

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 309 Crimes Evidencing Prejudice

**SPONSOR(S):** Criminal Justice Subcommittee

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		White	White

### SUMMARY ANALYSIS

Currently, s. 775.085, F.S., commonly referred to as the "Hate Crime Statute," provides that the penalty for any felony or misdemeanor offense is reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age of the victim. Under the section, offenses are reclassified as follows:

- A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree;
- A misdemeanor of the first degree is reclassified as a felony of the third degree;
- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The proposed committee substitute (PCS) amends this statute to include offenses evidencing prejudice based on the victim's employment as a justice or a judge for the state courts system, a correctional officer or a correctional probation officer, or a first responder. Accordingly, any felony or misdemeanor offense where such prejudice is evidenced will be reclassified to the next higher level offense.

On October 28, 2015, the Criminal Justice Impact Conference (CJIC) determined that the bill, as filed, would have a positive indeterminate prison bed impact. The proposed committee substitute (PCS) has not yet been reviewed by the CJIC. With respect to local governments, the PCS may decrease commitments to local jails to the extent that it reclassifies first degree misdemeanors to third degree felonies, but may increase the need for jail beds to the extent that it reclassifies second degree misdemeanors to first degree misdemeanors. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill takes effect on October 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

Currently, section 775.085, F.S., commonly referred to as the “Hate Crimes Statute,” provides that the penalty for any felony or misdemeanor offense is reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age of the victim. 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 as a life felony.

Reclassification of an offense has the effect of increasing the maximum sentence that a judge may impose for the offense. The maximum sentence for a second degree misdemeanor is 60 days in jail and a \$500 fine; for a first degree misdemeanor is one year in jail and a \$1,000 fine; for a third degree felony is five years imprisonment and a \$5,000 fine; for a second degree felony is fifteen years imprisonment and a \$10,000 fine; and for a first degree felony is thirty years imprisonment and a \$10,000 fine.<sup>1</sup>

Currently, Florida law does provide for certain assault or battery offenses to be increased in severity when committed against persons who are employed as: (a) first responders, e.g., law enforcement officers, firefighters, and emergency medical care providers;<sup>2</sup> (b) detention and commitment facility staff and juvenile probation officers;<sup>3</sup> (c) sports officials and school employees;<sup>4</sup> and (d) health services personnel.<sup>5</sup> Florida law, however, does not generally reclassify *any type* of criminal offense to the next higher level because the offense evidences prejudice based on the victim’s type of employment.

#### Effect of Bill

The bill amends s. 775.085, F.S., to specify that the penalty for any felony or misdemeanor offense is reclassified if the commission of the offense evidences prejudice based on the victim’s employment as a:

- Justice or a judge for the state courts system as defined in s. 25.382, F.S.;<sup>6</sup>
- A correctional officer<sup>7</sup> or a correctional probation officer<sup>8</sup> as defined in s. 943.10, F.S.; or
- A first responder as defined in s. 112.1815, F.S.<sup>9</sup>

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<sup>1</sup> ss. 775.082 and 775.083 F.S.

<sup>2</sup> s. 784.07, F.S.

<sup>3</sup> s. 784.075, F.S.

<sup>4</sup> s. 784.081, F.S.

<sup>5</sup> s. 784.076, F.S.

<sup>6</sup> The term “state courts system” is defined as “all officers, employees, and divisions of the Supreme Court, district courts of appeal, circuit courts, and county courts.”

<sup>7</sup> The term “correctional officer” is defined as “any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.” s. 943.10(2), F.S.

<sup>8</sup> The term “correctional probation officer” is defined as a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.” s. 943.10(3), F.S.

<sup>9</sup> The term “first responder” is defined to mean “a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 employed by state or local government. A

The bill also provides that the term “employment” includes a full-time, a part-time, an auxiliary, or a volunteer position.

The bill takes effect on October 1, 2016.

**B. SECTION DIRECTORY:**

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

Section 2. Provides an effective date of October 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill does not appear to have any impact on state revenues.

**2. Expenditures:**

The Criminal Justice Impact Conference met on October 28, 2015, and determined that the bill, as filed, will have a positive indeterminate prison bed impact. The bill, as filed, applied to a victim employed as an officer of the court, a correctional officer, or a first responder. The proposed committee substitute (PCS) substitutes “justices or judges” for the undefined broader term “officer of the court,” which could have also included any attorney, and, thus, should reduce the bill’s impact on prison beds. The PCS adds a victim employed as a correctional probation officer and, thus, could increase the bill’s impact on prison beds due to that addition.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill does not appear to have any impact on local government revenues.

**2. Expenditures:**

The bill may decrease commitments to local jails to the extent that it reclassifies first degree misdemeanors to third degree felonies. The bill may also increase the need for jail beds to the extent that it reclassifies second degree misdemeanors to first degree misdemeanors.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**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:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A