

By Senators Dyer, Campbell, Klein, Meadows, Silver, Turner, Forman, Rossin, Kurth and Williams

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A bill to be entitled
An act relating to enhanced penalties for felonies and misdemeanors; amending s. 775.085, F.S.; providing enhanced penalties for offenses committed against a child or an older adult; amending s. 874.04, F.S.; requiring that a court impose certain enhanced penalties if the offender was a member of a criminal street gang at the time of the offense or if the offense was part of any gang-related activity; 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 Offense committed against a child or older adult;evidencing prejudice while committing offense; enhanced penalties.--

(1)~~(a)~~ The penalty for any felony or misdemeanor shall be reclassified as provided in paragraph (b)~~this subsection~~ if:

1. The victim of such felony or misdemeanor is a minor under 16 years of age or a person 65 years of age or older; or

2. The commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim:

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

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

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

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

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

14 (3) It shall be an essential element of a violation of
15 this section that the record reflect that the defendant
16 perceived, knew, or had reasonable grounds to know or perceive
17 that the victim was within the class or age group delineated
18 in this section herein.

19 Section 2. Section 874.04, Florida Statutes, as
20 amended by section 21 of chapter 97-194, Laws of Florida, is
21 amended to read:

22 874.04 Criminal street gang activity; enhanced
23 penalties.--Upon a finding by the court at sentencing that the
24 defendant is a member of a criminal street gang, the penalty
25 for any felony or misdemeanor, or any delinquent act or
26 violation of law which would be a felony or misdemeanor if
27 committed by an adult, shall ~~may~~ be enhanced if the offender
28 was a member of a criminal street gang at the time of the
29 commission of such offense or if the offense was committed as
30 part of any gang-related activity. Each of the findings
31 required as a basis for such sentence must ~~shall~~ be found by a

1 preponderance of the evidence. The enhancement will be as
2 follows:

3 (1)(a) A misdemeanor of the second degree may be
4 punished as if it were a misdemeanor of the first degree.

5 (b) A misdemeanor of the first degree may be punished
6 as if it were a felony of the third degree. For purposes of
7 sentencing under chapter 921 and determining incentive
8 gain-time eligibility under chapter 944, such offense is
9 ranked in level 1 of the offense severity ranking chart. The
10 criminal street gang multiplier in s. 921.0024 does not apply
11 to misdemeanors enhanced under this paragraph.

12 (2)(a) A felony of the third degree may be punished as
13 if it were a felony of the second degree.

14 (b) A felony of the second degree may be punished as
15 if it were a felony of the first degree.

16 (c) A felony of the first degree may be punished as if
17 it were a life felony.

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19 For purposes of sentencing under chapter 921 and determining
20 incentive gain-time eligibility under chapter 944, such felony
21 offense is ranked as provided in s. 921.0022 or s. 921.0023,
22 and without regard to the penalty enhancement in this
23 subsection. For purposes of this section, penalty enhancement
24 affects the applicable statutory maximum penalty only.

25 Section 3. This act shall take effect October 1, 1998.

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28 SENATE SUMMARY

29 Requires that the penalty imposed for a felony or
30 misdemeanor be reclassified to a more severe penalty if
31 the victim of the offense is a child under 16 years of
age or an adult 65 years of age or older, if the offense
was committed by a member of a street gang, or if the
offense was part of any gang-related activity.