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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 that certain offenses shall not be
deemed as evidencing prejudice under certain
circumstances; 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.

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

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

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

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

14 2. "Advanced age" means that the victim is older than
15 65 years of age.

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

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

28 (4) Those acts prohibited under chapters 395 and 400
29 shall not be construed as an offense evidencing prejudice
30 based on the mental or physical disability or advanced age of
31 the victim.

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