

By Senator Rader

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1 A bill to be entitled
2 An act relating to crimes evidencing prejudice;
3 amending s. 775.085, F.S.; expanding grounds for the
4 reclassification of crimes to include prejudice based
5 on the gender or gender identity of the victim;
6 defining the term "gender identity"; amending s.
7 775.0863, F.S.; expanding grounds for reclassification
8 of crimes to include prejudice based on a disability
9 of the victim; redefining the term "disability";
10 reenacting s. 921.0022(2), F.S., relating to the
11 Criminal Punishment Code and the offense severity
12 ranking chart, to incorporate the amendments made to
13 ss. 775.085 and 775.0863, F.S., in references thereto;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Subsection (1) of section 775.085, Florida
19 Statutes, is amended to read:

20 775.085 Evidencing prejudice while committing offense;
21 reclassification.—

22 (1) (a) The penalty for any felony or misdemeanor shall be
23 reclassified as provided in this subsection if the commission of
24 such felony or misdemeanor evidences prejudice based in whole or
25 in part on the race, color, ancestry, ethnicity, religion,
26 sexual orientation, national origin, homeless status, ~~or~~
27 advanced age, gender, or gender identity of the victim:

28 1. A misdemeanor of the second degree is reclassified to a
29 misdemeanor of the first degree.

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30 2. A misdemeanor of the first degree is reclassified to a
31 felony of the third degree.

32 3. A felony of the third degree is reclassified to a felony
33 of the second degree.

34 4. A felony of the second degree is reclassified to a
35 felony of the first degree.

36 5. A felony of the first degree is reclassified to a life
37 felony.

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

39 1. "Advanced age" means that the victim is older than 65
40 years of age.

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

46 ~~3.2.~~ "Homeless status" means that the victim:

47 a. Lacks a fixed, regular, and adequate nighttime
48 residence; or

49 b. Has a primary nighttime residence that is:

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

52 (II) A public or private place not designed for, or
53 ordinarily used as, a regular sleeping accommodation for human
54 beings.

55 Section 2. Section 775.0863, Florida Statutes, is amended
56 to read:

57 775.0863 Evidencing prejudice while committing offense
58 against person with ~~mental or physical~~ disability;

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59 reclassification.—

60 (1) (a) The penalty for any felony or misdemeanor shall be
61 reclassified as provided in this subsection if the commission of
62 such felony or misdemeanor evidences prejudice based in whole or
63 in part on a ~~mental or physical~~ disability of the victim:

64 1. A misdemeanor of the second degree is reclassified to a
65 misdemeanor of the first degree.

66 2. A misdemeanor of the first degree is reclassified to a
67 felony of the third degree.

68 3. A felony of the third degree is reclassified to a felony
69 of the second degree.

70 4. A felony of the second degree is reclassified to a
71 felony of the first degree.

72 5. A felony of the first degree is reclassified to a life
73 felony.

74 (b) As used in paragraph (a), the term "disability" ~~"mental~~
75 ~~or physical disability"~~ means a physical or mental impairment
76 that substantially limits one or more of a person's major life
77 activities ~~a condition of mental or physical incapacitation due~~
78 ~~to a developmental disability, organic brain damage, or mental~~
79 ~~illness, and one or more mental or physical limitations that~~
80 ~~restrict a person's ability to perform the normal activities of~~
81 ~~daily living.~~

82 (2) A person or organization that establishes by clear and
83 convincing evidence that it has been coerced, intimidated, or
84 threatened in violation of this section has a civil cause of
85 action for treble damages, an injunction, or any other
86 appropriate relief in law or in equity. Upon prevailing in such
87 civil action, the plaintiff may recover reasonable attorney fees

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88 and costs.

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

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

97 921.0022 Criminal Punishment Code; offense severity ranking
98 chart.—

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

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Section 4. This act shall take effect July 1, 2018.