

1 A bill to be entitled
 2 An act relating to crimes evidencing prejudice;
 3 amending s. 775.085, F.S.; providing for
 4 reclassification of offenses if the commission of the
 5 offenses evidences prejudice towards the victim in
 6 whole or in part on specified grounds; providing for
 7 reclassification of offenses evidencing prejudice
 8 based on the gender or gender identity of the victim;
 9 defining the term "gender identity"; amending s.
 10 775.0863, F.S.; requiring grounds for reclassification
 11 of crimes to include prejudice based on a disability
 12 of the victim; revising the definition of the term
 13 "disability"; reenacting s. 921.0022(2), F.S.,
 14 relating to the Criminal Punishment Code and the
 15 offense severity ranking chart, to incorporate the
 16 amendments made by the act in cross-references to
 17 amended provisions; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Section 775.085, Florida Statutes, is amended
 22 to read:

23 775.085 Evidencing prejudice while committing offense;
 24 reclassification.—

25 (1)(a) The penalty for any felony or misdemeanor shall be

26 reclassified as provided in this subsection if the commission of
 27 such felony or misdemeanor evidences prejudice in whole or in
 28 part based on the race, color, ancestry, ethnicity, religion,
 29 sexual orientation, national origin, homeless status, ~~or~~
 30 advanced age, gender, or gender identity of the victim:

31 1. A misdemeanor of the second degree is reclassified to a
 32 misdemeanor of the first degree.

33 2. A misdemeanor of the first degree is reclassified to a
 34 felony of the third degree.

35 3. A felony of the third degree is reclassified to a
 36 felony of the second degree.

37 4. A felony of the second degree is reclassified to a
 38 felony of the first degree.

39 5. A felony of the first degree is reclassified to a life
 40 felony.

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

42 1. "Advanced age" means that the victim is older than 65
 43 years of age.

44 2. "Gender identity" means gender-related identity,
 45 appearance, or behavior, regardless of whether such gender-
 46 related identity, appearance, or behavior is different from that
 47 traditionally associated with the person's physiology or
 48 assigned sex at birth.

49 ~~3.2.~~ "Homeless status" means that the victim:

50 a. Lacks a fixed, regular, and adequate nighttime

51 residence; or

52 b. Has a primary nighttime residence that is:

53 (I) A supervised publicly or privately operated shelter
54 designed to provide temporary living accommodations; or

55 (II) A public or private place not designed for, or
56 ordinarily used as, a regular sleeping accommodation for human
57 beings.

58 (2) A person or organization that establishes by clear and
59 convincing evidence that it has been coerced, intimidated, or
60 threatened in violation of this section has a civil cause of
61 action for treble damages, an injunction, or any other
62 appropriate relief in law or in equity. Upon prevailing in such
63 civil action, the plaintiff may recover reasonable attorney fees
64 and costs.

65 (3) It is an essential element of this section that the
66 record reflect that the defendant perceived, knew, or had
67 reasonable grounds to know or perceive that the victim was
68 within the class delineated in this section.

69 Section 2. Subsection (1) of section 775.0863, Florida
70 Statutes, is amended to read:

71 775.0863 Evidencing prejudice while committing offense
72 against person with ~~mental or physical~~ disability;
73 reclassification.—

74 (1) (a) The penalty for any felony or misdemeanor shall be
75 reclassified as provided in this subsection if the commission of

76 such felony or misdemeanor evidences prejudice in whole or in
 77 part based on a ~~mental or physical~~ disability of the victim:

78 1. A misdemeanor of the second degree is reclassified to a
 79 misdemeanor of the first degree.

80 2. A misdemeanor of the first degree is reclassified to a
 81 felony of the third degree.

82 3. A felony of the third degree is reclassified to a
 83 felony of the second degree.

84 4. A felony of the second degree is reclassified to a
 85 felony of the first degree.

86 5. A felony of the first degree is reclassified to a life
 87 felony.

88 (b) As used in paragraph (a), the term "disability"
 89 "~~mental or physical disability~~" means a physical or mental
 90 impairment that substantially limits one or more major life
 91 activities ~~a condition of mental or physical incapacitation due~~
 92 ~~to a developmental disability, organic brain damage, or mental~~
 93 ~~illness, and one or more mental or physical limitations that~~
 94 ~~restrict a person's ability to perform the normal activities of~~
 95 ~~daily living.~~

96 Section 3. For the purpose of incorporating the amendments
 97 made by this act to sections 775.085 and 775.0863, Florida
 98 Statutes, in references thereto, subsection (2) of section
 99 921.0022, Florida Statutes, is reenacted to read:

100 921.0022 Criminal Punishment Code; offense severity

101 ranking chart.—

102 (2) The offense severity ranking chart has 10 offense
103 levels, ranked from least severe, which are level 1 offenses, to
104 most severe, which are level 10 offenses, and each felony
105 offense is assigned to a level according to the severity of the
106 offense. For purposes of determining which felony offenses are
107 specifically listed in the offense severity ranking chart and
108 which severity level has been assigned to each of these
109 offenses, the numerical statutory references in the left column
110 of the chart and the felony degree designations in the middle
111 column of the chart are controlling; the language in the right
112 column of the chart is provided solely for descriptive purposes.
113 Reclassification of the degree of the felony through the
114 application of s. 775.0845, s. 775.085, s. 775.0861, s.
115 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or
116 any other law that provides an enhanced penalty for a felony
117 offense, to any offense listed in the offense severity ranking
118 chart in this section shall not cause the offense to become
119 unlisted and is not subject to the provisions of s. 921.0023.

120 Section 4. This act shall take effect October 1, 2018.