

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 Committee on Criminal Justice

BILL: SB 1228

INTRODUCER: Senator Gainer

SUBJECT: Marine Turtle Protection Act

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.			EP	
3.			AP	

I. Summary:

SB 1288 amends s. 921.0022(3)(c), F.S., to correct the numbering on the Offense Severity Ranking Chart for solicitation or conspiracy to commit a violation of the Marine Turtle Protection Act. The bill further provides that possession of a marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species is a Level 3 offense. Thus, the offense ranking will increase from a Level 1 to a Level 3.

II. Present Situation:

Marine Turtle Protection Act

The “Marine Turtle Protection Act” (MTPA) was created to ensure that the Fish and Wildlife Conservation Commission (Commission) has the appropriate authority and resources to implement its responsibilities under the recovery plans of the U.S. Fish and Wildlife Services for the following five species of marine turtles:¹

- Atlantic loggerhead turtle (*Caretta caretta*);
- Atlantic green turtle (*Chelonia mydas*);
- Leatherback turtle (*Dermochelys coriacea*);
- Atlantic hawksbill turtle (*Eretmochelys imbricata*); and
- Atlantic ridley turtle (*Lepidochelys kemp*).

The MTPA prohibits a person, firm, or corporation from knowingly possessing, taking, disturbing, mutilating, destroying or causing to be destroyed, transferring, selling, offering to

¹ Section 379.2431(1), F.S.

sell, molesting, or harassing any marine turtle species or hatchling or parts or the eggs or nest of any marine turtle.²

The Commission may:

- Issue a special permit or loan agreement to a person, firm, or corporation to possess a marine turtle species or hatchling, or parts, including nests or eggs, for scientific, education, or exhibition purposes, or for conservation activities such as the relocation of nests, eggs, or marine turtles or hatchlings away from construction sites.
- Issue a special permit or loan agreement to a properly accredited person³ for marine turtle conservation purposes.
- Adopt rules pursuant to ch. 120, F.S., to prescribe terms, conditions, and restrictions for marine turtle conservation, and to permit the possession of marine turtle species, hatchlings, or parts thereof, including nests or eggs.

Penalties for violations of the MTPA are provided in the table below.

Marine Turtle Violations ⁴	Type of Infraction	Civil Penalty or Jail Time
1st offense for possession of 11 or fewer marine turtle eggs	1st Degree Misdemeanor	Max. \$1,000 ⁵ and Max. 1 year ⁶
2nd and subsequent offense for possession of 11 or fewer marine turtle eggs	3rd Degree Felony	Max. \$5,000 ⁷ or Max. 5 years ⁸
1st offense for possession of more than 11 marine turtle eggs	3rd Degree Felony	Max. \$5,000 or Max. 5 years
Illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle species or hatchling, or parts thereof, or the eggs or nest of any marine turtle species	3rd Degree Felony	Max. \$5,000 or Max. 5 years
Possession of any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species	3rd Degree Felony	Max. \$5,000 or Max. 5 years
Soliciting or conspiring to commit a violation of the MTPA	3rd Degree Felony	Max. \$5,000 or Max. 5 years
Additional penalty for each egg associated with the above violations		\$100 per egg ⁹

In 2016, HB 7013 (ch. 2016-107, L.O.F.), amended s. 379.2431, F.S., to provide that *possession* of a marine turtle or hatchling, or parts thereof, without authorization from the Commission

² This provision applies unless authorized in this paragraph or otherwise provided by the Federal Endangered Species Act or its implementing regulations. Section 379.2431(1)(d), F.S.

³ Defined in s. 379.2431(1)(c), F.S.

⁴ Section 379.2431(1)(e), F.S.

⁵ Section 775.083(1)(d), F.S.

⁶ Section 775.082(4)(a), F.S.

⁷ Section 775.083(1)(c), F.S.

⁸ Section 775.082(3)(e), F.S.

⁹ Section 379.2431(1)(e), F.S.

under the MTPA or from the federal government under the Federal Endangered Species Act 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 *marine turtle hatchlings or parts thereof*, is a third degree felony.¹⁰

According to the Commission, prior to the clarification in ch. 2016-107, L.O.F., the possession of marine turtle species, hatchlings, or their parts was implied to be illegal along with other prohibitions in s. 379.2431(1)(d), F.S. The language providing for the clarification required adding a new subparagraph 6., making the solicitation or conspiracy to commit a violation of the MTPA a third degree felony, a new subparagraph 7.¹¹

The cross reference to the new subparagraph 7. was not amended in the Offense Severity Ranking Chart in the Criminal Punishment Code (Code) in s. 921.0022, F.S. The Code determines the sentence score for all felony convictions. There are 10 offense levels, ranked from least severe (Level 1 offenses) to most severe (Level 10 offenses). Each felony offense is assigned a level depending on the severity of the offense. Consequently, the Offense Severity Chart lists solicitation or conspiracy to commit a violation of the MTPA using the old subparagraph 6. and makes no reference to the new language in subparagraph 6. regarding possession.

Pursuant to s. 921.0023, F.S., for felony offenses committed on or after October 1, 1998, that are not listed in the Code, they are ranked within the following parameters:

- A third degree felony is within a Level 1 offense.
- A second degree felony is within a Level 4 offense.
- A first degree felony is within a Level 7 offense.
- A life felony is within a Level 10 offense.

Therefore, under current law, judges must treat sentencing for possession of marine turtles or parts thereof, as a Level 1 offense under s. 921.0023(1), F.S.

III. Effect of Proposed Changes:

The bill amends s. 921.0022(3)(c) F.S., to correct the numbering on the Offense Severity Ranking Chart for solicitation or conspiracy to commit a violation of the Marine Turtle Protection Act. The bill further provides that possession of a marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species as a Level 3 offense. Thus, the offense ranking will increase from a Level 1 to a Level 3.

The bill is effective July 1, 2017.

¹⁰ In a 2013 circuit court case from Palm Beach County, a judge found a defendant not guilty of knowingly possessing marine turtle eggs under s. 379.2431(1)(d) 2., F.S. *State v. Alvarez*, Case No. 2013-CF-101AM (Fla. 16th Jud. Cir. 2015).

¹¹ Florida Fish and Wildlife Conservation Commission, *2017 Legislative Proposal* (November 17, 2016) (on file with the Senate Committee on Criminal Justice).

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, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a positive insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0022 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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