

1                   A bill to be entitled  
 2           An act relating to crimes evidencing prejudice;  
 3           amending s. 775.085, F.S.; providing for  
 4           reclassification of offenses if the commission of the  
 5           offenses evidences prejudice towards the victim in  
 6           whole or in part on specified grounds; providing for  
 7           reclassification of offenses evidencing prejudice  
 8           based on the gender or gender identity of the victim;  
 9           defining the term "gender identity"; amending s.  
 10          775.0863, F.S.; requiring grounds for reclassification  
 11          of crimes to include prejudice based on a disability  
 12          of the victim; revising the definition of the term  
 13          "disability"; reenacting s. 921.0022(2), F.S.,  
 14          relating to the Criminal Punishment Code and the  
 15          offense severity ranking chart, to incorporate the  
 16          amendments made by the act in cross-references to  
 17          amended provisions; providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1. Section 775.085, Florida Statutes, is amended  
 22           to read:

23           775.085 Evidencing prejudice while committing offense;  
 24           reclassification.—

25           (1)(a) The penalty for any felony or misdemeanor shall be

26 reclassified as provided in this subsection if the commission of  
 27 such felony or misdemeanor evidences prejudice in whole or in  
 28 part based on the race, color, ancestry, ethnicity, religion,  
 29 sexual orientation, national origin, homeless status, ~~or~~  
 30 advanced age, gender, or gender identity of the victim:

31 1. A misdemeanor of the second degree is reclassified to a  
 32 misdemeanor of the first degree.

33 2. A misdemeanor of the first degree is reclassified to a  
 34 felony of the third degree.

35 3. A felony of the third degree is reclassified to a  
 36 felony of the second degree.

37 4. A felony of the second degree is reclassified to a  
 38 felony of the first degree.

39 5. A felony of the first degree is reclassified to a life  
 40 felony.

41 (b) As used in paragraph (a), the term:

42 1. "Advanced age" means that the victim is older than 65  
 43 years of age.

44 2. "Gender identity" means gender-related identity,  
 45 appearance, or behavior, regardless of whether such gender-  
 46 related identity, appearance, or behavior is different from that  
 47 traditionally associated with the person's physiology or  
 48 assigned sex at birth.

49 ~~3.2.~~ "Homeless status" means that the victim:

50 a. Lacks a fixed, regular, and adequate nighttime

51 residence; or

52 b. Has a primary nighttime residence that is:

53 (I) A supervised publicly or privately operated shelter  
54 designed to provide temporary living accommodations; or

55 (II) A public or private place not designed for, or  
56 ordinarily used as, a regular sleeping accommodation for human  
57 beings.

58 (2) A person or organization that establishes by clear and  
59 convincing evidence that it has been coerced, intimidated, or  
60 threatened in violation of this section has a civil cause of  
61 action for treble damages, an injunction, or any other  
62 appropriate relief in law or in equity. Upon prevailing in such  
63 civil action, the plaintiff may recover reasonable attorney fees  
64 and costs.

65 (3) It is an essential element of this section that the  
66 record reflect that the defendant perceived, knew, or had  
67 reasonable grounds to know or perceive that the victim was  
68 within the class delineated in this section.

69 Section 2. Subsection (1) of section 775.0863, Florida  
70 Statutes, is amended to read:

71 775.0863 Evidencing prejudice while committing offense  
72 against person with ~~mental or physical~~ disability;  
73 reclassification.—

74 (1) (a) The penalty for any felony or misdemeanor shall be  
75 reclassified as provided in this subsection if the commission of

76 | such felony or misdemeanor evidences prejudice in whole or in  
 77 | part based on a ~~mental or physical~~ disability of the victim:

78 |       1. A misdemeanor of the second degree is reclassified to a  
 79 | misdemeanor of the first degree.

80 |       2. A misdemeanor of the first degree is reclassified to a  
 81 | felony of the third degree.

82 |       3. A felony of the third degree is reclassified to a  
 83 | felony of the second degree.

84 |       4. A felony of the second degree is reclassified to a  
 85 | felony of the first degree.

86 |       5. A felony of the first degree is reclassified to a life  
 87 | felony.

88 |       (b) As used in paragraph (a), the term "disability"  
 89 | "~~mental or physical disability~~" means a physical or mental  
 90 | impairment that substantially limits one or more major life  
 91 | activities ~~a condition of mental or physical incapacitation due~~  
 92 | ~~to a developmental disability, organic brain damage, or mental~~  
 93 | ~~illness, and one or more mental or physical limitations that~~  
 94 | ~~restrict a person's ability to perform the normal activities of~~  
 95 | ~~daily living.~~

96 |       Section 3. For the purpose of incorporating the amendments  
 97 | made by this act to sections 775.085 and 775.0863, Florida  
 98 | Statutes, in references thereto, subsection (2) of section  
 99 | 921.0022, Florida Statutes, is reenacted to read:

100 |       921.0022 Criminal Punishment Code; offense severity

101 ranking chart.—

102 (2) The offense severity ranking chart has 10 offense  
103 levels, ranked from least severe, which are level 1 offenses, to  
104 most severe, which are level 10 offenses, and each felony  
105 offense is assigned to a level according to the severity of the  
106 offense. For purposes of determining which felony offenses are  
107 specifically listed in the offense severity ranking chart and  
108 which severity level has been assigned to each of these  
109 offenses, the numerical statutory references in the left column  
110 of the chart and the felony degree designations in the middle  
111 column of the chart are controlling; the language in the right  
112 column of the chart is provided solely for descriptive purposes.  
113 Reclassification of the degree of the felony through the  
114 application of s. 775.0845, s. 775.085, s. 775.0861, s.  
115 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or  
116 any other law that provides an enhanced penalty for a felony  
117 offense, to any offense listed in the offense severity ranking  
118 chart in this section shall not cause the offense to become  
119 unlisted and is not subject to the provisions of s. 921.0023.

120 Section 4. This act shall take effect October 1, 2018.