

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1458
 INTRODUCER: Judiciary Committee and Senator Joyner
 SUBJECT: Criminal Offenses Against Homeless Persons
 DATE: March 28, 2007 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Cellon | Cannon | CJ | Favorable |
| 2. | Daniell | Maclure | JU | Fav/CS |
| 3. | | | JA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

Currently, s. 775.085, F.S., commonly known as Florida’s “hate crime” statute, provides that the penalty for any felony or misdemeanor must be reclassified if the commission of the 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. This bill amends this statute to include offenses evidencing prejudice based on the “homeless status” of the victim.

This bill substantially amends section 775.085, Florida Statutes.

II. Present Situation:

Background of Hate Crime Laws

The first modern law aimed at punishing offenses classified as “hate crimes” was enacted by Congress in 1968.¹ Subsequently, federal laws such as the Hate Crimes Statistics Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Hate Crimes Sentencing Enhancement Act, and the Local Law Enforcement Hate Crimes Prevention Act of 2005 have provided additional coverage.² A hate crime is defined as “a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, national origin, ethnicity, gender,

¹ 18 U.S.C. s. 245.

² National Coalition for the Homeless, *Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness*, 7-8 (2006).

disability, or sexual orientation of any person.”³ There is currently no federal criminal prohibition against violent crimes directed at individuals because of their housing status.

The United States Supreme Court upheld state hate crime penalty enhancement laws in *Wisconsin v. Mitchell*, 508 U.S. 476 (1993). Today, at least 46 states have hate crime laws, though none specifically enhance penalties on those who attack the homeless.⁴

Each year the National Coalition for the Homeless investigates and prepares a report on hate crimes and violence in America. The Coalition’s 2006 report found that between 1999 and 2005, there were 82 homicides classified as the result of hate crimes; however, over the same period of time, there were 169 deaths as a result of violent acts directed at homeless people, more than twice the number of hate crime related deaths.⁵ In 2006, there were 142 violent acts on homeless people, 20 of which resulted in death.⁶ Hate crimes or violence on the homeless occurred in 26 states during 2006, with Florida being the highest in the nation, having 48 acts of violence against the homeless.⁷ Currently, California and Maine have passed pieces of legislation to address crimes on homeless persons.⁸ Although, no state has added homelessness to its hate crimes statute, legislation is currently pending in California (S.B. 122), Florida (H.B. 11 and S.B. 1458), Maryland (S.B. 160), Massachusetts (H.B. 1419), Nevada (A.B. 83), and Texas (H.B. 1360 and S.B. 536).⁹

Florida’s Hate Crime Statute and Related Laws

Florida’s hate crime statute, s. 775.085, F.S., reclassifies offenses, though it does not provide for any mandatory minimum term of imprisonment. It can be applied to *any* felony or misdemeanor if the commission of the felony or misdemeanor “evidences prejudice” based upon the victim’s race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age. Offenses 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.

Currently, there is no law that specifically enhances penalties or reclassifies the felony or misdemeanor degree of any offense if the offense is committed against a homeless person.

³ *Id.* at 8; *see also*, H.R. 3355, s. 280003, Violent Crime Control and Law Enforcement Act of 1994, at <http://thomas.loc.gov/> (last visited March 20, 2007).

⁴ National Coalition for the Homeless, *supra* note 2, at 8.

⁵ *Id.* at 12.

⁶ *Id.* at 15.

⁷ *Id.* at 22-24. Attacks against the homeless increased 65 percent last year nationally. Kari Cobham, *Meeting tackles homeless problem*, DAYTONA BEACH NEWS JOURNAL, February 21, 2007, at 1C.

⁸ National Coalition for the Homeless, *supra* note 2, at 37.

⁹ *Id.*

III. Effect of Proposed Changes:

This bill amends s. 775.085, F.S., Florida's "hate crime" statute, to reclassify the felony or misdemeanor degree of a criminal offense if the commission of the offense evidences prejudice based on the "homeless status" of the victim. This means that when a misdemeanor or felony crime is committed against a homeless person, if the commission of such crime evidences prejudice based on the person's "homeless status," the crime can be reclassified to the next highest degree for sentencing purposes. For example, a first-degree misdemeanor theft may be reclassified to a third-degree felony.

The bill defines the term "homeless" in conformity with s. 420.621, F.S., which contains the following definition:

"Homeless" refers to an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:

- (a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
- (b) An institution that provides a temporary residence for individuals intended to be institutionalized; or
- (c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

This act shall take effect October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill appears to be exempt from the requirements of Article VII, section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference considered this bill on March 6, 2007, and determined that any prison-bed impact the bill may carry would likely be insignificant.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

¹⁰ See <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (follow "2007 Conference Results" hyperlink) (last visited March 19, 2007).

VIII. Summary of Amendments:

None.

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