

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

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

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

14           775.085 Evidencing prejudice while committing offense;  
15 enhanced penalties.--

16           (1)(a) The penalty for any felony or misdemeanor shall  
17 be reclassified as provided in this subsection if the  
18 commission of such felony or misdemeanor evidences prejudice  
19 based on the race, color, ancestry, ethnicity, religion,  
20 sexual orientation, ~~or~~ national origin, mental or physical  
21 disability, or advanced age of the victim:

22           1.(a) A misdemeanor of the second degree shall be  
23 punishable as if it were a misdemeanor of the first degree.

24           2.(b) A misdemeanor of the first degree shall be  
25 punishable as if it were a felony of the third degree.

26           3.(c) A felony of the third degree shall be punishable  
27 as if it were a felony of the second degree.

28           4.(d) A felony of the second degree shall be  
29 punishable as if it were a felony of the first degree.

30           5. A felony of the first degree shall be punishable as  
31 if it were a life felony.

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

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

8           2. "Advanced age" means that the victim is older than  
9 65 years of age.

10           (2) A person or organization that ~~which~~ establishes by  
11 clear and convincing evidence that it has been coerced,  
12 intimidated, or threatened in violation of this section has  
13 ~~shall have~~ a civil cause of action for treble damages, an  
14 injunction, or any other appropriate relief in law or in  
15 equity. Upon prevailing in such civil action, the plaintiff  
16 may recover reasonable attorney's fees and costs.

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

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

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