

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 356

INTRODUCER: Senator Hutson

SUBJECT: Mental or Physical Disabilities

DATE: February 17, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-------------------|-----------------|------------|-----------------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 2. | <u>Clodfelter</u> | <u>Sadberry</u> | <u>ACJ</u> | Recommend: Favorable |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 356 removes prejudice based on mental or physical disability as a factor for reclassifying a criminal offense or having a civil cause of action under s. 775.085, F.S., Florida’s hate crimes statute. Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on any of ten specified characteristics of the victim, including mental or physical disability. It also provides that a person or organization who is coerced, intimidated, or threatened in violation of the statute has a civil cause of action. The bill creates a new section of law, s. 775.0851, F.S., which may be cited as “Carl’s Law,” to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. This new section’s language is substantively identical to the language currently in s. 775.085, F.S, with respect to evidencing prejudice based on mental or physical disability.

The Criminal Justice Impact Conference estimates that SB 356 will not have a prison bed impact.

The effective date of the bill is October 1, 2016.

II. Present Situation:

Section 775.085, F.S., Florida’s hate crimes statute, reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, *mental or physical disability*,¹ or advanced age of the victim.² It is an essential element of proof for the record to reflect that the defendant perceived, knew, or had reasonable grounds to know or

¹ “Mental or physical disability” means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim’s ability to perform the normal activities of daily living. Section 775.085(1)(b)1., F.S.

² Section 775.08(1), F.S.

perceive that the victim was within one of the delineated classes.³ This is commonly referred to as the “hate crime” statute. Offenses are reclassified as follows:

- A second degree misdemeanor⁴ is reclassified to a first degree misdemeanor.⁵
- A first degree misdemeanor is reclassified to a third degree felony.⁶
- A third degree felony is reclassified to a second degree felony.⁷
- A second degree felony is reclassified to a first degree felony.⁸
- A first degree felony is reclassified to a life felony.⁹

Reclassification of the degree of an offense increases the minimum and maximum penalties that a judge may impose for an offense.

Section 775.085, F.S., also provides that a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney’s fees and costs.¹⁰

It is an essential element of proof in either a criminal or civil action under the statute for the record to reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within one of the delineated classes.¹¹

III. Effect of Proposed Changes:

The bill removes prejudice based on mental or physical disability as a factor for reclassifying an offense or having a civil cause of action under s. 775.085, F.S., Florida’s hate crimes statute. The bill creates a new section of law, s. 775.0851, F.S., which may be cited as “Carl’s Law,” to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. This new section’s language is substantively identical to the language currently in s. 775.085, F.S., with respect to evidencing prejudice based on mental or physical disability. This highlights the offense by placing it in a separate statutory section, but does not change the effect of the law.

³ Section. 775.085(3), F.S.

⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁶ A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding any third degree felony violation under ch. 810, F.S.) and if total sentence points are 22 points or fewer, the court must sentence the defendant to a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

⁷ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁸ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁹ A life felony is generally punishable by life imprisonment or a term of years not exceeding life imprisonment and a fine of up to \$15,000. Sections 775.082 and 775.083, F.S.

¹⁰ Section 775.085(2), F.S.

¹¹ Section 775.085(3), F.S.

The effective date of the bill is October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimates that SB 356 will not have a prison bed impact. There will also be no fiscal impact in other areas of the criminal or civil justice systems.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida Attorney General's Office, in 2014 (the latest year for which data is reported), there were two reported hate crimes in Florida motivated by the victim's mental disability (2.7% of reported hate crimes). No hate crimes were reported under the physical disability category.¹²

¹² *Hate Crimes in Florida (January 1, 2014 – December 31, 2014)*, Florida Attorney General's Office, [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A5QNXL/\\$file/2014HateCrimesinFloridaReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A5QNXL/$file/2014HateCrimesinFloridaReport.pdf) (last visited on February 11, 2016).

In August 2015, a thirty-six-year-old autistic St. Augustine resident named Carl Starke was followed home and murdered by several individuals who were reportedly looking for cars to steal.¹³ During the investigation that resulted in the days following Carl Starke's murder, the St. Johns County Sheriff, David Shoar, stated that Starke was victimized because he was seen as a "soft target" by these individuals.¹⁴

VIII. Statutes Affected:

This bill substantially amends section 775.085 of the Florida Statutes.

This bill creates section 775.0851 of the Florida Statutes.:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ Jenna Carpenter, "Shoar: Suspects in Vista Cove Killing Targeted Autistic Man," *The St. Augustine Record* (August 21, 2015), <http://staugustine.com/news/local-news/2015-08-21/two-suspects-identified-tuesday-homicide#.Vk9nSk3ltHh> (last visited on February 11, 2016).

¹⁴ *Id.*