

By Senator Rader

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1 A bill to be entitled
2 An act relating to crimes evidencing prejudice;
3 amending s. 775.085, F.S.; expanding grounds for the
4 reclassification of crimes to include prejudice based
5 on the gender or gender identity of any person;
6 specifying that the reclassification occurs if the
7 crime was based in whole or in part on the race,
8 color, ancestry, ethnicity, religion, sexual
9 orientation, national origin, homeless status,
10 advanced age, gender, or gender identity of any
11 person; defining the term "gender identity"; amending
12 s. 775.0863, F.S.; replacing the term "mental or
13 physical disability" with the term "disability";
14 defining the term "disability"; specifying that the
15 reclassification occurs if the crime was based in
16 whole or in part on a disability of any person;
17 reenacting s. 921.0022(2), F.S., relating to the
18 Criminal Punishment Code and the offense severity
19 ranking chart, to incorporate the amendments made to
20 ss. 775.085 and 775.0863, F.S., in references thereto;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (1) of section 775.085, Florida
26 Statutes, is amended to read:

27 775.085 Evidencing prejudice while committing offense;
28 reclassification.—

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

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30 reclassified as provided in this subsection if the commission of
31 such felony or misdemeanor evidences prejudice based in whole or
32 in part on the race, color, ancestry, ethnicity, religion,
33 sexual orientation, national origin, homeless status, ~~or~~
34 advanced age, gender, or gender identity of any person the
35 ~~victim~~:

36 1. A misdemeanor of the second degree is reclassified to a
37 misdemeanor of the first degree.

38 2. A misdemeanor of the first degree is reclassified to a
39 felony of the third degree.

40 3. A felony of the third degree is reclassified to a felony
41 of the second degree.

42 4. A felony of the second degree is reclassified to a
43 felony of the first degree.

44 5. A felony of the first degree is reclassified to a life
45 felony.

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

47 1. "Advanced age" means that the person ~~victim~~ is older
48 than 65 years of age.

49 2. "Gender identity" means a person's gender-related
50 identity, appearance, or behavior, regardless of whether such
51 gender-related identity, appearance, or behavior is different
52 from that traditionally associated with the person's physiology
53 or assigned sex at birth.

54 ~~3.2.~~ "Homeless status" means that the person ~~victim~~:

55 a. Lacks a fixed, regular, and adequate nighttime
56 residence; or

57 b. Has a primary nighttime residence that is:

58 (I) A supervised publicly or privately operated shelter

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59 designed to provide temporary living accommodations; or

60 (II) A public or private place not designed for, or
61 ordinarily used as, a regular sleeping accommodation for human
62 beings.

63 Section 2. Section 775.0863, Florida Statutes, is amended
64 to read:

65 775.0863 Evidencing prejudice while committing offense
66 against person with ~~mental or physical~~ disability;
67 reclassification.—

68 (1) (a) The penalty for any felony or misdemeanor shall be
69 reclassified as provided in this subsection if the commission of
70 such felony or misdemeanor evidences prejudice based in whole or
71 in part on a ~~mental or physical~~ disability of any person ~~the~~
72 ~~victim~~:

73 1. A misdemeanor of the second degree is reclassified to a
74 misdemeanor of the first degree.

75 2. A misdemeanor of the first degree is reclassified to a
76 felony of the third degree.

77 3. A felony of the third degree is reclassified to a felony
78 of the second degree.

79 4. A felony of the second degree is reclassified to a
80 felony of the first degree.

81 5. A felony of the first degree is reclassified to a life
82 felony.

83 (b) As used in paragraph (a), the term "disability" ~~"mental~~
84 ~~or physical disability"~~ means a physical or mental impairment
85 that substantially limits one or more of a person's major life
86 activities ~~a condition of mental or physical incapacitation due~~
87 ~~to a developmental disability, organic brain damage, or mental~~

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88 ~~illness, and one or more mental or physical limitations that~~
89 ~~restrict a person's ability to perform the normal activities of~~
90 ~~daily living.~~

91 (2) A person or organization that establishes by clear and
92 convincing evidence that it has been coerced, intimidated, or
93 threatened in violation of this section has a civil cause of
94 action for treble damages, an injunction, or any other
95 appropriate relief in law or in equity. Upon prevailing in such
96 civil action, the plaintiff may recover reasonable attorney fees
97 and costs.

98 (3) It is an essential element of this section that the
99 record reflect that the defendant perceived, knew, or had
100 reasonable grounds to know or perceive that the person ~~victim~~
101 was within the class delineated in this section.

102 Section 3. For the purpose of incorporating the amendments
103 made by this act to sections 775.085 and 775.0863, Florida
104 Statutes, in references thereto, subsection (2) of section
105 921.0022, Florida Statutes, is reenacted to read:

106 921.0022 Criminal Punishment Code; offense severity ranking
107 chart.—

108 (2) The offense severity ranking chart has 10 offense
109 levels, ranked from least severe, which are level 1 offenses, to
110 most severe, which are level 10 offenses, and each felony
111 offense is assigned to a level according to the severity of the
112 offense. For purposes of determining which felony offenses are
113 specifically listed in the offense severity ranking chart and
114 which severity level has been assigned to each of these
115 offenses, the numerical statutory references in the left column
116 of the chart and the felony degree designations in the middle

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117 column of the chart are controlling; the language in the right
118 column of the chart is provided solely for descriptive purposes.
119 Reclassification of the degree of the felony through the
120 application of s. 775.0845, s. 775.085, s. 775.0861, s.
121 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or
122 any other law that provides an enhanced penalty for a felony
123 offense, to any offense listed in the offense severity ranking
124 chart in this section shall not cause the offense to become
125 unlisted and is not subject to the provisions of s. 921.0023.

126 Section 4. This act shall take effect October 1, 2019.