



**COMMITTEE ON
HOMELAND SECURITY
& PUBLIC SAFETY**

COMMITTEE MEETING

**WEDNESDAY, DECEMBER 12, 2007
1:00 p.m. – 2:30 p.m.**

**ROOM
Reed Hall
(102 House Office Building)**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Homeland Security & Public Safety

Start Date and Time: Wednesday, December 12, 2007 01:00 pm

End Date and Time: Wednesday, December 12, 2007 02:30 pm

Location: Reed Hall (102 HOB)

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 9 Persons Injured by Crime by Llorente

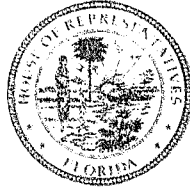
HB 61 Offenses Against Officers by Scionti

HB 105 Secondary Metals Recyclers by Troutman

HB 107 Human Smuggling by Snyder

HB 117 Orders of No Contact by Adams

NOTICE FINALIZED on 12/05/2007 15:52 by SPT



The Florida House of Representatives

Safety & Security Council

Committee on Homeland Security & Public Safety

**Marco Rubio
Speaker**

**Sandra Adams
Chair**

AGENDA

Wednesday, December 12, 2007

1:00 p.m. – 2:30 p.m.

Reed Hall

(102 House Office Building)

- I. Opening remarks by Chair Adams**
- II. Roll call by Sonja Thompson, CAA**
- III. Consideration of the following bill(s):**
 - HB 9 Persons Injured by Crime by Llorente**
 - HB 61 Offenses Against Officers by Scionti**
 - HB 105 Secondary Metals Recyclers by Troutman**
 - HB 107 Human Smuggling by Snyder**
 - HB 117 Orders of No Contact by Adams**
- IV. Closing Remarks**
- V. Meeting Adjourned**

**Marco Rubio
Speaker**



**Sandra Adams
Chair**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 9 Persons Injured by Crime

SPONSOR(S): Llorente and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	_____	Cunningham 	Kramer 
2) <u>Safety & Security Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 9 creates s. 843.21, F.S., which provides that a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury commits:

- A third degree felony where the victim's medical condition worsens as a result of the deprivation of medical care.
- A second degree felony where the deprivation of medical care results in the victim's death.

The bill takes effect October 1, 2008, and does not appear to have a significant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – The bill makes it a crime for a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity to deprive that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury.

B. EFFECT OF PROPOSED CHANGES:

In 2003, Frank Pacheco was assaulted by a group of men and sustained serious injuries. After the assault, the attackers allegedly put Pacheco in the back of a car and forced Pacheco's companion to drive around. The prosecutor in the case stated that "the wounds Pacheco suffered from the beating were not life-threatening, but they became so after he was shoved into the car and not taken directly to the hospital."¹

HB 9 creates s. 843.21, F.S., which provides that a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury commits:

- A third degree felony² where the victim's medical condition worsens as a result of the deprivation of medical care.
- A second degree felony³ where the deprivation of medical care results in the victim's death.

The bill has an effective date of October 1, 2008.

C. SECTION DIRECTORY:

Section 1. Cites the bill as the "Frank Pacheco Aid to Victims Act."

Section 2. Creates s. 843.21, F.S., relating to depriving crime victim of medical care.

Section 3. This bill takes effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹ <http://www.miaminewtimes.com/2005-03-24/news/how-to-get-away-with-murder/5>

² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

³ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, to the extent that this bill creates a new crime, there may be an additional prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to persons injured by crime; providing a
 3 short title; creating s. 843.21, F.S.; prohibiting the
 4 depriving of a victim injured by a crime of medical
 5 treatment with specified intent; providing penalties;
 6 providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. This act may be cited as the "Frank Pacheco Aid
 11 to Victims Act."

12 Section 2. Section 843.21, Florida Statutes, is created to
 13 read:

14 843.21 Depriving crime victim of medical care.--A person
 15 who takes custody of or exercises control over a person he or
 16 she knows to be injured as a result of criminal activity and
 17 deprives that person of medical care with the intent to avoid,
 18 delay, hinder, or obstruct any investigation of the criminal
 19 activity contributing to the injury commits:

20 (1) Where the victim's medical condition worsens as a
 21 result of the deprivation of medical care, a felony of the third
 22 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 23 775.084.

24 (2) Where deprivation of medical care contributes or
 25 results in the death of the victim, a felony of the second
 26 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 27 775.084.



28 Section 3. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61 Offenses Against Officers

SPONSOR(S): Scionti

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	_____	Cunningham 	Kramer 
2) <u>Safety & Security Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 776.051, F.S., *precludes* a person from using a “justifiable use of force” defense in a criminal prosecution if the person resists an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer. This statute also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest that he or she knew was unlawful. The Florida Supreme Court recently held that s. 776.051, F.S., only applies to arrest situations.

HB 61 expands s. 776.051, F.S., so that in addition to applying to arrest situations, it also applies to other police-citizen encounters. Thus, under the provisions of the bill, if a person hits a law enforcement officer who is conducting a *search* and is subsequently charged with “battery on a law enforcement officer,” that person may *not* use a “justifiable use of force” defense. The bill also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest or during an execution of a legal duty that he or she knew was unlawful.

Section 784.07, F.S., provides enhanced penalties for persons who knowingly commit an assault or battery on a law enforcement officer who is engaged in the lawful performance of his or her duties. Similarly, ss. 843.01 and 843.02, F.S., make it a crime to knowingly and willfully resist, obstruct, or oppose, with or without violence, law enforcement officers in the lawful execution of a legal duty. All three statutes require that the officer be *lawfully* performing or executing a duty.

HB 61 amends ss. 784.07, 843.01, and 843.02, F.S., by deleting the requirement that the officer be engaged in the *lawful* performance of his or her duties.

This bill appears to have no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill expands s. 776.051, F.S., to preclude a person from using a “justifiable use of force” defense if they obstruct with violence a law enforcement officer who is engaged in the execution of a legal duty.

B. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force

Chapter 776, F.S., contains a variety of statutes that outline when a person may justifiably use force against another.¹ These “justifiable use of force” defenses are commonly used in criminal prosecutions (e.g. a person charged with battery may claim that the use of force [i.e. the battery] was justified because they were defending themselves). Chapter 776, F.S., also contains statutes that *preclude* a person from using “justifiable use of force” defenses in a criminal prosecution.²

Section 776.051, F.S., is a statute that *precludes* a person from using a “justifiable use of force” defense in a criminal prosecution. Specifically, the statute provides that “a person is *not* justified in using force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.”³ Thus, if a person resists an arrest and is subsequently charged with “battery on a law enforcement officer⁴,” that person is precluded from using a “justifiable use of force” defense. Section 776.051, F.S., also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest that he or she knew was unlawful.

In recent years, Florida’s First and Fifth District Courts of Appeal issued conflicting opinions as to whether s. 776.051, F.S., applied only to arrest situations, or whether it also applied to other types of police-citizen encounters (e.g. searches). The Florida Supreme Court resolved this conflict in 2006 when they decided *Tillman v. State*.⁵ In *Tillman*, the court held that s. 776.051, F.S., by its plain terms, applied only to arrest situations.⁶ Thus, if a person hits a law enforcement officer during an *arrest* and is subsequently charged with “battery on a law enforcement officer,” that person may not use a “justifiable use of force” defense. In contrast, if that same person hits a law enforcement officer who is

¹ See e.g., s. 776.012, F.S., (A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force); s. 776.031, F.S., (A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.)

² See e.g., s. 776.041, F.S., (The justification described in the preceding sections of this chapter is not available to a person who is attempting to commit, committing, or escaping after the commission of, a forcible felony).

³ This is true even if the arrest is technically illegal. See, *Jones v. State*, 570 So.2d 433 (Fla. 5th DCA 1990); *Wallace v. State*, 557 So.2d 212 (Fla. 2nd DCA 1990); *Delaney v. State*, 489 So.2d 891, (Fla. 1st DCA 1986).

⁴ s. 784.07, F.S.

⁵ 934 So.2d 1263 (Fla. 2006)

⁶ *Id.*

conducting a *search* and is subsequently charged with “battery on a law enforcement officer,” that person may use a “justifiable use of force” defense.

It should be noted that while the court in *Tillman* held that s. 776.051, F.S., applied only to arrest situations, the court commented that policy reasons may support extending the prohibition in s. 776.051, F.S., beyond arrests, but that it was not the court’s function to substitute its judgment for that of the legislature.⁷

Effect of the Bill

HB 61 expands s. 776.051, F.S., so that in addition to applying to arrest situations, it also applies to other police-citizen encounters. Specifically, the bill provides that a person is not justified in using force “to obstruct with violence a law enforcement officer who is engaged in the execution of a legal duty, regardless of whether a court later finds that the action of the law enforcement officer was unlawful, if the law enforcement officer was acting in good faith.” Thus, under the provisions of the bill, if a person hits a law enforcement officer who is conducting a *search* and is subsequently charged with “battery on a law enforcement officer,” that person may *not* use a “justifiable use of force” defense.

The bill also precludes a law enforcement officer from using a “justifiable use of force” defense if the officer used force during an arrest or during an execution of a legal duty that he or she knew was unlawful.

Assault or Battery on a Law Enforcement Officer & Resisting With and Without Violence

Section 784.07, F.S., provides enhanced penalties for persons who knowingly commit an assault or battery on a law enforcement officer⁸ who is engaged in the lawful performance of his or her duties. Similarly, ss. 843.01 and 843.02, F.S., make it a crime to knowingly and willfully resist, obstruct, or oppose, with or without violence, law enforcement officers⁹ in the lawful execution of a legal duty. All three statutes require that the officer be *lawfully* performing or executing a duty.

In *Tillman*, the Florida Supreme Court examined the language of the above statutes and held that “proof that the officer was acting lawfully is necessary...”¹⁰ Thus, a person who hits an officer during the course of a search could not be prosecuted for “resisting with violence” if the search was held unlawful. The court noted that “this interpretation may narrow the intended scope of protection for public officials further than actually intended and, thereby, undermine the very purpose of these

⁷ *Id.* at 1269-1270.

⁸ The enhanced penalties in s. 784.07, F.S., also apply to persons who knowingly commit an assault or battery on a firefighter, an emergency medical care provider, a traffic accident investigation officer as described in s. 316.640, F.S., a nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a traffic infraction enforcement officer as described in s. 316.640, F.S., a parking enforcement specialist as defined in s. 316.640, F.S., a person licensed as a security officer as defined in s. 493.6101, F.S., and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, intake officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, parking enforcement specialist, public transit employee or agent, or security officer.

⁹ Also included are members of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisors; county probation officers; personnel or representatives of the Department of Law Enforcement; or other persons legally authorized to execute process. *See* ss. 843.01 and 843.02, F.S.

¹⁰ *See Tillman*, at 1270.

statutes.”¹¹ The court reviewed other similar state statutes and commented that the majority of them did not use the narrow phrase “lawful performance,” but rather used a broader phrase such as “engaged in the execution of any official duty.”¹²

Effect of the Bill

HB 61 amends ss. 784.07, 843.01, and 843.02, F.S., by deleting the requirement that the officer be engaged in the *lawful* performance of his or her duties. As a result, a person who hits an officer during the course of a search can still be prosecuted for “resisting with violence,” even if the search was held unlawful.

C. SECTION DIRECTORY:

Section 1. Amends s. 776.051, F.S., relating to use of force in resisting or making an arrest.

Section 2. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 3. Amends s. 843.01, F.S., relating to resisting officers with violence to his or her person.

Section 4. Amends s. 843.02, F.S., relating to resisting officers without violence to his or her person.

Section 5. This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹¹ *Id.* at 1274.

¹² *Id.* at 1275.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to offenses against officers; amending s.
 776.051, F.S.; providing that a person is not justified in
 resisting with violence a law enforcement officer who is
 engaged in the execution of a legal duty, regardless of a
 specified later finding by a court; providing that a
 person is not justified in using force if a law
 enforcement officer acts in good faith and is known or
 appears to be a law enforcement officer; amending s.
 784.07, F.S.; providing for reclassification of certain
 offenses against certain officers who are engaged in the
 performance of duties; amending s. 843.01, F.S.; providing
 criminal penalties for resisting with violence an officer
 who is executing a legal duty; amending s. 843.02, F.S.;
 providing criminal penalties for resisting without
 violence an officer who is executing a legal duty;
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 776.051, Florida Statutes, is amended
 to read:

776.051 Use of force in resisting or making an arrest or
the execution of a legal duty; prohibition.--

(1) A person is not justified in the use of force to
 resist an arrest by a law enforcement officer or to resist a law
enforcement officer who is engaged in the execution of a legal
duty, regardless of whether a court later finds that the action

29 of the law enforcement officer was unlawful, if the law
 30 enforcement officer was acting in good faith and he or she who
 31 is known, or reasonably appears, to be a law enforcement
 32 officer.

33 (2) A law enforcement officer, or any person whom the
 34 officer has summoned or directed to assist him or her, is not
 35 justified in the use of force if the arrest or execution of a
 36 legal duty is unlawful and known by him or her to be unlawful.

37 Section 2. Subsection (2) of section 784.07, Florida
 38 Statutes, is amended to read:

39 784.07 Assault or battery of law enforcement officers,
 40 firefighters, emergency medical care providers, public transit
 41 employees or agents, or other specified officers;
 42 reclassification of offenses; minimum sentences.--

43 (2) Whenever any person is charged with knowingly
 44 committing an assault or battery upon a law enforcement officer,
 45 a firefighter, an emergency medical care provider, a traffic
 46 accident investigation officer as described in s. 316.640, a
 47 nonsworn law enforcement agency employee who is certified as an
 48 agency inspector, blood alcohol analyst, or a breath test
 49 operator while such employee is in uniform and engaged in
 50 processing, testing, evaluating, analyzing, or transporting a
 51 person who is detained or under arrest for DUI, a traffic
 52 infraction enforcement officer as described in s. 316.640, a
 53 parking enforcement specialist as defined in s. 316.640, a
 54 person licensed as a security officer as defined in s. 493.6101
 55 and wearing a uniform that bears at least one patch or emblem
 56 that is visible at all times that clearly identifies the

57 | employing agency and that clearly identifies the person as a
 58 | licensed security officer, or a security officer employed by the
 59 | board of trustees of a community college, while the officer,
 60 | firefighter, emergency medical care provider, intake officer,
 61 | traffic accident investigation officer, traffic infraction
 62 | enforcement officer, inspector, analyst, operator, parking
 63 | enforcement specialist, public transit employee or agent, or
 64 | security officer is engaged in the ~~lawful~~ performance of his or
 65 | her duties, the offense for which the person is charged shall be
 66 | reclassified as follows:

67 | (a) In the case of assault, from a misdemeanor of the
 68 | second degree to a misdemeanor of the first degree.

69 | (b) In the case of battery, from a misdemeanor of the
 70 | first degree to a felony of the third degree.

71 | (c) In the case of aggravated assault, from a felony of
 72 | the third degree to a felony of the second degree.

73 | Notwithstanding any other provision of law, any person convicted
 74 | of aggravated assault upon a law enforcement officer shall be
 75 | sentenced to a minimum term of imprisonment of 3 years.

76 | (d) In the case of aggravated battery, from a felony of
 77 | the second degree to a felony of the first degree.

78 | Notwithstanding any other provision of law, any person convicted
 79 | of aggravated battery of a law enforcement officer shall be
 80 | sentenced to a minimum term of imprisonment of 5 years.

81 | Section 3. Section 843.01, Florida Statutes, is amended to
 82 | read:

83 | 843.01 Resisting officer with violence to his or her
 84 | person.--Whoever knowingly and willfully resists, obstructs, or

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85 opposes any officer as defined in s. 943.10(1), (2), (3), (6),
 86 (7), (8), or (9); member of the Parole Commission or any
 87 administrative aide or supervisor employed by the commission;
 88 parole and probation supervisor; county probation officer;
 89 personnel or representative of the Department of Law
 90 Enforcement; or other person legally authorized to execute
 91 process in the execution of legal process or in the ~~lawful~~
 92 execution of any legal duty, by offering or doing violence to
 93 the person of such officer or legally authorized person, commits
 94 ~~is guilty of~~ a felony of the third degree, punishable as
 95 provided in s. 775.082, s. 775.083, or s. 775.084.

96 Section 4. Section 843.02, Florida Statutes, is amended to
 97 read:

98 843.02 Resisting officer without violence to his or her
 99 person.--Whoever shall resist, obstruct, or oppose any officer
 100 as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9);
 101 member of the Parole Commission or any administrative aide or
 102 supervisor employed by the commission; county probation officer;
 103 parole and probation supervisor; personnel or representative of
 104 the Department of Law Enforcement; or other person legally
 105 authorized to execute process in the execution of legal process
 106 or in the ~~lawful~~ execution of any legal duty, without offering
 107 or doing violence to the person of the officer, commits ~~shall be~~
 108 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 109 provided in s. 775.082 or s. 775.083.

110 Section 5. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 105 Secondary Metals Recyclers

SPONSOR(S): Troutman and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>		Padgett <i>RP</i>	Kramer <i>TK</i>
2) <u>Safety & Security Council</u>			
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

A secondary metals recycler is essentially a scrap metal dealer. Secondary metals recyclers purchase used metals typically salvaged from building demolition, remodeling, etc. and refine those metals into raw materials which can be used to make new products. Secondary metals recyclers are currently regulated under Ch. 538, Part II, F.S. All secondary metals recyclers in Florida must be registered with the Department of Revenue as provided in s. 538.25, F.S. HB 105 amends and expands several aspects of the laws relating to secondary metals recyclers.

- The bill eliminates the requirement that transactions must be greater than \$10 in value to be regulated under these statutes.
- The bill requires secondary metals recyclers to gather more in depth information about the sellers of regulated metals.
- The bill enhances the penalties secondary metals recyclers face for repeated noncompliance with statutory requirements; increasing the penalty from a first degree misdemeanor to a third degree felony.
- The bill enhances the penalties sellers of regulated metals face for giving false information to secondary metals recyclers; increasing the penalties to second and third degree felonies (based on the dollar amount received by the seller).
- The bill requires the Department of Revenue to release the names of any registered secondary metals recycler to a law enforcement official upon request.
- The bill requires that all regulated metals be transported to a secondary metals recycler in a motor vehicle; eliminating current exceptions.

This bill appears to have an indeterminate but likely insignificant prison bed impact on the Department of Corrections.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill increases sanctions on secondary metals recyclers who repeatedly fail to keep required transaction records and hold metals, pursuant to a request from a law enforcement officer, for a certain period of time. The bill also enhances the punishment if a seller provides false information to a secondary metals recycler.

B. EFFECT OF PROPOSED CHANGES:

A secondary metals recycler is essentially a scrap metal dealer. Secondary metals recyclers purchase used metals typically salvaged from building demolition, remodeling, etc. and refine those metals into raw materials which can be used to make new products. Secondary metals recyclers are currently regulated under Ch. 538, Part II, F.S. All secondary metals recyclers in Florida must be registered with the Department of Revenue as provided in s. 538.25, F.S.

Recently, there has been an increase of reports of metal theft (specifically copper) from construction sites, citrus groves, air conditioner units, cell phone towers, and even a report of copper theft from an Amtrak locomotive. The reports state that thieves take the stolen metal to a secondary metals recycler and sell the metal for cash. Currently, scrap copper wire sells for \$2.59-\$2.74 per pound¹.

Definitions

Currently, to qualify as a "purchase transaction"² regulated under Chapter 538, the transaction must involve an exchange of consideration greater than \$10. S. 538.18(6), F.S. HB 105 deletes the requirement that the transaction be greater than \$10. This has the effect of making all transactions involving the sale of regulated metals subject to the regulations set forth in Florida Statutes, Chapter 538, Part II.

Record Keeping

Currently s. 538.19, F.S. requires secondary metals recyclers³ to gather information about each seller of regulated metals⁴ and information about the regulated metals being sold. The current statute requires the secondary metals recycler to maintain a record of:

¹ http://www.dallascontracting.com/scrap_copper_metal_prices.html (As of December 4, 2007).

² A purchase transaction is formally defined as a transaction in which a secondary metals recycler gives consideration having a value in excess of \$10 in exchange for regulated metals property. S. 538.18(6), F.S.

³ S. 538.18, F.S. defines a secondary metals recycler as "any person who (a) is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous or nonferrous metals are converted into raw material products consisting of

- The name of the secondary metals recycler
- The name of the seller
- The date and time of the transaction
- The weight, quantity, or volume, and a description of the regulated metals being sold
- A signed statement from the seller stating that the seller is entitled to sell the regulated metals
- The number of a seller's personal identification card
- A photograph of the seller

The secondary metals recycler is required to keep this information for 5 years from the date of the transaction. There is no requirement the form on which the seller's information is recorded be approved by any governmental department.

A "personal identification card" is currently defined as driver's license, identification card, passport, military identification card, or a work authorization card. HB 105 deletes this specific language and amends the statute to include the broader definition of any government issued photo identification card.

HB 105 expands s. 538.19, F.S. to require that, in addition to the previous information listed above, secondary metals recyclers also gather additional information regarding the transaction, including:

- The seller's full name, residential address, workplace, and home and work telephone number
- The seller's height, weight, date of birth, race, gender, hair color, eye color, and other physical identifying marks
- The seller's right thumbprint
- A description of the seller's vehicle including the make, model, and tag number
- Any other information required by FDLE
- A photograph of the regulated metals being sold

HB 105 also amends s. 538.19 F.S. to require the form on which the above information is recorded be approved by FDLE.

Enhanced Penalties – Secondary Metals Recyclers

Currently, s. 538.23 provides that a secondary metals recycler is guilty of a first degree misdemeanor⁵ if convicted for knowingly and intentionally:

- Failing to allow a law enforcement official access to inspect records of transactions

prepared grades and having existing or potential economic value; or (b) has facilities for performing the manufacturing process by which ferrous or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of the content thereof."

⁴ Regulated metals are defined as "any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, or similar beverage containers." S. 538.18(7), F.S.

⁵ Punishable by up to a year in jail and a \$1,000 fine s. 775.082(4)(a), F.S.; s. 775.083(1)(d), F.S.

- Failing to allow a law enforcement official access to inspect regulated metals in the possession of the secondary metals recycler
- Failing to gather and maintain records of each transaction
- Failing, pursuant to a request from law enforcement, to hold regulated metals for a minimum period of time
- Purchasing regulated metals from a seller where the metals were not transported in a motor vehicle

HB 105 expands s. 538.23(1)(a) F.S. to allow for enhanced penalties for third or subsequent offenses of s.538.23 F.S. The bill makes third or subsequent offenses a third degree felony⁶.

Enhanced Penalties – Sellers of Regulated Metals

Subsection (3) of s. 538.23, F.S. provides that a seller of regulated metals who receives money for a transaction and knowingly gives false verification of ownership of the regulated metals or who gives altered identification to a secondary metals recycler is guilty of:

- A first degree misdemeanor if the seller received less than \$300
- A third degree felony if the seller received \$300 or more

HB 105 amends s. 538.23 F.S. to enhance the penalties for violations of subsection (3). The bill provides that a seller convicted under s. 538.23(3) F.S. is guilty of:

- A third degree felony if the seller received less than \$300
- A second degree felony⁷ if the seller received \$300 or more

Registration of Secondary Metals Recyclers

Currently, s. 538.25, F.S. provides that secondary metals recyclers must register with the Department of Revenue and lists minimum eligibility requirements to become a registered secondary metals recycler. The Department of Revenue is authorized by s. 213.053(11) F.S. to give law enforcement officials the name of a specified secondary metals dealer as well as information on whether a specified secondary metals dealer holds a valid certificate of registration.

HB 105 adds subsection (6) to s. 538.25, which requires the Department of Revenue, upon the request of a law enforcement official, to release the names and addresses of any secondary metals recyclers who are registered to do business in the law enforcement official's jurisdiction.

⁶ Punishable by up to 5 years in jail and a \$5,000 fine. S. 775.082(3)(d), F.S.; s. 775.083(1)(c)

⁷ Punishable by up to 15 years in jail and a \$10,000 fine. S. 775.082(3)(c) F.S.; s. 775.083(1)(b) F.S.

Prohibited Transactions

Section 538.26(4) currently prohibits secondary metals recyclers from purchasing regulated metals from sellers if the regulated metals were not transported in a motor vehicle. There is an exception, however, if the seller can prove ownership of the regulated metals⁸.

HB 105 amends s. 538.26(4) to eliminate the exception which allows the purchase if the seller can prove ownership of the regulated metals. The bill would require sellers to transport all regulated metals to a secondary metals recycler in a motor vehicle. Aluminum cans are specifically excluded from this provision⁹.

C. SECTION DIRECTORY:

Section 1 Amends s. 538.18, F.S.; revising the definitions of "personal identification card" and "purchase transaction."

Section 2 Amends s. 538.19, F.S.; relating to information the secondary metals recycler must obtain concerning each seller.

Section 3 Amends s. 538.23, F.S.; reclassifying false verification of ownership of metals sold to secondary metals recyclers as second and third degree felonies; providing for enhanced penalties for third or subsequent violations of s. 538.19, 538.20, 538.21, and 538.26(4).

Section 4 Adds s. 538.25(6), F.S.; relating to information that law enforcement officials can request concerning secondary metals recyclers.

Section 5 Amends s. 538.26, F.S.; relating to certain prohibited practices involving secondary metals recyclers.

Section 6 Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate – see fiscal comments section.

⁸ A violation of this section would subject the secondary metals recycler to punishment of a first degree misdemeanor. s. 538.23(1), F.S. HB 105 increases the penalties for third or subsequent violations to a third degree felony.

⁹ Aluminum cans are also excluded from the definition of regulated metals. S. 538.18(7), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 105 requires secondary metals recyclers to gather additional information about sellers of regulated metals. Secondary metals recyclers are already obligated to collect some information about the sellers of regulated metals so there is already an existing framework for the information gathering process. This bill would increase the amount of information secondary metals recyclers are required to collect, but since the structure for gathering such information is already in place, the economic impact on the private sector is likely to be minimal.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates third degree felony penalties for certain offenses and as a result, this bill may have a prison bed impact on the department. However, the third degree felony offenses created by this bill are not ranked in the Offense Severity Ranking Chart and as a result, will default to a level 1 ranking. Such offenses are usually presumed to have an insignificant prison bed impact on the Department of Corrections.

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:

Section 538.25 F.S. governs the registration of secondary metals recyclers. HB 105 line 112 uses the term "secondhand dealers," which are the subject of Ch. 538, Part I, F.S.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to secondary metals recyclers; amending s.
 3 538.18, F.S.; revising the definition of "personal
 4 identification card"; deleting an exclusion of
 5 transactions under a specified amount from the definition
 6 of "purchase transaction" for specified purposes; amending
 7 s. 538.19, F.S.; providing for additional seller
 8 information to be obtained; requiring an image of the
 9 regulated metals being sold; amending s. 538.23, F.S.;
 10 providing for enhanced penalties for third or subsequent
 11 violations of a specified provision; providing enhanced
 12 penalties for violations of specified provisions relating
 13 to false verification of ownership or false or altered
 14 identification of a seller of regulated metals; amending
 15 s. 538.25, F.S.; requiring the Department of Revenue to
 16 provide a law enforcement official, upon request, with
 17 specified information regarding certain secondhand
 18 dealers; amending s. 538.26, F.S.; prohibiting the
 19 purchase of any regulated metals property, other than
 20 aluminum cans, when presented at the property of a
 21 secondary metals recycler and not transported in a motor
 22 vehicle; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsections (5) and (6) of section 538.18,
 27 Florida Statutes, are amended to read:
 28 538.18 Definitions.--As used in this part, the term:

29 (5) "Personal identification card" means any government-
 30 issued photographic identification card ~~a driver's license or~~
 31 ~~identification card issued by the Department of Highway Safety~~
 32 ~~and Motor Vehicles under s. 322.03 or s. 322.051, or a similar~~
 33 ~~card issued by another state, a military identification card, a~~
 34 ~~passport, or an appropriate work authorization issued by the~~
 35 ~~United States Bureau of Citizenship and Immigration Services.~~

36 (6) "Purchase transaction" means a transaction in which a
 37 secondary metals recycler gives consideration ~~having a value in~~
 38 ~~excess of \$10 in exchange~~ for regulated metals property.

39 Section 2. Subsection (2) of section 538.19, Florida
 40 Statutes, is amended to read:

41 538.19 Records required.--

42 (2) The following information must be maintained on a form
 43 approved by the Department of Law Enforcement for each purchase
 44 transaction:

45 (a) The name and address of the secondary metals recycler.

46 (b) The name, initials, or other identification of the
 47 individual entering the information on the ticket.

48 (c) The date and time of the transaction.

49 (d) The weight, quantity, or volume, and a description of
 50 the type of regulated metals property purchased in a purchase
 51 transaction.

52 (e) The amount of consideration given in a purchase
 53 transaction for the regulated metals property.

54 (f) A signed statement from the person delivering the
 55 regulated metals property stating that she or he is the rightful

56 | owner of, or is entitled to sell, the regulated metals property
 57 | being sold.

58 | (g) The distinctive number from the personal
 59 | identification card of the person delivering the regulated
 60 | metals property to the secondary metals recycler.

61 | (h) A description of the person from whom the goods were
 62 | acquired, including:

63 | 1. Full name, current residential address, workplace, and
 64 | home and work phone numbers.

65 | 2. Height, weight, date of birth, race, gender, hair
 66 | color, eye color, and any other identifying marks.

67 | 3. The right thumbprint, free of smudges and smears.

68 | 4. Vehicle description to include the make, model, and tag
 69 | number of the vehicle and trailer of the person selling the
 70 | regulated metals property.

71 | 5. Any other information required by the form approved by
 72 | the Department of Law Enforcement.

73 | (i) A photograph, videotape, or digital image of the
 74 | regulated metals being sold.

75 | (j)-(h) A photograph, videotape, or similar likeness of the
 76 | person receiving consideration in which such person's facial
 77 | features are clearly visible.

78 | Section 3. Subsections (1) and (3) of section 538.23,
 79 | Florida Statutes, are amended to read:

80 | 538.23 Violations and penalties.--

81 | (1) (a) Except as provided in paragraph (b), a secondary
 82 | metals recycler who shall, upon conviction of knowingly and
 83 | intentionally:

- 84 1.~~(a)~~ Violates ~~Violating~~ s. 538.20 or s. 538.21;
 85 2.~~(b)~~ Engages ~~Engaging~~ in a pattern of failing to keep
 86 records as required by s. 538.19; or
 87 3.~~(c)~~ Violates ~~Violating~~ s. 538.26(4),

88
 89 commits ~~be guilty of~~ a misdemeanor of the first degree,
 90 punishable as provided in s. 775.082.

91 (b) A secondary metals recycler who commits a third or
 92 subsequent violation of paragraph (a) commits a felony of the
 93 third degree, punishable as provided in s. 775.082, s. 775.083,
 94 or s. 775.084.

95 (3) Any person who knowingly gives false verification of
 96 ownership or who gives a false or altered identification and who
 97 receives money or other consideration from a secondary metals
 98 recycler in return for regulated metals property commits ~~shall,~~
 99 ~~upon conviction, be guilty of:~~

100 (a) A felony ~~misdemeanor~~ of the third ~~first~~ degree,
 101 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 102 775.084, if the value of the money or other consideration
 103 received is less than \$300.

104 (b) A felony of the second ~~third~~ degree, punishable as
 105 provided in s. 775.082, s. 775.083, or s. 775.084, if the value
 106 of the money or other consideration received is \$300 or more.

107 Section 4. Subsection (6) is added to section 538.25,
 108 Florida Statutes, to read:

109 538.25 Registration.--

110 (6) Upon the request of a law enforcement official, the
 111 Department of Revenue shall release to the official the name and

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112 address of any secondhand dealer registered to do business
 113 within the official's jurisdiction.

114 Section 5. Subsection (4) of section 538.26, Florida
 115 Statutes, is amended to read:

116 538.26 Certain acts and practices prohibited.--It is
 117 unlawful for a secondary metals recycler to do or allow any of
 118 the following acts:

119 (4) Purchase regulated metals property, with the exception
 120 of aluminum cans, from any seller who presents such property for
 121 sale at the registered location of the secondary metals recycler
 122 when such property was not transported in a motor vehicle ~~unless~~
 123 ~~the seller can prove ownership of the regulated metals property.~~

124 Section 6. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 107 Human Smuggling

SPONSOR(S): Snyder and others

TIED BILLS: IDEN./SIM. BILLS: SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Kramer <i>TK</i>	Kramer <i>TK</i>
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 107 creates section 877.28, F.S. which makes it a third degree felony for a person to transport *into the state* an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. The section also provides that:

- If the person transported in violation of this section is a minor, the offense will be a second degree felony.
- If a violation of the section results in great bodily harm to a person transported, a five year minimum mandatory sentence must be imposed.
- If a violation of the section results in the death of a person transported, a ten year minimum mandatory minimum sentence must be imposed.

The section also provides that a person commits a separate offense for each person he or she transports in violation of the section.

This bill appears to have an indeterminate fiscal impact on the Department of Corrections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill provides criminal penalties for activities that may not currently be punishable under state law.

Promote personal responsibility: This bill creates criminal penalties for someone who transports *into the state* an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States

B. EFFECT OF PROPOSED CHANGES:

Human Trafficking and sex trafficking offenses: Section 787.06, F.S. makes it a second degree felony for any person to knowingly:

1. Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
2. Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services;

The term "human trafficking" is defined by that section to mean transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.

Section 796.045, F.S. provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking. The offense is a second degree felony and is a first degree felony if committed against a victim under the age of 14 or if it results in death.

Florida statutes do not specifically provide criminal penalties for transporting a person into the state who is illegally entering or remaining in the United States.

Laws of other jurisdictions: Federal law governs whether a person is legally authorized to enter or remain in this country. Federal law provides criminal penalties for illegally transporting a person into the country. Specifically, 8 U.S.C. s. 1324 provides criminal penalties for any person who:

1. knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

2. knowing or in reckless disregard of the¹ fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;
3. knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

Several other states have passed legislation in recent years making it unlawful to transport a person who is illegally in the country or entering the country. For example, Colorado's law provides that a person commits "smuggling of humans" if, "for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value".

Effect of bill: HB 107 creates section 877.28, F.S. which makes it a third degree felony for a person to transport *into the state* an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. The section also provides that:

- If the person transported in violation of this section is a minor, the offense will be a second degree felony.
- If a violation of the section results in great bodily harm to a person transported, a five year minimum mandatory sentence must be imposed.
- If a violation of the section results in the death of a person transported, a ten year minimum mandatory minimum sentence must be imposed.

The section also provides that a person commits a separate offense for each person he or she transports in violation of the section.

C. SECTION DIRECTORY:

Section 1. Creates s. 877.28, F.S., relating to human smuggling.

Section 2. Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹ See, C.R.S.A. s. 18-13-128; See also, Arizona - A.R.S. s. 13-2319; Oklahoma – 21 Okl.St. Ann. s. 446; Tennessee – T.C.A. s. 39-17-114

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate – see fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would criminalize the activity of transporting into the state an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. This activity is already punishable under federal law.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates new third degree and second degree felony offenses for activities which currently may not be punishable under state law. Additionally, the bill will require the imposition of five or ten year minimum mandatory sentences for certain offenses. As a result, the bill may have a prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

This bill, if enacted, will provide local and state law enforcement entities a much needed resource in their efforts to protect Florida's borders. Currently, there is no state law against the smuggling of illegal immigrants into Florida. When smugglers are apprehended by state law enforcement personnel, they must wait for Federal investigators to take over the case. This can result in the loss of evidence, the disappearance of witnesses, the destruction of the crime scene, and a weaker criminal case.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to human smuggling; creating s. 877.28,
 3 F.S.; prohibiting transporting into the state an
 4 individual who the person knows is illegally entering the
 5 United States or has illegally entered or remained in the
 6 United States; providing penalties; providing enhanced
 7 penalties for specified violations; providing an effective
 8 date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 877.28, Florida Statutes, is created to
 13 read:

14 877.28 Human smuggling.--

15 (1) (a) Except as provided in paragraph (b), a person who
 16 transports into the state an individual who the person knows is
 17 illegally entering the United States or has illegally entered or
 18 remained in the United States commits a felony of the third
 19 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 20 775.084.

21 (b) A person who transports a minor in violation of
 22 paragraph (a) commits a felony of the second degree, punishable
 23 as provided in s. 775.082, s. 775.083, or s. 775.084.

24 (2) (a) If a violation of this section results in great
 25 bodily harm to a person transported, a mandatory minimum
 26 sentence of 5 years' imprisonment must be imposed.

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27 (b) If a violation of this section results in the death of
28 a person transported, a mandatory minimum sentence of 10 years'
29 imprisonment must be imposed.

30 (3) A person commits a separate offense for each person he
31 or she transports in violation of this section.

32 Section 2. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 Orders of No Contact

SPONSOR(S): Adams and others

TIED BILLS: IDEN./SIM. BILLS: SB 622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Cunningham <i>SC</i>	Kramer <i>TK</i>
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, courts must issue an order prohibiting an offender from having contact with the victim for the duration of the sentence imposed when sentencing offenders who have been convicted of:

- Sexual battery – s. 794.011, F.S.; or
- Lewd and lascivious offenses committed upon or in the presence of persons less than 16 – s. 800.04, F.S.

HB 117 adds to the above list of qualifying crimes by requiring courts to issue a no contact order when sentencing persons convicted of any of the offenses contained in s. 775.084(1)(b)1.a.-o., F.S. These crimes include arson, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

This bill takes effect October 1, 2008, and does not appear to have a significant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill requires courts to issue no contact orders when sentencing persons convicted of certain violent offenses.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, courts must issue an order prohibiting an offender from having contact with the victim for the duration of the sentence imposed when sentencing offenders who have been convicted of:

- Sexual battery – s. 794.011, F.S.; or
- Lewd and lascivious offenses committed upon or in the presence of persons less than 16 – s. 800.04, F.S.

The prohibition includes direct as well as indirect contact and remains in effect for the duration of the sentence imposed. Offenders who violate these orders, commonly referred to as “no contact orders,” commit a 3rd degree felony¹, and any punishment imposed must run consecutive to any former sentence imposed.²

Courts may reconsider a no contact order upon the request of the victim if the request is made after the victim is 18 or older.³ If such a request is made, the court must hold an evidentiary hearing to determine whether a change of circumstances has occurred which warrants a change in the order and whether it is in the best interests of the victim that the order be modified or rescinded.⁴

Effect of the Bill

HB 117 adds to the above list of qualifying crimes by requiring courts to issue a no contact order when sentencing persons convicted of any of the offenses contained in s. 775.084(1)(b)1.a.-o., F.S. These crimes include arson, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

² s. 921.244, F.S.

³ *Id.*

⁴ *Id.*

C. SECTION DIRECTORY:

Section 1. Amends s. 921.244, F.S., relating to order of no contact; penalties.

Section 2. This bill takes effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill. However, the offense expanded by this bill is a 3rd degree felony, which is not ranked in the offense severity ranking chart. As a result, it defaults to a Level I offense in the ranking chart. Such offenses are usually presumed to have an insignificant prison bed impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to orders of no contact; amending s.
 3 921.244, F.S.; requiring that offenders convicted of
 4 specified violent offenses be prohibited from having any
 5 contact with the victim; providing penalties; providing
 6 that the penalty for violation of such an order run
 7 consecutive to the sentence for the original violation;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 921.244, Florida Statutes, is amended
 13 to read:

14 921.244 Order of no contact; penalties.--

15 (1) At the time of sentencing an offender convicted of a
 16 violation of s. 794.011 or s. 800.04 or any offense in s.
 17 775.084(1)(b)1.a.-o., the court shall order that the offender be
 18 prohibited from having any contact with the victim, directly or
 19 indirectly, including through a third person, for the duration
 20 of the sentence imposed. The court may reconsider the order upon
 21 the request of the victim if the request is made at any time
 22 after the victim has attained 18 years of age. In considering
 23 the request, the court shall conduct an evidentiary hearing to
 24 determine whether a change of circumstances has occurred which
 25 warrants a change in the court order prohibiting contact and
 26 whether it is in the best interest of the victim that the court
 27 order be modified or rescinded.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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28 (2) Any offender who violates a court order issued under
29 this section commits a felony of the third degree, punishable as
30 provided in s. 775.082, s. 775.083, or s. 775.084.

31 (3) The punishment imposed under this section shall run
32 consecutive to any former sentence imposed for a conviction for
33 any offense under s. 794.011 or s. 800.04 or any offense in s.
34 775.084(1)(b)1.a.-o.

35 Section 2. This act shall take effect October 1, 2008.