

1989

Session Law 89-133

Florida Senate & House of Representatives

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H 1112 GENERAL BILL/CS by Criminal Justice; King; Gordon; Renke and others (Similar S 1210)

Criminal Penalties/Prejudice; provides for reclassification of penalties when felony or misdemeanor evidencing prejudice is committed; provides criminal penalties; provides for civil remedies & injunctive relief. Creates 775.085. Effective Date: 10/01/89.

03/21/89 HOUSE Prefiled
03/24/89 HOUSE Referred to Criminal Justice; Appropriations
03/31/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment
04/04/89 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 105; Subreferred to Subcommittee on Prosecution and Punishment
04/11/89 HOUSE On Committee agenda—Criminal Justice, 04/13/89, 8:00 am, 21-HOB—For ratification of referral to subcommittee
04/21/89 HOUSE On subcommittee agenda—Criminal Justice, 04/25/89, 8:30 am, 21-HOB
04/25/89 HOUSE Subcommittee Recommendation: Favorable as a proposed CS; On Committee agenda—Criminal Justice, 04/27/89, 1:30 pm, 21-HOB—Not considered
04/28/89 HOUSE On Committee agenda—Criminal Justice, 05/02/89, 8:30 am, 21-HOB
05/02/89 HOUSE Preliminary Committee Action by Criminal Justice: Favorable as a CS
05/12/89 HOUSE Comm. Report: CS by Criminal Justice -HJ 486; CS read first time -HJ 486; Now in Appropriations -HJ 486
05/19/89 HOUSE Withdrawn from Appropriations -HJ 548; Placed on Calendar
05/24/89 HOUSE Placed on Special Order Calendar
05/29/89 HOUSE Read second time; Read third time; CS passed; YEAS 114 NAYS 0 -HJ 766
05/29/89 SENATE In Messages
05/31/89 SENATE Received, referred to Judiciary-Criminal; Judiciary-Civil -SJ 619; Withdrawn from Judiciary-Criminal; Judiciary-Civil; Substituted for SB 1210; CS passed; YEAS 37 NAYS 0 -SJ 663
05/31/89 Ordered enrolled
06/20/89 Signed by Officers and presented to Governor
06/26/89 Approved by Governor; Chapter No. 89-133

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1112d.cj
DATE: June 6, 1989

HOUSE OF REPRESENTATIVES
CRIMINAL JUSTICE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1112

RELATING TO: Criminal Penalties

SPONSOR(S): Criminal Justice, Representatives King, Gordon, and others

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 26, 1989

CHAPTER #: 89-133, Laws of Florida

COMPANION BILL(S): SB 1210

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Florida law does not currently provide for enhanced punishments for crimes committed when the motive for such crime is based on prejudice on account of race, color, ancestry, religion or national origin.

B. EFFECT OF PROPOSED CHANGES:

This bill provides for enhancement of criminal penalties when a felony or misdemeanor evidencing prejudice based on the race, color, ancestry, ethnicity, religion, or national origin of the victim is committed, and provides for civil remedies, including treble damages, attorneys fees, and injunctive relief.

This bill would enhance the penalties as follows:

A second degree misdemeanor shall be punished as a first degree misdemeanor.

A first degree misdemeanor shall be punished as a third degree felony.

A third degree felony shall be punished as a second degree felony.

A second degree felony shall be punished as a first degree felony.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 creates s. 775.085 which establishes enhanced penalties for the commission of any misdemeanor or felony evidencing prejudice based on race, color, ancestry, ethnicity, religion, or national origin of the victim.

It further creates a civil cause of action for treble damages, injunctive or other relief, and for reasonable attorney fees and costs where the plaintiff establishes by clear and convincing evidence that coercion, intimidation or threats evidencing prejudice have been perpetrated.

Section 2 establishes an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate

2. Direct Private Sector Benefits:

Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:

Indeterminate

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the State Comprehensive Plan, s.187.201, F. S., in that it could facilitate the punishment of criminal behavior.

IV. COMMENTS:

This bill is consistent with the State Comprehensive Plan, s. 187.201, F. S., as its goal is to ensure that the rights of crime victims are emphasized and protected.

CS/HB 1112 has the support of the Anti-Defamation League.

CS/HB 1111 is related in that it provides for the reporting of bias crimes.

Several states that have bias crime laws also provide protection and causes of action for prejudice based on sex and sexual preference.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Susan Hugins Elsass

Staff Director:



Robin S. Wasser

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Rudolph</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav2 amend.</u>
2. <u>Wiehle kw</u>	<u>Smawley</u>	2. <u>JCI</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Criminal Penalties

BILL NO. AND SPONSOR:

SB 1210 by
Senators Stuart and Girardeau

I. SUMMARY:

A. Present Situation:

The Florida Statutes contain certain penalty enhancement provisions, which provide increased penalties when crimes are committed under specified circumstances. For example, wearing a hood, mask, or other device concealing one's identity while committing a crime results in an enhanced punishment as if the offense were reclassified as the next serious offense (i.e., a third degree felony would be punishable as if it were a second degree felony, etc.). s. 775.0845, F.S. Possession or use of a weapon or firearm during the commission of a felony results in similar punishment enhancements. s. 775.087, F.S.

Currently, however, Florida law does not provide enhanced punishment for the commission of a criminal act when the motive for that act is based on a person's race, religion or national origin.

Certain injurious acts committed against persons or their property and motivated by prejudice may be redressed in a civil court of law, depending on the circumstances. General and special damages may be recovered in a civil action, including punitive damages if willful, wanton, or gross misconduct is involved. s. 768.73, F.S.

B. Effect of Proposed Changes:

SB 1210 would provide for enhancement of criminal penalties when a felony or misdemeanor is committed which evidences prejudice based on the victim's race, color, ancestry, ethnicity, religion, or national origin. In effect, this provision would require proof of criminal conduct in addition to proof of the offender's motive or intent to target the victim as a result of such prejudice.

Penalties would be enhanced as follows: (1) a second degree misdemeanor would be punished as a first degree misdemeanor, (2) a first degree misdemeanor would be punished as a third degree felony, (3) a third degree felony would be punished as a second degree felony, and (4) a second degree felony would be punished as a first degree felony. Presumably, offenses constituting first degree felonies would not be enhanced when the motive of prejudice is involved.

In addition, where a person or organization establishes by clear and convincing evidence that such person or organization was coerced, intimidated or threatened by the commission of a crime evidencing prejudice, a civil cause of action would be available. A person or organization bringing this civil action could seek treble damages, injunctive and other appropriate relief, and reasonable attorney's fees.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

None.

B. Government:

According to the Department of Corrections, SB 1210 would have a minimal impact on the offender population.

III. COMMENTS:

The clear and convincing evidentiary standard is an intermediate standard of proof, requiring more proof than the preponderance of the evidence standard generally used in civil cases, but not to the extent required by the beyond a reasonable doubt standard used in criminal cases.

To date, at least 18 states have enacted laws providing for enhanced penalties for certain crimes when they are committed by reason of the victim's color, religion, sexual orientation or national origin.

Questions may arise concerning how to determine if the motivation involved in a criminal act is bias-related. According to a publication issued by the Anti-Defamation League of B'nai B'rith:

The mere mention of a biased remark does not necessarily make an incident bias-motivated, any more than the absence of such a remark makes the incident a non-bias one. Law enforcement officers must use probable cause standards to help them make the decision on a case-by-case basis as to whether a particular incident constitutes a bias-related crime.

A related bill, SB 1211, sponsored by Senators Stuart and Girardeau, would require the Florida Department of Law Enforcement to compile and disseminate hate crime data.

IV. AMENDMENTS:**#1 by Judiciary-Criminal:**

Provides that an enhanced penalty will apply when the motive for a criminal offense is based on a person's ethnicity.

#2 by Judiciary-Criminal:

Corrects grammatical error.

SENATE COMMITTEE AMENDMENT

SB 1210

No. 1
(reported favorably)

HB _____

The Committee on..Judiciary-Criminal..recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Senate Amendment

On page 1....., line 19.....,
after the word "ancestry,"

If amendment is text from another bill insert:

Bill No. _____ Draft No. _____ With Changes? Yes No -

insert:

ethnicity,

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

* Amendment No. 1, taken up by committee: 5/8/89 Adopted x *

* Offered by Senator Stuart Failed *

(Amendment No. _____ Adopted Failed Date / /)

SENATE COMMITTEE AMENDMENT

SB 1210

No. 2
(reported favorably)

HB _____

The Committee on..Judiciary-Criminal..recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Senate Amendment

On page 1....., line 30....., strike
the word "it"

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No	Yes
			-	

and insert:
such person or organization

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

* Amendment No. 2, taken up by committee: 5/8/89 Adopted x *

* Offered by Senator Stuart Failed _ *

(Amendment No. _____ Adopted ___ Failed ___ Date __/__/__)