

By Senator Polsky

29-00316D-22

20221208__

1 A bill to be entitled
2 An act relating to reclassification of crimes
3 evidencing prejudice; amending ss. 775.085 and
4 775.0863, F.S.; providing for the reclassification of
5 felony and misdemeanor offenses for defacing,
6 damaging, or destroying a victim's property based upon
7 a perpetrator's prejudice; defining the term "victim";
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 775.085, Florida Statutes, is amended to
13 read:

14 775.085 Evidencing prejudice while committing offense;
15 reclassification.—

16 (2)~~(1)(a)~~ The penalty for any felony or misdemeanor must
17 ~~shall~~ be reclassified as provided in this subsection if the
18 commission of such felony or misdemeanor evidences prejudice
19 based on the race, color, ancestry, ethnicity, religion, sexual
20 orientation, national origin, homeless status, or advanced age
21 of the victim:

22 (a)~~1.~~ A misdemeanor of the second degree is reclassified to
23 a misdemeanor of the first degree.

24 (b)~~2.~~ A misdemeanor of the first degree is reclassified to
25 a felony of the third degree.

26 (c)~~3.~~ A felony of the third degree is reclassified to a
27 felony of the second degree.

28 (d)~~4.~~ A felony of the second degree is reclassified to a
29 felony of the first degree.

29-00316D-22

20221208__

30 (e)5- A felony of the first degree is reclassified to a
31 life felony.

32 (1)(b) As used in this section ~~paragraph (a)~~, the term:

33 (a)1- "Advanced age" means that the victim is older than 65
34 years of age.

35 (b)2- "Homeless status" means that the victim:

36 1.a- Lacks a fixed, regular, and adequate nighttime
37 residence; or

38 2.b- Has a primary nighttime residence that is:

39 a.(I) A supervised publicly or privately operated shelter
40 designed to provide temporary living accommodations; or

41 b.(II) A public or private place not designed for, or
42 ordinarily used as, a regular sleeping accommodation for human
43 beings.

44 (c) "Victim" includes, but is not limited to, all of the
45 following:

46 1. An individual.

47 2. A public or private organization that owns property that
48 is defaced, damaged, or destroyed based upon the perpetrator's
49 prejudice against a person or a group within a class delineated
50 in this section.

51 3. A state or local governmental entity as defined in s.
52 164.1031 which owns property that is defaced, damaged, or
53 destroyed based upon the perpetrator's prejudice against a
54 person or a group within a class delineated in this section.

55 (3)(2) A person or an organization that establishes by
56 clear and convincing evidence that it has been coerced,
57 intimidated, or threatened in violation of this section has a
58 civil cause of action for treble damages, an injunction, or any

29-00316D-22

20221208__

59 other appropriate relief in law or in equity. Upon prevailing in
60 such civil action, the plaintiff may recover reasonable attorney
61 fees and costs.

62 (4)~~(3)~~ It is an essential element of this section that the
63 record reflect that the defendant perceived, knew, or had
64 reasonable grounds to know or perceive that the victim was
65 within a ~~the~~ class delineated in this section.

66 Section 2. Section 775.0863, Florida Statutes, is amended
67 to read:

68 775.0863 Evidencing prejudice while committing offense
69 against person with mental or physical disability;
70 reclassification.—

71 (2)~~(1)~~(a) The penalty for any felony or misdemeanor must
72 ~~shall~~ be reclassified as provided in this subsection if the
73 commission of such felony or misdemeanor evidences prejudice
74 based on a mental or physical disability of the victim:

75 (a)~~1.~~ A misdemeanor of the second degree is reclassified to
76 a misdemeanor of the first degree.

77 (b)~~2.~~ A misdemeanor of the first degree is reclassified to
78 a felony of the third degree.

79 (c)~~3.~~ A felony of the third degree is reclassified to a
80 felony of the second degree.

81 (d)~~4.~~ A felony of the second degree is reclassified to a
82 felony of the first degree.

83 (e)~~5.~~ A felony of the first degree is reclassified to a
84 life felony.

85 (1)~~(b)~~ As used in this section ~~paragraph (a)~~, the term:

86 (a) "Mental or physical disability" means a condition of
87 mental or physical incapacitation due to a developmental

29-00316D-22

20221208__

88 disability, organic brain damage, or mental illness, and one or
89 more mental or physical limitations that restrict a person's
90 ability to perform the normal activities of daily living.

91 (b) "Victim" includes, but is not limited to, all of the
92 following:

93 1. An individual.

94 2. A public or private organization that owns property that
95 is defaced, damaged, or destroyed based upon the perpetrator's
96 prejudice against a person or a group within the class
97 delineated in this section.

98 3. A state or local governmental entity as defined in s.
99 164.1031 which owns property that is defaced, damaged, or
100 destroyed based upon the perpetrator's prejudice against a
101 person or a group within the class delineated in this section.

102 (3)-(2) A person or an organization that establishes by
103 clear and convincing evidence that it has been coerced,
104 intimidated, or threatened in violation of this section has a
105 civil cause of action for treble damages, an injunction, or any
106 other appropriate relief in law or in equity. Upon prevailing in
107 such civil action, the plaintiff may recover reasonable attorney
108 fees and costs.

109 (4)-(3) It is an essential element of this section that the
110 record reflect that the defendant perceived, knew, or had
111 reasonable grounds to know or perceive that the victim was
112 within the class delineated in this section.

113 Section 3. This act shall take effect October 1, 2022.