or parts thereof, as a level one violation under s. 921.0023(1), F.S., which ranks all felonies not listed for purposes of sentencing.

EFFECT OF PROPOSED CHANGES

The bill amends s. 921.0022(3)(c), F.S., to correct the numbering on the OSRC for solicitation or conspiracy to commit a violation of the MTPA. Further, the bill adds possession of a sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species as a level three violation to the OSRC. Thus, the offense ranking will increase from a level one to a level three. The maximum sentence time will remain the same, but the factors the judge uses to calculate the length of the sentence will change.¹⁸ This change is consistent with the offense severity ranking for taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtles, sea turtle eggs, or sea turtle nests in violation of the MTPA and soliciting to commit or conspiring to commit a violation of the MTPA.

¹² 16 U.S.C. § 1538(a)(1); 50 C.F.R. § 17.31(a).

¹³ 16 U.S.C. § 1540(a) and (b).

¹⁴ Section 379.2431(1), F.S. (2015).

¹⁵ FWC, 2017 Legislative Proposal Agenda Item 17, November 17, 2016, available at: <http://myfwc.com/media/4089156/17-proposal.pdf> (last visited March 2, 2017).

¹⁶ Section 921.0022, F.S.

¹⁷ Section 921.0022(1), F.S.

¹⁸ See sections 921.002(1)(g) and 921.0024(1) and (2), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code OSRC.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference anticipates the bill would have a positive insignificant impact on the state, meaning an increase of fewer than 10 beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.