

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 any person 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 any person; 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 any person ~~the~~  
31 ~~victim~~:

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

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

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

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

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

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

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

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

50 ~~3.2.~~ "Homeless status" means that the victim:

51           a. Lacks a fixed, regular, and adequate nighttime  
 52 residence; or

53           b. Has a primary nighttime residence that is:

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

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

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

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

70           Section 2. Subsections (1) and (3) of section 775.0863,  
 71 Florida Statutes, are amended to read:

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

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

76 reclassified as provided in this subsection if the commission of  
77 such felony or misdemeanor evidences prejudice in whole or in  
78 part based on a ~~mental or physical~~ disability of any person the  
79 ~~victim~~:

80 1. A misdemeanor of the second degree is reclassified to a  
81 misdemeanor of the first degree.

82 2. A misdemeanor of the first degree is reclassified to a  
83 felony of the third degree.

84 3. A felony of the third degree is reclassified to a  
85 felony of the second degree.

86 4. A felony of the second degree is reclassified to a  
87 felony of the first degree.

88 5. A felony of the first degree is reclassified to a life  
89 felony.

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

98 (3) It is an essential element of this section that the  
99 record reflect that the defendant perceived, knew, or had  
100 reasonable grounds to know or perceive that the person ~~victim~~

101 was within the class delineated in this section.

102 Section 3. For the purpose of incorporating the amendments  
103 made by this act to sections 775.085 and 775.0863, Florida  
104 Statutes, in references thereto, subsection (2) of section  
105 921.0022, Florida Statutes, is reenacted to read:

106 921.0022 Criminal Punishment Code; offense severity  
107 ranking chart.—

108 (2) The offense severity ranking chart has 10 offense  
109 levels, ranked from least severe, which are level 1 offenses, to  
110 most severe, which are level 10 offenses, and each felony  
111 offense is assigned to a level according to the severity of the  
112 offense. For purposes of determining which felony offenses are  
113 specifically listed in the offense severity ranking chart and  
114 which severity level has been assigned to each of these  
115 offenses, the numerical statutory references in the left column  
116 of the chart and the felony degree designations in the middle  
117 column of the chart are controlling; the language in the right  
118 column of the chart is provided solely for descriptive purposes.  
119 Reclassification of the degree of the felony through the  
120 application of s. 775.0845, s. 775.085, s. 775.0861, s.  
121 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or  
122 any other law that provides an enhanced penalty for a felony  
123 offense, to any offense listed in the offense severity ranking  
124 chart in this section shall not cause the offense to become  
125 unlisted and is not subject to the provisions of s. 921.0023.

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Section 4. This act shall take effect October 1, 2019.