

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1797 (PCB PS 04-09) Habitual Misdemeanor Offenders
SPONSOR(S): Committee on Public Safety & Crime Prevention
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice</u>	<u>4 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>10 Y, 7 N</u>	<u>Kramer</u>	<u>De La Paz</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1797 (PCB PS 04-09) creates a new category of habitual offender called the "habitual misdemeanor offender," which is defined as a defendant before the court for sentencing for a specified misdemeanor who has previously been convicted, as an adult, of four or more specified misdemeanor offenses, which in relation to each other and the misdemeanor before the court for sentencing, are separate offenses that are not part of the same criminal transaction or episode and were committed within 1 year of the date the misdemeanor before the court for sentencing was committed.

The bill provides that, if the court finds that a defendant before the court for sentencing for a misdemeanor is a habitual misdemeanor offender, the court shall impose one of the following sentences:

- A term of imprisonment of not less than 6 months and may impose a term of imprisonment of up to 1 year. This term of incarceration would be served in county jail.
- Commitment to a residential treatment program for not less than 6 months, but not to exceed 364 days, if the treatment program is operated by the county or a private vendor with which the county has contracted to operate such program; or a private vendor under contract with the state or licensed by the state to operate such program or other community based treatment program or a combination of residential and community based program; or
- Detention for not less than 6 months, but not to exceed 364 days, to a designated residence, if the detention is supervised or monitored by the county or by a private vendor with which the county has contracted to supervise or monitor the detention.

The bill defines the term "specified misdemeanor offense" to include those misdemeanor offenses described in Chapters 741 (domestic violence), 784 (assault, battery, stalking), 790 (weapons and firearms), 796 (prostitution), 800 (lewdness and indecent exposure), 806 (arson and criminal mischief), 810 (trespass), 812 (theft), 817 (fraudulent practices), 831 (forgery and counterfeiting), 832 (worthless checks), 843 (obstructing justice), 856 (disorderly intoxication, loitering), 893 (drugs) or 901 (giving false name to law enforcement officer).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1797.ps.doc
DATE: March 18, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

A term of incarceration for a misdemeanor offense is served in county jail. Currently, the maximum sentence for a second degree misdemeanor is sixty days in jail and a \$500 fine and the maximum sentence for a first degree misdemeanor is one year in jail and a \$1,000 fine. At one time, Florida law provided for habitual offender sanctions for the repeated commission of misdemeanor offenses.¹ These provisions were repealed in 1988.²

Several statutes provide for the reclassification of a misdemeanor offense to a felony offense in certain circumstances. For example, section 775.085 provides that a second degree misdemeanor is classified to a first degree misdemeanor and a first degree misdemeanor is reclassified to a third degree felony if the commission of an offense “evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.” Similarly, the offense of simple battery is reclassified from a first degree misdemeanor to a third degree felony if it is committed against a law enforcement officer or one of a list of other officers.³ Reclassification of a second degree misdemeanor to a first degree misdemeanor has the effect of increasing the maximum sentence for the offense from 60 days to one year in county jail while reclassification of a first degree misdemeanor to a third degree felony increases the maximum sentence for an offense from one year in county jail to five years in state prison.

Some offenses which are ordinarily a misdemeanor are considered a felony if the offender has prior convictions for the same offense. For example, while a simple battery is a first degree misdemeanor,

¹ Section 775.084(1)(b), F.S. (1987), defined a “habitual misdemeanant” as “a defendant for whom the court may impose an extended term of imprisonment, as provided in this section,” if the court makes the following findings:

▶ “The defendant has at least twice previously been convicted of the same crime committed at different times after the defendant’s 18th birthday”;

▶ “The misdemeanor for which the defendant is to be sentenced was committed within 2 years of the date of the commission of the last prior crime or within 2 years of the defendant’s release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a crime, whichever is later”;

▶ “The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section”; and

▶ “A conviction for a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.”

Section 775.084(4)(b), F.S. (1987), provided that a court, in conformity with procedures established in the statute, “and upon a finding that the imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant,” may sentence the habitual misdemeanant to a term of imprisonment not exceeding three years for a first degree misdemeanor and to a term of imprisonment not in excess of one year for a first degree misdemeanor.

² See sec. 6, ch. 88-131, F.S. (effective on October 1, 1988)

³ Section 784.07, F.S.

the offense is a third degree felony if the offender has previously been convicted of a battery. Also, the offense of petit theft (which is ordinarily a misdemeanor) is a third degree felony if the offender has previously been convicted two or more times of theft.⁴

There is at least one section of statute that requires the imposition of a minimum mandatory term of incarceration upon conviction of a misdemeanor offense. Section .456.065 provides that it is a first degree misdemeanor to practice a health care profession with an inactive or delinquent license and provides a minimum mandatory term of imprisonment of 30 days.

The habitual *felony* offender statute allows a judge to impose a sentence in excess of the ordinary statutory maximum for the offense for which the offender is being sentenced if the offender has been convicted of two or more felony offenses within a specified period of time.⁵ In addition, the habitual violent felony offender, violent career criminal and three-time violent felony offender statutes authorize or in some cases, require the imposition of an enhanced sentence based on prior felony convictions.⁶

Effect of HB 1797: PCB 1797 creates a new category of habitual offender called the "habitual misdemeanor offender," which is defined as a defendant before the court for sentencing for a specified misdemeanor who has previously been convicted, as an adult, of four or more specified misdemeanor offenses, which in relation to each other and the misdemeanor before the court for sentencing, are separate offenses that are not part of the same criminal transaction or episode and were committed within 1 year of the date the misdemeanor before the court for sentencing was committed.

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The bill defines the term "convicted" as "a determination of guilt which is the result of trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld." The bill also provides that the court may not impose such sentence if the current misdemeanor offense has been reclassified as a felony as a result of any prior qualifying misdemeanor.

⁴ Section 812.014(3), F.S.

⁵ Section 775.084(1), F.S.

⁶ See generally, s. 775.084, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 775.0837, F.S.; providing for sentencing as a habitual misdemeanor offender.

Section 2. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Corrections made the following comments in its analysis of SB 1376 which was similar to the original bill:

This legislation creates a minimum mandatory term of incarceration for persons convicted of a fifth misdemeanor within a 12-month period. The legislation will require a minimum sentence of at least six (6) months to a year in a county jail.

These sentences, except in isolated instances, will be served in county jails, not state prisons. Therefore, this legislation is likely to have a significant impact on county jail populations by increasing the length of incarceration for the specified offenders.

This legislation should have no direct impact on state prison or supervised offender populations under the jurisdiction of the Florida Department of Corrections as it is expected these offenders would serve the sentence in a county correctional facility.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There is currently no minimum sentence for a first or second degree misdemeanor offense (other than specified in such statutes as battery and theft, discussed above), even if the offender has multiple prior convictions. This bill would mandate a six month sentence to be served in jail, treatment or detention at a designated residence, for a second or a first degree misdemeanor offense where the offender has the required prior convictions. Further, where applied, this would have the effect of increasing the maximum sentence for a second degree misdemeanor (for an offender with the required prior convictions) from 60 days in jail to one year in jail. As a result, this bill is likely to have some impact on the county jail population and a fiscal impact on the counties who will be obligated to expend funds for either incarceration, treatment or supervision.

The Office of the State Courts Administrator made the following comments in its analysis of SB 1376 which contains provisions similar to HB 1797:

We used our Offender Based Transaction System data to identify misdemeanor offenders who would qualify for the mandatory jail sentence under SB 1376. Please note that for the counties with missing data, we used the state average to identify those offenders that would qualify for this bill. Also, we only counted offenders once, as this bill would require a minimum of 6 months

sentence. It is slightly possible that an offender could be sentenced twice during a given year under the misdemeanor offender provision of this bill, but we ignored this possibility.

In FY [2003], there were approximately 931 offenders statewide that were convicted of a misdemeanor that had at least four additional misdemeanor convictions on separate occasions within the last 12 months. We excluded all offenders that had already received at least a 6 month jail term.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

This bill began as a proposed committee bill of the Committee on Public Safety & Crime Prevention. PCB PS 04-09 required a judge to sentence a habitual misdemeanor offender to a term of imprisonment of not less than 6 months but less than one year. The Subcommittee on Criminal Justice amended the bill to provide that the judge could require treatment or detention in a designated residence in lieu of the term of incarceration as discussed in the Effect of Proposed Changes section of this analysis. The Committee on Public Safety & Crime Prevention adopted an amendment to limit the scope of the habitual misdemeanor offender designation to include only misdemeanors contained in certain chapters of statute. The proposed committee bill then became HB 1797.