

HB 1 – Combating Public Disorder (Identical SB 484)

This bill creates and amends multiple statutes. It amends s. 784.021, F.S. and s. 784.045, F.S., stating that the current Level 6, 3rd degree felonies for aggravated assault and the current Level 7, 2nd degree felonies for aggravated battery are ranked one level above the ranking for the offense committed if it is “committed by a person acting in furtherance of a riot or an aggravated riot.” Similar language is added to s. 784.07, F.S., assault or battery of law enforcement officers, firefighters, etc., and it is also stated that “a person convicted of battery upon a law enforcement officer committed in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S. shall be sentenced to a minimum term of imprisonment of 6 months.” This bill also amends s. 784.03, F.S., adding a **Level 2, 3rd degree felony** for “a person who commits a battery in furtherance of a riot or an aggravated riot.”

A large number of arrests occur for assault/battery on an annual basis, with 77,698 arrests in 2019 and 78,736 arrests in 2020 for violation of the statutes impacted in this section of the bill. The current statutory language for riots (s. 870.01(2), F.S.) also shows 14 arrests in CY 2019 and 72 arrests in CY 2020. However, it is not known how much these arrests overlap given the language in this bill. In Florida, May 30th, 2020 was a significant day for protests across the state, particularly in Miami, Tampa, and Jacksonville. This resulted in the arrests of many people related to these incidents. FDLE provided data for May 29th through May 31st of 2020, as well as May 30th of 2019, in order to better understand changes in arrests for these felonies that might indicate a potential pool of arrests connected to the unrest in Miami-Dade, Hillsborough, and Duval counties. For the statutes listed above, no real changes in arrests were found over these days. While a potential pool cannot be determined from these trends, it is possible that some proportion of the 75 arrests made in these counties during the May 30th, 2020 and May 31st, 2020 time period were connected to the unrest. However, under current language for s. 870.01(2), F.S., only Hillsborough County had arrests for rioting, with 7 on May 30th and May 31st of 2020, and only 3 arrests for statutes impacted by this section of the bill.

CONFERENCE ADOPTED ESTIMATE: **Positive Indeterminate**

This bill also amends s. 806.13, F.S., creating a **Level 2, 3rd degree felony** for “any person who, without the consent of the owner thereof, willfully and maliciously defaces, injures, or otherwise damages by any means a memorial...and the value of the damage to the memorial is greater than \$200.” It also creates s. 806.135, F.S., defining a memorial and stating that “it is unlawful for any person to willfully and maliciously destroy or demolish any memorial, or pull down a memorial, unless authorized by the owner of the memorial.” A person committing this violation would be charged with a **Level 4, 2nd degree felony**.

Per FDLE, for the two misdemeanor offenses under s. 806.13, F.S., in FY 18-19 there were 8,629 arrests, with 3,684 convictions and 1,311 adjudications withheld. In FY 19-20 there were 7,400 arrests, with 2,812 convictions and 975 adjudications withheld. Per

DOC, in FY 18-19 and FY 19-20, there were 5 offenders sentenced for willfully damaging a place of worship, under s. 806.13(2), F.S., or equipment related to public telephones, under s. 806.13(3), F.S., with none of these offenders receiving a prison sentence. Both are unranked, 3rd degree felonies (Level 1 by default). There were 67 admissions to prison in FY 18-19 (mean sentence length=31.8 m, incarceration rate: 9.6%) and 46 admissions to prison in FY 19-20 (mean sentence length=22.8 m, incarceration rate: 9.9%) for violations of s. 806.13(1)(b)3, F.S., related to criminal mischief, with damage of \$1,000 or more to public communication or any other public service. This is a Level 2, 3rd degree felony. It is not known how many of these incidents capture criminal mischief described in this bill.

In FY 18-19, the incarceration rate for a Level 2, 3rd degree felony was 9.8%, and in FY 19-20 the incarceration rate was 9.5%. The incarceration rate for a Level 4, 2nd degree felony was 28.2% in FY 18-19, and in FY 19-20 the incarceration rate was 28.3%.

CONFERENCE ADOPTED ESTIMATE: Positive Moderate

This bill also amends s. 810.02, F.S., adding that a burglary “committed during a riot or an aggravated riot...and the perpetration of the burglary is facilitated by conditions arising from the riot” is reclassified as either a 1st or 2nd degree felony, depending on the type of burglary, and ranked one level higher than it would if such conditions did not exist. Additionally, conditions arising from the riot “means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel.” This same language is also applied to theft (s. 812.014, F.S.), which would be reclassified as either a 1st or 2nd degree felony, depending on the type of theft, and ranked one level higher than it would if such conditions did not exist.

A large number of arrests occur for burglary and theft on an annual basis, with 70,365 arrests in 2019 and 56,612 arrests in 2020 for violation of the statutes impacted in this section of the bill. The current statutory language for riots (s. 870.01(2), F.S.) also shows 14 arrests in CY 2019 and 72 arrests in CY 2020. However, it is not known how much these arrests overlap given the language in this bill. In Florida, May 30th, 2020 was a significant day for protests across the state, particularly in Miami, Tampa, and Jacksonville. This resulted in the arrests of many people related to these incidents. FDLE provided data for May 29th through May 31st of 2020, as well as May 30th of 2019, in order to better understand changes in arrests for these felonies that might indicate a potential pool of arrests connected to the unrest in Miami-Dade, Hillsborough, and Duval counties. For the statutes listed above, no real changes in arrests were found over these days for Miami-Dade and Duval Counties, though it is possible that some proportion of the 24 arrests made in these counties during the May 30th, 2020 and May 31st, 2020 time period were connected to the unrest. However, under current language for s. 870.01(2), F.S., only Hillsborough County had arrests for rioting, with 7 on May 30th and May 31st of 2020, while also having 37 arrests for statutes impacted by this section of the bill. Given that news reports for Tampa indicated more than 40 people

arrested for burglary and rioting, it is likely that most of these arrests were in connection to the rioting.¹

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

This bill also amends s. 870.01, F.S, providing specific definitions for affrays and riots, which could impact the current Level 3, 3rd degree felony for a riot. This bill also splits those that commit a riot and those that incite/encourage a riot into separate Level 3, 3rd degree felonies. They are currently encompassed within a single Level 3, 3rd degree felony. Furthermore, this bill adds the offenses of aggravated rioting and aggravated inciting or encouraging a riot to the statutory language, defining them and creating **Level 4, 2nd degree felonies** for committing such acts. Additionally, this new language could impact the Level 1, 3rd degree felony under s. 870.03, F.S. for destruction of buildings. Finally, this bill amends s. 872.02, F.S., adding that injuring or removing a tomb or monument that is “committed by a person in furtherance of a riot or an aggravated riot” is ranked one level higher for those felonies listed under this statute.

Per FDLE, in CY 2019, there were 14 arrests for a riot under s. 870.01(2), F.S., with 3 convictions, and in CY 2020, there were 72 arrests with 1 conviction and 2 adjudications withheld. There were 2 arrests for a violation of s. 872.02, F.S. in CY 2019 and 6 arrests in CY 2020, though it is not known if any of these incidents were in furtherance of a riot under its current definition. There was 1 arrest for a violation of s. 870.03, F.S. in CY 2019 and no arrests in CY 2020. Per DOC, in FY 18-19 and FY 19-20, there was one admission for rioting under s. 870.01(2), F.S and no admissions to prison for felonies listed under s. 872.02, F.S. and s. 870.03, F.S. While the current numbers impacted by these statutes are low, it is not known how both the expanded definition of rioting and additional higher level/degree felonies might increase the numbers coming to prison. Furthermore, given yearly fluctuations in rioting under current statutory language, as shown in the differences in arrest numbers between CY 2019 and CY 2020, it is not known how consistent the impact will be on prison beds.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL: Positive Indeterminate

Requested by: House & Senate

¹ Mary Shedden, Daylina Miller, Stephanie Colombini, *Tampa Issues Curfew After Businesses Damaged in Overnight Protests*, WUSF Public Media, (May 31, 2021), <https://www.wusfnews.wusf.usf.edu/law-order/2020-05-31/tampa-issues-curfew-after-businessesdamaged-in-overnight-protests> (last visited Feb. 3, 2021).