

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill provides increased punishment for wrongful conduct.

B. EFFECT OF PROPOSED CHANGES:

Domestic Violence

"Domestic violence" is a description of violent crimes involving family and household members. Section 741.28, F.S., defines domestic violence at "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." That same section defines "family or household member" to mean "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit."

Reclassification of an Offense

The Constitution classifies crimes into two general classes: misdemeanors and felonies. Current general law further classifies misdemeanors and felonies. The classification generally determines the maximum possible punishment. Note that some crimes have a specific maximum punishment in excess of these:

Maximum Punishment for Criminal Offenses (in general)		
Classification	Incarceration	Fine
Infraction	none	\$500
2nd degree misdemeanor	90 days county jail	\$500
1st degree misdemeanor	1 year county jail	\$1,000
3rd degree felony	5 years state prison	\$5,000
2nd degree felony	15 years state prison	\$10,000
1st degree felony	30 years state prison	\$10,000
Life felony	Life in state prison	\$15,000
Capital felony	Death	none

The statutory definition of a criminal offense provides the classification of the offense.¹

Several statutes currently reclassify an offense to an increased class based on the commission of certain activities during the crime, or based on the status of the victim. Examples of reclassification provided for under current law includes:

- Wearing a mask while committing offense, s. 775.0845, F.S.
- Wearing bulletproof vest while committing certain offenses, s. 775.0846, F.S.
- Evidencing prejudice while committing offense, s. 775.085, F.S.
- Possession or use of a weapon while committing offense, s. 775.087, F.S.

¹ The few felonies not specifically classified are considered a third degree felony, and the few misdemeanors not specifically classified are considered a second degree misdemeanor. Section 775.081, F.S.

- Committing crime while in possession of weapon taken from a law enforcement officer, s. 775.0875, F.S.

Reclassifications can be “stacked”, that is, they can be added to one another.

Effect of Bill

This bill creates s. 741.311, F.S., to provide an enhanced penalty applicable to a person who commits domestic violence, and in the commission of the offense deprives a family or household member of access to or the use of communication services. The bill references the definition of "communication services" in s. 812.15(1), F.S.²

The enhanced penalty is as follows:

- A second degree misdemeanor is punishable as a first degree misdemeanor.
- A first degree misdemeanor is punishable as a third degree felony.
- A third degree felony is punishable as a second degree felony.
- A second degree felony is punishable as a first degree felony.
- A first degree felony is punishable as a life felony.

The bill thus has the effect of increasing the maximum sentence that a court may impose for the offense, and may also increase the minimum sentence required under the Criminal Punishment Code. Note, however, that this is not a classic reclassification of the offense, as is typical in other statutes.

The Criminal Punishment Code³ prescribes a mathematical formula for calculating the minimum sentence for any offense. Offenses are categorized into 10 levels, higher numbered levels result in a higher minimum sentence. An unclassified third degree felony, such as a misdemeanor reclassified to a third degree felony, defaults to Level 1.

Section 741.283, F.S., requires a court to sentence an offender adjudicated guilty of a crime of domestic violence, as defined in s. 741.28, F.S., where the offender has intentionally caused bodily harm to another person, to a minimum of 5 days in jail unless the offender is sentenced to term of imprisonment in state prison (in which case the offender would be sentenced to one year or more). This bill amends s. 741.283, F.S., to add that an offender adjudicated guilty of a violation of s. 741.311, F.S. (depriving another of communication services in the commission of domestic violence) likewise must be sentenced to a minimum of 5 days. This provision may not accomplish the desired intent, see "Other Comments" herein.

This bill applies to crimes committed on or after July 1, 2005.

C. SECTION DIRECTORY:

Section 1 amends s. 941.28, F.S., to change a cross-reference.

Section 2 amends s. 741.283, F.S., to require a minimum sentence of 5 days in jail for any person who deprives another of communication services in the commission of an offense involving domestic violence.

² Section 812.15(1)(d), F.S., defines "communications service" to mean "any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities."

³ Sections 921.002 - 0027, F.S.

Section 3 creates s. 741.311, F.S., to provide an enhanced penalty for a crime of domestic violence where the offender deprived any person of communication services.

Section 4 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference estimates that this bill will have an indeterminate minimal prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Typically, similar laws provide for reclassification of the offense. The bill merely provides for the punishment level to increase, but without reclassification of the offense. It is unclear how this will affect first degree misdemeanors, in that such are limited to one year in county jail, should a court seek to sentence such offender to a term of imprisonment in state prison.

This bill amends s. 741.283, F.S., to add that an offender adjudicated guilty a violation of s. 741.311, F.S. (depriving another of communication services in the commission of domestic violence) likewise must be sentenced to a minimum of 5 days. However, s. 741.311, F.S., is not a separate offense that a person may be adjudicated guilty of, but is a sentencing enhancement. Accordingly, this bill may not require the 5 day minimum sentence that appears to be intended. An amendment may be necessary to effectuate the apparent intent of the section.

This bill has an effective date of July 1, 2005. The State Courts System has asked that all new criminal laws have an effective date of October 1, 2005.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a