

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 909

Homeless Persons

SPONSOR(S): Taylor

TIED BILLS:

IDEN./SIM. BILLS: SB 2680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Kramer	Kramer
2) PreK-12 Policy Committee			
3) Civil Justice & Courts Policy Committee			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor offense 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 is commonly known as the "hate crime" statute. HB 909 amends this statute to include offenses evidencing prejudice based on the homeless status of the victim. This will have the effect of increasing the maximum sentence that can be imposed for an offense against a homeless person where the commission of the offense evidences prejudice based on the homeless status of the victim.

The bill also creates a new section of statute which requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. This will apply regardless of whether the offender knew the homeless status of the victim. The bill also authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service. The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

The bill requires FDLE to develop a telecourse on the plight of homeless persons that must be made available to all law enforcement agencies in the state. The bill also requires every state, local and correctional law enforcement agency to certify that each of its officers has taken the course.

The bill requires schools to teach the subject of homelessness, which must be covered in ways such as expanding the Miami-Dade County Public Schools' "It could happen to you" curriculum on homelessness statewide and using the Faces of Homelessness Speakers' Bureau program of the National Coalition for the Homeless.

The bill requires Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study into the nature and scope of hate crimes or violent crimes that are committed against people experiencing homelessness.

As written, this bill will have a fiscal impact on FDLE, the Department of Education and local law enforcement agencies. See fiscal comments section for details.

Note: It is expected that the sponsor will offer an amendment that will retain the provision of the bill amending the hate crime statute to include homeless status and will remove all of the other provisions of the bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hate Crime Statute: Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor offense 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 is commonly referred to as a "hate crime" statute. 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.

Reclassification of an offense has the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is 60 days in jail; for a first degree misdemeanor is one year in jail; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.¹

There is currently no section of statute that specifically applies to criminal offenses committed against a homeless person.

The bill amends section 775.085, F.S., the "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.

The bill provides that the term "homeless status" means the victim is homeless as the term is defined in 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:

¹ s. 775.082, F.S.

- (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.

Assault or battery on homeless person: The bill also creates a new section of statute which requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault² or aggravated battery³ upon a homeless person. This section does not require proof that the offender was aware of the homeless status of the victim and could apply to an offense committed by a homeless person against another homeless person. The bill authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service.⁴ The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

Housing status data collection. Section 877.19, F.S. requires FDLE to collect data on incidents of hate crimes. Law enforcement officers are required to send this information to FDLE monthly. The Attorney General issues an annual summary of the data collected pursuant to the section.⁵

FDLE's Uniform Crime Report (UCR) system allows FDLE to provide standardized reports on crime statistics based on data gathered from across the state. Reports that provide both summary and detail information are issued yearly. There is no requirement that the homeless status of the victim be included in all crime reports submitted by agencies.

The bill provides that housing status must be included with crime reports that are to be included in the uniform crime reporting data maintained by the Florida Department of Law Enforcement. The bill provides that requirements for reporting this data must be developed by the department with the assistance of the National Coalition for the Homeless, the National Law Center on Homelessness and Poverty, and criminal justice professionals. Throughout the state, law enforcement officers will be required to collect housing status information from victims and suspects whenever the collection of such information is appropriate. The Department of Law Enforcement will be required to provide a summary report of this data to the National Coalition for the Homeless and to appropriate state agencies.

Law enforcement instruction: In order to be certified as a law enforcement officer in the state, an applicant must attend basic recruit training and pass an examination.⁶ An officer is also required to undergo continuing education.⁷ The Criminal Justice Standards and Training Commission develops the curriculum for the training and certifies the training schools which provide the training.⁸

² An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

³ An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

⁴ This provision is similar to section 784.08, F.S. which requires the imposition of a three year minimum mandatory sentence for an aggravated assault or aggravated battery committed on a victim age 65 or older. There are a number of other sections of statute that reclassify assault or battery offenses if they are committed against specified types of victims. Section 784.07(2), F.S. reclassifies assault and battery offenses committed against a list of people such as law enforcement officers, firefighters, emergency medical care providers and public transit employees and requires the imposition of a three year minimum mandatory sentence for aggravated assault of a law enforcement officer and a five year minimum mandatory sentence for aggravated battery of a law enforcement officer. See also, ss. 784.074, 784.081, 784.082, 784.083, F.S.

⁵ <http://myfloridalegal.com/pages.nsf/Main/1CA76AEC8962AFC58525755B00517A06>

⁶ s. 943.13,

⁷ s. 943.135, F.S.

⁸ ss. 943.12 and 943.14, F.S.

Sections 943.171 through 943.17295, F.S., contain a number of specific requirements relevant to law enforcement officer training including training in subjects such as victims assistance, juvenile sexual offender investigations, and domestic violence.

The bill creates s. 943.17165, F.S. which requires FDLE to develop a telecourse on the plight of homeless persons that must be made available to all law enforcement agencies in the state. The bill also requires every state, local and correctional law enforcement agency to certify that each of its officers has taken the course. The bill requires the telecourse to address crimes against homeless persons and methods of dealing effectively and humanely with homeless persons. The course must include instruction on each of the following topics:

1. Information about homelessness, including causes of homelessness, its impact, and solutions to homelessness.
2. Indicators of hate crimes.
3. The impact of these crimes on the victim, the victim's family, and the community.
4. The assistance and compensation available to victims.
5. The laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.
6. Law enforcement procedures, reporting, and documentation of hate crimes.
7. Techniques and methods to handle incidents of hate crimes.
8. The special problems inherent in hates crimes against homeless persons and techniques on how to deal with these special problems.

The bill requires FDLE to consult with subject matter experts in developing the telecourse, including, but not limited to, the following:

1. Homeless and formerly homeless individuals.
2. The National Coalition for the Homeless and the National Law Center on Homelessness & Poverty.
3. Other local service providers and advocates for homeless people.
4. Experts on the disabilities homeless persons commonly experience.
5. Law enforcement agencies with experience investigating hate crimes against homeless people.

The bill requires FDLE to develop a protocol relating to hate crimes against homeless persons that law enforcement personnel are required to follow, including, but not limited to, the following:

1. Preventing likely hate crimes by, among other things, establishing contact with persons and communities that are likely targets and forming community hate crime prevention and response networks and cooperating with such networks.
2. Responding to reports of hate crimes, including reports of hate crimes committed under color of legal authority.
3. Providing victim assistance and follow up, including community follow up.
4. Reporting methods and procedures to track hate crimes against homeless persons.

The bill provides that crime prevention activities must incorporate the protection of the homeless population.

School instruction: Section 1003.42, F.S. provides that members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board must teach a list of topics. Included in this list are topics such as: flag education; the elements of civil government; the elementary principles of agriculture; kindness to animals; the history of the United States, the Holocaust, African Americans and the state.

The bill amends this section to require schools to “teach the subject of homelessness, which must be covered in ways such as expanding the Miami-Dade County Public Schools’ “It could happen to you” curriculum on homelessness statewide and using the Faces of Homelessness Speakers’ Bureau program of the National Coalition for the Homeless.”

OPPAGA study: The bill provides that effective July 1, 2009, the Office of Program Policy Analysis and Government Accountability (OPPAGA) must conduct a study into the nature and scope of hate crimes or violent crimes that are committed against people experiencing homelessness. The study must contain the following information concerning these crimes:

1. The causes of such hate crimes and violence.
2. The circumstances that contribute to or were responsible for the perpetrators' behavior.
3. Beliefs held by the perpetrators of these crimes and any changes in those beliefs after conviction.

By December 31, 2009, the bill requires OPPAGA to make findings and recommendations for legislation or government policy that might reduce the number of hate crimes and violent crimes committed against homeless persons.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.085, F.S.; relating to evidencing prejudice while committing offenses; reclassification.

Section 2. Creates s. 784.0815, F.S.; relating to assault or battery on homeless persons.

Section 3. Creates unnumbered section of statute relating to housing status data collection.

Section 4. Creates s. 943.17165, F.S.; relating to hate crimes against homeless persons; course; protocols; activities.

Section 5. Amends s. 1003.42, F.S.; relating to required instruction.

Section 6. Requires OPPAGA study.

Section 7. Provides effective date of October 1, 2009, except as otherwise provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will apparently require all local law enforcement officers to take a telecourse on the plight of homeless persons. The bill also requires law enforcement to collect data on the housing status of victims and suspects which may have a workload impact on all local law enforcement agencies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Education has indicated that there would be a cost to school districts for design of the curriculum required by the bill relating to homelessness. The department states that purchase of the National Coalition for the Homeless video and the "It Could Happen to You" curriculum and video for 3,811 public schools could cost \$819,365.

FDLE indicated that the requirements of the bill will have a \$299,687 non-recurring impact on the department as follows:

	FY 09-10	FY 10-11	FY 11-12	
OPS Staff OPS to create telecourse and develop protocol for law enforcement	\$156,000	0	0	OPS
Programming – re-write of database	\$133,575	0	0	Programming
Contractor Expense	\$10,112	0	0	Expense
TOTAL	299,687	0	0	

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE recommends changing the reference relating to law enforcement training to refer to "distance learning" rather than a "telecourse". The fiscal impact cited above assumes that FDLE would develop an online course that officers or agencies would be able to download and complete on a computer. FDLE notes that the bill does not require officers to complete the training by a certain date.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES