

1 A bill to be entitled
2 An act relating to sentencing; amending s.
3 775.0845, F.S.; restating legislative intent
4 with respect to sentencing for offenses
5 committed while wearing a mask, hood, or
6 similar device; providing an effective date.

7
8 WHEREAS, in *Cabal v. State*, 678 So.2d 315 (Fla. 1996),
9 the Florida Supreme Court held that the 1993 version of
10 section 775.0845, Florida Statutes, is a penalty enhancement
11 statute rather than a substantive reclassification statute,
12 and

13 WHEREAS, in dicta to the Cabal opinion, the court
14 recognized that in 1995 the Legislature amended section
15 775.0845, Florida Statutes, and

16 WHEREAS, in this dicta the court did not address
17 whether the amended section 775.0845, Florida Statutes, is a
18 substantive reclassification statute, because the amended
19 statute was not at issue in the Cabal case, and

20 WHEREAS, the Legislature finds that a court will likely
21 address this issue at some future date, and

22 WHEREAS, the Legislature further finds that section
23 775.0845, Florida Statutes, should be amended to provide
24 additional clarification to the courts that the legislative
25 intent behind the statute is not to enhance a penalty but to
26 reclassify an offense the next higher degree, NOW, THEREFORE,

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 775.0845, Florida Statutes, is
31 amended to read:

1 775.0845 Wearing mask while committing offense;
 2 reclassification ~~enhanced penalties~~.--The felony or
 3 misdemeanor degree of penalty for any criminal offense, other
 4 than a violation of ss. 876.12-876.15, shall be reclassified
 5 to the next higher degree ~~increased~~ as provided in this
 6 section if, while committing the offense, the offender was
 7 wearing a hood, mask, or other device that concealed his or
 8 her identity.

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

12 (b) In the case of a misdemeanor of the first degree,
 13 the offense is reclassified to ~~shall be punishable as if it~~
 14 ~~were~~ a felony of the third degree. For purposes of sentencing
 15 under chapter 921 and determining incentive gain-time
 16 eligibility under chapter 944, such offense is ranked in level
 17 2 of the offense severity ranking chart.

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

21 (b) In the case of a felony of the second degree, the
 22 offense is reclassified to ~~shall be punishable as if it were~~ a
 23 felony of the first degree.

24
 25 For purposes of sentencing under chapter 921 and determining
 26 incentive gain-time eligibility under chapter 944, a felony
 27 offense that ~~which~~ is reclassified under this subsection is
 28 ranked one level above the ranking under s. 921.0012 or s.
 29 921.0013 of the offense committed.

30 Section 2. This act shall take effect upon becoming a
 31 law.