

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: November 5, 1997 Revised: _____

Subject: Offenses That Evidence Prejudice

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 154 amends Florida’s Hate Crime Statute to provide that a criminal offense is reclassified to the next higher felony or misdemeanor degree if the commission of the offense evidences prejudice based upon the victim’s mental or physical disability or advanced age.

CS/SB 154 substantially amends the following section of the Florida Statutes: 775.085.

II. Present Situation:

Section 775.085(1), F.S., reclassifies to the next higher felony or misdemeanor degree a criminal offense if the commission of the offense evidences prejudice based upon the victim’s race, color, ancestry, ethnicity, religion, sexual orientation, or national origin.

Section 775.085(3), F.S., provides that it is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated.

In *State v. Stalder*, 630 So.2d 1072 (Fla. 1994), the Florida Supreme Court construed s. 775.085 as applying only to “bias-motivated crimes,” which it defined as “any crime wherein the perpetrator intentionally selects the victim because of the victim’s ‘race, color, ethnicity, religion, or national origin.’” *Id.* at 1077. The Court noted that this interpretation was consistent with legislative intent to “discourage criminal acts directed against groups that have historically been subjected to prejudicial acts.” *Id.* at 1076; *State v. Hart*, 677 So.2d 385, 386 (Fla. 4th DCA 1996), quoting *Stalder*.

“A crime which shows prejudice only during its commission and not its genesis falls outside the section 775.085 proscription.” *Id.* “To qualify criminal conduct . . . under section 775.085, *Stalder* does not require that prejudice be the sole motivating factor for the underlying crime. . . . The essence of criminality under section 775.085 is that prejudice be a significant factor in bringing about the commission of the underlying crime, i.e. but for the racial enmity, the underlying crime would not have occurred.” *Hart*, 677 So.2d at 386-87.

III. Effect of Proposed Changes:

CS/SB 154 amends s. 775.085, F.S., to provide that a criminal offense is reclassified to the next higher felony or misdemeanor degree if the commission of the offense evidences prejudice based upon the victim’s mental or physical disability or advanced age.

“Mental or physical disability,” as defined in the legislation, “means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim’s ability to perform the normal activities of daily living.” This definition mirrors the definition of the term “disabled adult” as used in chapter 825, which specifies crimes and provides penalties for the abuse, neglect and exploitation of elderly persons and disabled adults.

“Advanced age,” as defined in the legislation, “means that the victim is older than 65 years of age.” This definition mirrors the definition of the term “elderly person” in s. 825.101(5), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of CS/SB 154. A preliminary estimate of the fiscal impact of this CS was not completed at the time this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As previously noted, in the *Stalder* case, the Florida Supreme Court determined that the legislative intent behind s. 775.085, F.S., is to “discourage criminal acts directed against groups that have historically been subjected to prejudicial acts.” *Id.*, 630 So.2d at 1076.

Consequently, were this legislation to become law, a question may arise as to whether the groups identified in this legislation “have historically been subjected to prejudicial acts,” and, if not, would such groupings be inconsistent with legislative intent as construed by the Florida Supreme Court in *Stalder*. For example, while crimes have been and continue to be perpetrated against the physically disabled, were these crimes perpetrated because of personal animus toward the physically disabled or simply because the fact of the victim’s physical disability made it easier to commit the crimes?

It is also noted that enhanced penalties or reclassification are already provided for a number of criminal offenses against the elderly or disabled, see e.g., s. 784.08, F.S. (assault, battery, aggravated assault, or aggravated battery), s. 794.011, F.S. (sexual battery), s. 825.102, F.S. (lewd or lascivious offenses), and s. 825.103, F.S. (exploitation). These offenses do not require that the crime evidence prejudice.

The Bureau of Justice Assistance states that Alaska, California, Connecticut, Delaware, Illinois, Indiana, Maine, Minnesota, New Jersey, New York, Oklahoma, Vermont, Washington, and Washington, D.C., include mental or physical disability or handicap in their hate crime statutes. The Bureau also states that Indiana, Vermont, and Washington include age in their hate crime statutes. Bureau of Justice Assistance, *A Policymaker’s Guide to Hate Crimes* (March 1997) (Monograph), p. 28 (Figure C: State Hate Crime Statutory Provisions) and p. 56, notes 100-102, citing at note 100 to Anti-Defamation League, *Audit of Anti-Semitic Incidents, 1994* (New York 1995).

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
