

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 Criminal Justice Committee

BILL: CS/SB 734

INTRODUCER: Criminal Justice Committee and Senators Gelber, Smith, and others

SUBJECT: Public Corruption

DATE: April 19, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Favorable
2.	Cellon	Cannon	CJ	Fav/CS
3.			GO	
4.			JU	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill reclassifies most criminal offenses committed “under color of law” up one degree of severity (2nd degree misdemeanor is reclassified as a 1st degree misdemeanor, 1st degree misdemeanor is reclassified as a 3rd degree felony, and so on). Specifically, the bill provides for the reclassification when a criminal offense is furthered or facilitated by a person acting or purporting to act in the performance of his or her official duties under any law, ordinance, or regulation.

The reclassification does not apply to criminal offenses where the underlying offense requires acting or purporting to act in the performance of official duties as a necessary element of the crime (i.e., official misconduct, bid tampering).

For purposes of the Criminal Punishment Code in Chapter 921, F.S., the bill designates such reclassified offenses one level above their current ranking.

The bill takes effect July 1, 2010.

This bill creates section 775.0876 of the Florida Statutes.

II. Present Situation:

The Palm Beach County Grand Jury was convened to consider matters of public corruption in both 2009 and 2010. Several recommendations of the Grand Jury focused on the need for more and better criminal statutes at the state level to help combat misconduct and unlawful acts by public officials.

The Grand Jury specifically recommended that the Legislature pass a sentencing enhancement for crimes committed “under color of law.”

Enhancements for the purpose of charging and penalizing crimes generally occur by reclassifying a criminal act to a higher level of offense if certain facts apply. For example, what amounts to a simple first-degree misdemeanor battery can be reclassified and charged as battery upon a person 65 years of age or older at the third-degree felony level. The prosecutor must prove not only the elements of the battery offense but the additional element of the age of the victim at the time of the offense. Other enhancements occur when a defendant has been convicted of a particular crime and is subsequently convicted of committing the same crime. For example, a person who has a prior conviction for simple (misdemeanor) battery and who commits a second or subsequent simple battery commits a third degree felony battery for charging and sentencing purposes. In that case, the prosecutor would have to prove the elements of the (second or subsequent) simple battery and then show that the prior conviction for battery exists.

The 10-20-Life statute (s. 775.087(2)(a), F.S.) allows for enhancement of the penalty if a firearm is possessed or used in the commission of certain crimes. The jury must make the finding that the defendant possessed or used the firearm while committing the crime *either* by finding him guilty of a crime that involves a firearm *or* by answering a specific question on the verdict form so indicating.¹ The 10-20-Life statute requires reclassification of felonies committed with a firearm to a higher degree where the use of a firearm is not an essential element of the underlying offense.²

The Florida Criminal Code generally classifies felonies as criminal offenses punishable by more than one year of incarceration in a state correctional institution; a misdemeanor is a criminal offense punishable by up to one year in a county jail.³

Felonies are further classified as:

- Capital: punishable by death or life imprisonment without parole.
- Life: for most offenses, punishable by life imprisonment, and a fine of up to \$15,000.
- 1st Degree: punishable by imprisonment for a term not exceeding 30 years, or when specified by statute not exceeding life imprisonment, and a fine of up to \$10,000.
- 2nd Degree: punishable by imprisonment not exceeding 15 years, and a fine of up to \$10,000.

¹ *Dallas v. State*, 898 So.2d 163 (Fla. 4th DCA 2005).

² *Id.*

³ s. 775.08, F.S.

- 3rd Degree: punishable by imprisonment not exceeding 5 years, and a fine of up to \$5,000.

Misdemeanors are further classified as:

- 1st Degree: punishable by incarceration up to 1 year, and a fine of up to \$1,000.
- 2nd Degree: punishable by incarceration not exceeding 60 days, and a fine of up to \$500.

The Criminal Punishment Code applies to all but capital felonies, and contains an offense severity ranking chart that designates offenses into certain “levels” from 1 to 10 based on severity, that are then used to determine the lowest permissible sentence for a particular offense.

There are currently no enhanced criminal classifications or felony sentencing penalties for criminal acts committed “under color of law,” that is, for wrongful conduct based on public authority or position or the assertion of such that does not form an element of the underlying crime.

III. Effect of Proposed Changes:

The bill reclassifies felony and misdemeanor criminal offenses committed by one who is acting or purporting to act in the performance of official duties up one degree of severity, *unless* acting or purporting to act in the performance of official duties is a necessary element of the *underlying* crime.

Specifically, the bill provides for the reclassification when a criminal offense is furthered or facilitated by a person acting or purporting to act in the performance of his or her official duties under any law, ordinance, or regulation.

So, for example, violating the law by committing the offense of official misconduct in s. 838.022, F.S., which necessarily requires proof of corrupt conduct by a “public servant” in the performance of certain public duties, would not result in a reclassification while a public employee who uses his or her public position to aid or abet someone in the commission of Medicaid provider fraud in violation of s. 409.920, F.S., could be reclassified.

The reclassification scheme provided in the bill is as follows:

- 2nd degree misdemeanor becomes a 1st degree misdemeanor
- 1st degree misdemeanor becomes a 3rd degree felony
- 3rd degree felony becomes a 2nd degree felony
- 2nd degree felony becomes a 1st degree felony
- 1st degree felony becomes a life felony

For purposes of the Criminal Punishment Code in Chapter 921, such reclassified offenses are designated one level above their current ranking by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed this bill on February 23, 2010, and found its impact to be indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Committee on April 19, 2010:**

The elements that must be proven for a penalty reclassification because a criminal act is committed “under color of law” are specified with greater particularity by the Committee Substitute.

B. Amendments:

None.

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