

By the Committee on Criminal Justice and Senator Campbell

307-489-98

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

A bill to be entitled  
An act relating to offenses that evidence  
prejudice; amending s. 775.085, F.S.; providing  
enhanced penalties for offenses that show  
evidence of prejudice against the victim, based  
on the victim's mental or physical disability  
or advanced age; providing definitions;  
providing an effective date.

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

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

775.085 Evidencing prejudice while committing offense;  
reclassification ~~enhanced penalties~~.--

(1)(a) ~~The penalty for~~ Any felony or misdemeanor shall  
be reclassified to the next higher degree as provided in this  
subsection if the commission of such felony or misdemeanor  
evidences prejudice based on the race, color, ancestry,  
ethnicity, religion, sexual orientation, ~~or~~ national origin,  
mental or physical disability, or advanced age of the victim:

1.(a) ~~In the case of~~ a misdemeanor of the second  
degree, the offense is reclassified to ~~shall be punishable as~~  
~~if it were~~ a misdemeanor of the first degree.

2.(b) ~~In the case of~~ a misdemeanor of the first  
degree, the offense is reclassified to ~~shall be punishable as~~  
~~if it were~~ a felony of the third degree.

3.(c) ~~In the case of~~ a felony of the third degree, the  
offense is reclassified to ~~shall be punishable as if it were~~ a  
felony of the second degree.

1           4.(d) In the case of a felony of the second degree,  
2 the offense is reclassified to ~~shall be punishable as if it~~  
3 ~~were~~ a felony of the first degree.

4           5. In the case of a felony of the first degree, the  
5 offense is reclassified to a life felony.

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

7           1. "Mental or physical disability" means that the  
8 victim suffers from a condition of physical or mental  
9 incapacitation due to a developmental disability, organic  
10 brain damage, or mental illness, and has one or more physical  
11 or mental limitations that restrict the victim's ability to  
12 perform the normal activities of daily living.

13           2. "Advanced age" means that the victim is older than  
14 65 years of age.

15           (2) For purposes of sentencing under chapter 921 and  
16 determining incentive gain-time eligibility under chapter 944,  
17 a felony offense that is reclassified under this section is  
18 ranked one level above the ranking under s. 921.0022 or s.  
19 921.0023 for the felony offense committed. In the case of a  
20 first-degree misdemeanor reclassified to a felony of the third  
21 degree, for purposes of sentencing under chapter 921 and  
22 determining incentive gain-time eligibility under chapter 944,  
23 such offense is ranked in level 2 of the offense severity  
24 ranking chart of the Criminal Punishment Code.

25           (3)(2) A person or organization ~~that~~ ~~which~~ establishes  
26 by clear and convincing evidence that it has been coerced,  
27 intimidated, or threatened in violation of this section has  
28 ~~shall have~~ a civil cause of action for treble damages, an  
29 injunction, or any other appropriate relief in law or in  
30 equity. Upon prevailing in such civil action, the plaintiff  
31 may recover reasonable attorney's fees and costs.

1           (4)(3) It is ~~shall be~~ an essential element of this  
2 section that the record reflect that the defendant perceived,  
3 knew, or had reasonable grounds to know or perceive that the  
4 victim was within the class delineated in this section ~~herein~~.

5           Section 2. This act shall take effect October 1, 1998.

6  
7                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8   COMMITTEE SUBSTITUTE FOR  
9   Senate Bill 154

10 Provides for the ranking in the Florida Punishment Code  
11 offense ranking chart of felonies, and first degree  
12 misdemeanors reclassified to third degree felonies for  
13 purposes of sentencing and determining incentive gain-time  
14 eligibility.

15 Provides that first degree felonies shall be reclassified to  
16 life felonies.

17 Removes the deletion of words necessary to indicate that  
18 felonies are to be reclassified under s. 775.085, F.S.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31