

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/SB 1036

INTRODUCER: Criminal Justice Committee and Senator Ingoglia

SUBJECT: Reclassification of Criminal Penalties

DATE: February 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1036 creates s. 775.0848, F.S., reclassifying felony offenses to the next higher level in cases:

- Where a person who has been deported or removed from the United States under federal immigration proceedings for committing a felony, or who has departed the United States while such an order of deportation or removal is outstanding; and
- That person has unlawfully reentered the United States and while remaining unlawfully present has committed a new felony.

The term “removal” includes any agreement in which a person stipulates to removal during a criminal proceeding under federal or state law.

The bill also creates s. 908.12, F.S., providing similar reclassifications of criminal offenses applicable to a defendant who is convicted of committing a crime for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

“Transnational crime organization” is defined as an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

The bill may have a positive indeterminate prison bed impact. See Section V, Fiscal Impact Statement.

The bill becomes effective October 1, 2024.

II. Present Situation:

Recently, the Statewide Grand Jury recommended increases in criminal sentences for:

- Aliens who have been removed from the State, unlawfully reentered, and subsequently committed a new criminal offense;¹ and
- Persons who are proven to be a member of a transnational crime organization and who have committed a related felony offense.²

Federal Law-Unlawful Reentry

Reentry to the United States by aliens³ who have been removed from the U.S. is addressed in 8 U.S.C.A. 1326 as follows:

- Any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
 - Enters, attempts to enter, or is at any time found in, the United States...shall be fined under Title 18, or imprisoned not more than 2 years, or both.
- Any alien whose removal was subsequent to a conviction for the commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony⁴), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both.
- Any alien whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

The term “removal” includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.⁵ The U.S. Department of Homeland Security reports that in Fiscal Year 2022, 79,395 convicted criminals were removed from the United States.⁶

¹ Generally, under federal law any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States, shall be fined or imprisoned, or both. 8 U.S.C.A. s. 1326.

² Case No. SC 22-796, Florida Supreme Court, Fifth Presentment of the Twenty-First Statewide Grand Jury, November 17, 2023.

³ The term “alien” means any person not a citizen or national of the United States. 8 U.S.C.A. 1101(a)(3).

⁴ “Aggravated felony” is defined in 8 U.S.C.A. 1101(a)(43)(A)-(U). The term applies to a felony offense, whether in violation of Federal or State law, and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. 8 U.S.C.A.1101(a).

⁵ 8 U.S.C.A. 1326(b).

⁶ 2022 *Yearbook of Immigration Statistics*, U.S. Department of Homeland Security, Office of Homeland Security Statistics, 2023, available at https://www.dhs.gov/sites/default/files/2023-11/2023_0818_pley_yearbook_immigration_statistics_fy2022.pdf (last visited January 21, 2024).

Transnational Crime Organization

A “transnational crime organization” has been defined as an organization that routinely facilitates the international trafficking of drugs, humans, or weapons, or the international smuggling of humans.⁷

These organizations make money by smuggling humans from place to place, often across the borders of other countries. It can be a lucrative business. For example, a 2010 report by the United Nations Office on Drug Crime estimated that the smuggling of persons from Latin America to the United States generated approximately \$6.6 billion annually in illicit proceeds for human smuggling networks.⁸ A report by the Homeland Security Operational Analysis Center⁹ estimates that the smuggling of unlawful migrants from Guatemala, Honduras, and El Salvador generated between \$200 million and \$2.3 billion for human smugglers in 2017, however a lack of reliable data contributes to substantial uncertainty in both estimates.¹⁰

The U.S. Department of Homeland Security (DHS) reports:

- U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations referred information in dozens of cases to Homeland Security Investigations (HSI), resulting in the arrest of human traffickers and identification of trafficking victims. HSI initiated 1,373 criminal investigations related to sex trafficking and forced labor, leading to 3,655 arrests and 638 convictions.¹¹
- In December, 2023, following an investigation by HSI, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) sanctioned the Malas Mañas transnational criminal organization, a human smuggling and narcotics trafficking organization based in Sonora, Mexico, along with two individuals in its support network.¹²
- In August, 2023, the DHS and its federal partners, including the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), announced the results of increased enforcement efforts to stem the trafficking of firearms from the United States into Mexico for use by

⁷ Although, as the Statewide Grand Jury presentment explains, these organizations may also be involved in financial crimes, firearm and weapon smuggling, and a diverse list of criminal activity. Case No. SC 22-796, Florida Supreme Court, Fifth Presentment of the Twenty-First Statewide Grand Jury, November 17, 2023. *See also* Another “Se Busca Información” criminal target arrested; U.S. Customs and Border Protection, *News Release*, January 2, 2024, available at <https://www.cbp.gov/newsroom/local-media-release/another-se-busca-informacion-criminal-target-arrested> (last visited January 17, 2024).

⁸ The United Nations Office on Drugs and Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* available at https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf (last visited January 13, 2024).

⁹ Operated by the RAND Corporation on behalf of the U.S. Department of Homeland Security.

¹⁰ RAND Corporation News Release, *Human Smuggling Via Central America Generates Hundreds of Millions of Dollars, but Transnational Criminal Groups May Not Be Main Culprits*, April 22, 2019, available at <https://www.rand.org/news/press/2019/04/22.html> (last visited January 17, 2024).

¹¹ U.S. Department of Homeland Security, *DHS Center for Countering Human Trafficking Releases FY 2022 Annual Report*, January 31, 2023, available at <https://www.dhs.gov/news/2023/01/31/dhs-center-countering-human-trafficking-releases-fy-2022-annual-report> (last visited January 19, 2024).

¹² U.S. Department of Homeland Security, *Following DHS Investigation, Treasury Sanctions Human Smuggling and Drug Trafficking Organization Operating on Southwest Border*, Press Release, December 14, 2023, available at <https://www.dhs.gov/news/2023/12/14/following-dhs-investigation-treasury-sanctions-human-smuggling-and-drug-trafficking> (last visited January 20, 2024).

transnational criminal organizations.¹³ The DHS has seized over twice as many firearms in Fiscal Year 2023 than it did in Fiscal Year 2022.¹⁴

Reclassification of Criminal Offenses and Enhancement of Penalties

Reclassification occurs when the Legislature *increases the degree of a conviction*. The reclassification attaches at the time the charges are filed.¹⁵ Reclassification of a criminal conviction from one degree to a higher degree stems from an express and explicit grant of statutory authority.¹⁶

An example of a reclassification statute is s. 775.0863, F.S., Evidencing prejudice while committing offense against person with mental or physical disability; reclassification. The statute states in part:

- The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based on a mental or physical disability of the victim:
 - A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.¹⁷
 - A misdemeanor of the first degree is reclassified to a felony of the third degree.¹⁸
 - A felony of the third degree is reclassified to a felony of the second degree.¹⁹
 - A felony of the second degree is reclassified to a felony of the first degree.²⁰
 - A felony of the first degree is reclassified to a life felony.²¹

Penalty enhancements refer to the authority of a judge to impose a *more severe sentence* for a convicted offense when certain factual findings are made.²²

¹³ U.S. Department of Homeland Security, Press Release, September 1, 2023, *DHS Announces Results of Coordinated Enforcement to Interdict Southbound Firearms “Operation Without a Trace,”* available at <https://www.dhs.gov/news/2023/09/01/dhs-announces-results-coordinated-enforcement-interdict-southbound-firearms> (last visited January 20, 2024).

¹⁴ *Id.*

¹⁵ *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).

¹⁶ *Cf. Spicer v. State*, 615 So.2d 725, 726 (Fla. 2d DCA 1993) (reversing reclassification of robbery with a mask conviction because “[p]enal statutes must be construed in terms of their literal meaning [I]f the legislature had intended section 775.0845 [Florida Statutes (1989)] to reclassify offenses, it would have so stated”).

¹⁷ A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. (Sections 775.082 and 775.083, F.S.).

¹⁸ A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. (Sections 775.082 and 775.083, F.S.).

¹⁹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

²⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. A first degree felony is punishable by up to 30 years to life imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

²¹ A first degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a \$10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).

²² *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).

A good example of a penalty enhancement statute is the habitual felony offender law found in s. 775.084(1)(a), F.S. “Habitual felony offender” means a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.
- The felony for which the defendant is to be sentenced was committed:
 - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
 - Within 5 years of the date of the conviction of the defendant’s last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13, F.S., relating to the purchase or the possession of a controlled substance.
- The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this law.
- A conviction of a felony or other qualified offense necessary to the operation of this law has not been set aside in any postconviction proceeding.

In a separate proceeding, if the court finds that the defendant meets the criteria for imposing such sanction, the court must sentence the defendant as a habitual felony offender unless the court finds that it is not necessary for the protection of the public. The court may sentence the habitual felony offender as follows:

- In the case of a life felony or a felony of the first degree, for life.
- In the case of a felony of the second degree, for a term of years not exceeding 30.
- In the case of a felony of the third degree, for a term of years not exceeding 10.²³

III. Effect of Proposed Changes:

The bill creates two new sections of law relating to the reclassification of criminal penalties under certain circumstances.

The bill creates s. 775.0848, F.S., which provides that a person who has been deported or removed from the United States under federal immigration proceedings for committing a felony, or who has departed the United States while such an order of deportation or removal is outstanding, and has unlawfully reentered the United States and while remaining unlawfully present has committed a new felony, must have the penalty for committing the new felony reclassified as follows:

²³ Sections 775.084(1)(a), (3)(a), and (4)(a), F.S.

- A felony of the third degree is reclassified to a felony of the second degree.²⁴
- A felony of the second degree is reclassified to a felony of the first degree.²⁵
- A felony of the first degree is reclassified to a life felony.²⁶

The term “removal” includes any agreement in which a person stipulates to removal during a criminal proceeding under federal or state law.

The bill also creates s. 908.12, F.S., providing similar reclassifications of criminal penalties applicable to a defendant who is convicted of committing a crime for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization. The penalty for any misdemeanor or felony may be reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.²⁷
- A misdemeanor of the first degree is reclassified to a felony of the third degree.²⁸
- A felony of the third degree is reclassified to a felony of the second degree.²⁹
- A felony of the second degree is reclassified to a felony of the first degree.³⁰
- A felony of the first degree is reclassified to a life felony.³¹

“Transnational crime organization” is defined as an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

The bill becomes effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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²⁵A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. A first degree felony is punishable by up to 30 years to life imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

²⁶ A first degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a \$10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).

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³¹ A first degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a \$10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

Based upon EDR's preliminary analysis, the bill may have a positive indeterminate prison bed impact. The bill reclassifies penalties to the next higher degree which may result in more individuals sentenced to prison for longer periods of time.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 775.0848 and 908.12.

³²Office of Economic and Demographic Research, *SB 1036 Preliminary Estimate* (on file with the Senate Committee on Criminal Justice)

IX. 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 January 30, 2024:

The committee substitute:

- Expands the definition of the term “removal” by replacing “removal means” with “removal includes,” in order not to limit or eliminate other meanings of the term in federal immigration law.
- Removes language in order to clarify the intent of the bill to *reclassify* the penalty, rather than *enhance* it, for a crime committed for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

- B. **Amendments:**

None.