

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 Committee on Criminal Justice

BILL: SB 356

INTRODUCER: Senator Hutson

SUBJECT: Mental or Physical Disabilities

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 356 removes prejudice based on mental or physical disability as a factor for reclassifying an offense 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., which reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on mental or physical disability.

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 the advanced age of the victim.² This is commonly referred to as the “hate crime” statute. Offenses are reclassified as follows:

- A second degree misdemeanor³ is reclassified to a first degree misdemeanor.⁴

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. It is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated in s. 775.085, F.S.

Section. 775.085(3), F.S.

³ 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.

⁴ 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.

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

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.⁹

III. Effect of Proposed Changes:

The bill removes prejudice based on mental or physical disability as a factor for reclassifying an offense 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., which reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on mental or physical disability. (See "Present Situation" section of this analysis for a description of the provisions of s. 77.085, 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.

⁵ A third degree felony is punishable by up to 5 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.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ Section 775.085(2), F.S.

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 final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will not have a prison bed impact.

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 2 reported hate crimes in Florida motivated by the victim's mental disability (2.7 percent of reported hate crimes). No hate crimes were reported under the physical disability category.¹⁰

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.¹¹ 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.¹²

VIII. Statutes Affected:

This bill substantially amends section 775.085 of the Florida Statutes.

This bill creates section 775.0851 of the Florida Statutes.

¹⁰ *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 January 20, 2016).

¹¹ 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 January 20, 2016).

¹² *Id.*

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.
