

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1449 Reclassification of Criminal Penalties

SPONSOR(S): Michael

TIED BILLS: **IDEN./SIM. BILLS:** SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 3 N	Leshko	Hall
2) Justice Appropriations Subcommittee	8 Y, 4 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States. In Federal Fiscal Year (FFY) 2023, the total enforcement actions of the Office of Field Operations and the U.S. Border Patrol were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions. Criminal noncitizens encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens in FFY 2023 was 20,166 and has been 4,805 in FFY 2024 to date.

“Organized crime has been defined as ‘illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.’ Transnational organized crime occurs when these activities, or these groups or networks, operate in two or more countries.” Transnational criminal organizations engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually.

HB 1449 creates s. 775.0848, F.S., to require reclassification of any new felony committed by a person who unlawfully reenters the United States after having been deported or otherwise removed from the United States under federal immigration proceedings for committing a felony; or departing the United States while such an order of deportation or removal was outstanding.

The bill also creates s. 908.12, F.S., to require reclassification of any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if a person committed the offense for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization. The bill defines “transnational crime organization” to mean an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

Under the bill, qualifying offenses under ss. 775.0848 and 908.12, F.S., are reclassified as follows:

- A misdemeanor of the second-degree is reclassified to a misdemeanor of the first-degree.
- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.

The Criminal Justice Impact Conference met on February 12, 2024 and determined that the bill would have a positive insignificant impact on prison beds. See Fiscal Comments.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Immigration

The Federal Government establishes and enforces immigration laws. The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.¹

The Department of Homeland Security, the United States Immigration and Customs Enforcement, Enforcement and Removal Operations, is responsible for enforcing the immigration laws and identifying, apprehending, and removing aliens who are a risk to national security or public safety, who are in the country illegally, or who undermine the integrity of the country's immigration laws or border control efforts.²

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States.

In Federal Fiscal Year (FFY) 2023,³ the total enforcement actions of the Office of Field Operations (OFO) and the U.S. Border Patrol (USBP)⁴ were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions,^{5, 6}

Criminal noncitizens⁷ encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens for the past five years at all land borders were:⁸

FFY 2020	FFY 2021	FFY 2022	FFY 2023	FFY 2024 (to date)
7,009	6,567	16,993	20,166	4,805

Transnational Crime Organizations

"Organized crime has been defined as 'illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.' Transnational organized crime occurs when these activities, or these

¹ 8 U.S.C. §§ 1101-1778.

² U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, <https://www.ice.gov/ero> (last visited Jan. 27, 2024).

³ The federal fiscal year runs October 1 – September 30.

⁴ Both are federal law enforcement agencies under CBP.

⁵ CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 2, 2024).

⁶ These figures include both Title 8 enforcement actions and Title 42 expulsions. Title 8 enforcement actions include apprehensions or inadmissibles. Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the U.S. but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe. Apprehensions refers to the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or may not result in an arrest. Title 42 expulsions refers to individuals encountered by USBP or OFO and expelled to the country of last transit or home country in the interest of public health. CBP, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last visited Feb. 2, 2024).

⁷ "Criminal noncitizens" refers to noncitizens who have been convicted of a crime, whether in the U.S. or abroad, so long as the conviction is for conduct which is deemed criminal in the United States. CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 2, 2024).

⁸ CBP, *supra* at note 5.

groups or networks, operate in two or more countries.”⁹ Transnational crime organizations (TCOs) engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually.¹⁰

Drug Trafficking

Drug trafficking is TCOs’ second-highest most profitable illicit activity.¹¹ TCOs’ expansion of drug trafficking is often accompanied by dramatic increases in local crime and corruption.¹²

Florida law prohibits a person from drug trafficking by knowingly selling, purchasing, manufacturing, delivering, or bringing into the state, or being in actual or constructive possession of, a specified quantity of a controlled substance.¹³ Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense.

Human Trafficking

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.¹⁴ A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;¹⁵
- With or of a child or person believed to be a child younger than 18;¹⁶ or
- If for commercial sexual activity, with a mentally defective¹⁷ or mentally incapacitated¹⁸ person.¹⁹

Human Smuggling

Section 787.07, F.S., prohibits a person from transporting an individual into this state who the person knows, or should know, is illegally entering the United States from another country. A person commits a separate offense for each individual he or she transports into this state.

Enhanced Penalties for Gang-Related Offenses

⁹ Dr. Marina Caparini, *Transnational organized crime A threat to global public goods*, Stockholm International Peace Research Institute (Sept. 2, 2022), <https://www.sipri.org/commentary/topical-backgrounder/2022/transnational-organized-crime-threat-global-public-goods> (last visited Feb. 2, 2024).

¹⁰ Executive Order 14060, Establishing the United States Council on Transnational Organized Crime, 86 Fed. Reg. 71793 (Dec. 15, 2021).; See The White House, *FACT SHEET: The Biden Administration Launches New Efforts to Counter Transnational Criminal Organizations and Illicit Drugs*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/15/fact-sheet-the-biden-administration-launches-new-efforts-to-counter-transnational-criminal-organizations-and-illicit-drugs/> (last visited Feb. 2, 2024) and Channing Mavrellis, *Transnational Crime and the Developing World*, Global Financial Integrity (Mar. 27, 2017), <https://gfintegrity.org/report/transnational-crime-and-the-developing-world/> (last visited Feb. 2, 2024).

¹¹ Channing Mavrellis, *supra* at note 11.

¹² National Security Council, *Transnational Organized Crime: A Growing Threat to National and International Security*, <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/threat> (last visited Feb. 2, 2024).

¹³ Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone, fentanyl; phenclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutyric (GHB); gamma-butyrolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. S. 893.135, F.S.

¹⁴ S. 787.06(2)(d), F.S.

¹⁵ Ss. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

¹⁶ Ss. 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

¹⁷ Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(c), F.S.

¹⁸ Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(d), F.S.

¹⁹ S. 787.06(3)(g), F.S.

Section 874.04, F.S., enhances the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if the commission of the offense is found to be for the purpose of benefiting, promoting, or furthering the interests of a criminal gang²⁰ as follows:

- A misdemeanor of the second-degree may be punished as if it were a misdemeanor of the first-degree.
- A misdemeanor of the first-degree may be punished as if it were a felony of the third-degree.²¹
- A felony of the third-degree may be punished as if it were a felony of the second-degree.
- A felony of the second-degree may be punished as if it were a felony of the first-degree.
- A felony of the first-degree may be punished as if it were a life felony.²²

Effect of Proposed Changes

HB 1449 creates s. 775.0848, F.S., to require reclassification of any new felony committed by a person who unlawfully reenters the United States after:

- Having been deported or otherwise removed from the United States under federal immigration proceedings for committing a felony; or
- Departing the United States while such an order of deportation or removal was outstanding.

The bill defines “removal” to mean 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., to require reclassification of any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if a person committed the offense for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

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B. SECTION DIRECTORY:

Section 1: Creates s. 775.0848, F.S., relating to commission of a felony after unlawful reentry into the United States; reclassification.

Section 2: Creates s. 908.12, F.S., relating to transnational crime organizations; reclassification.

Section 3: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁰ Section 874.03(1), F.S., defines “criminal gang” to mean a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorist organizations and hate groups.

²¹ For purposes of sentencing such an offense is ranked as a level 1 offense on the Criminal Punishment Code offense severity ranking chart. S. 874.04(1)(b), F.S.

²² For purposes of sentencing any such felony offenses enhanced under s. 874.04, F.S., are to be ranked on the OSRC without regard to the penalty enhancement.

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 12, 2024 and determined that the bill would have a positive insignificant impact on prison beds.²³ A positive insignificant impact would result in an impact of ten or fewer prison beds.

Per the Department of Corrections (DOC), in fiscal year 2022-23, 1,131 offenders designated as aliens were admitted to prison. Furthermore, 363 of these aliens were born in Cuba. However, aliens in the DOC database include suspected and confirmed aliens, and are also made up of inmates who were legal and illegal immigrants at the time of their offenses. It is not known how many of these inmates would fit this bill's criteria. Furthermore, it is not known how many misdemeanor or felony offenders committed their crimes to benefit, promote, or further the interests of a transnational crime organization.²⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²³ Florida Office of Economic and Demographic Research, Criminal Justice Impact Conference, 2024 CS/SB 1036 (Similar HB 1449) February 12, 2024. <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1036.pdf> (last visited Feb. 13, 2024).

²⁴ *Id.*