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An act relating to sentencing; amending s.  
775.0845, F.S.; restating legislative intent  
with respect to sentencing for offenses  
committed while wearing a mask, hood, or  
similar device; providing an effective date.

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

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

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

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

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

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

Section 1. Section 775.0845, Florida Statutes, is  
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.