

By Senator Osgood

32-00530-23

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1 A bill to be entitled  
2 An act relating to crimes evidencing prejudice;  
3 reordering and amending s. 775.085, F.S.; expanding  
4 grounds for the reclassification of crimes to include  
5 acts of prejudice based on the gender, gender identity  
6 or expression, or physical or mental disability of a  
7 victim; specifying that the reclassification occurs if  
8 the crime was based in whole or in part on the actual  
9 or perceived race, color, ancestry, ethnicity,  
10 religion, gender, sexual orientation, gender identity  
11 or expression, national origin, homeless status,  
12 physical or mental disability, or advanced age of the  
13 victim; defining terms; making technical changes;  
14 reordering and amending s. 775.0863, F.S.; providing  
15 for the reclassification of crimes if the crime was  
16 based in whole or in part on the actual or perceived  
17 mental or physical disability of the victim; defining  
18 the term "victim"; making technical changes; providing  
19 an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Section 775.085, Florida Statutes, is reordered  
24 and amended to read:

25 775.085 Evidencing prejudice while committing offense;  
26 reclassification.—

27 (2)~~(1)~~~~(a)~~ The penalty for any felony or misdemeanor must  
28 ~~shall~~ be reclassified as provided in this subsection if the  
29 commission of such felony or misdemeanor evidences prejudice

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30 based in whole or in part on the actual or perceived race,  
31 color, ancestry, ethnicity, religion, gender, sexual  
32 orientation, gender identity or expression, national origin,  
33 homeless status, physical or mental disability, or advanced age  
34 of the victim:

35 (a)1. A misdemeanor of the second degree is reclassified to  
36 a misdemeanor of the first degree.

37 (b)2. A misdemeanor of the first degree is reclassified to  
38 a felony of the third degree.

39 (c)3. A felony of the third degree is reclassified to a  
40 felony of the second degree.

41 (d)4. A felony of the second degree is reclassified to a  
42 felony of the first degree.

43 (e)5. A felony of the first degree is reclassified to a  
44 life felony.

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

46 (a)1. "Advanced age" means that the victim is older than 65  
47 years of age.

48 (b) "Ethnicity" means the cultural characteristics and what  
49 makes someone part of another group.

50 (c) "Gender" means sex assigned at birth.

51 (d) "Gender identity or expression" means gender-related  
52 identity, appearance, expression, or behavior of an individual,  
53 regardless of the individual's sex assigned at birth.

54 (e)2. "Homeless status" means that the victim:

55 1.a. Lacks a fixed, regular, and adequate nighttime  
56 residence; or

57 2.b. Has a primary nighttime residence that is:

58 a.(I) A supervised publicly or privately operated shelter

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59 designed to provide temporary living accommodations; or

60 b.~~(f)~~ A public or private place not designed for, or  
61 ordinarily used as, a regular sleeping accommodation for human  
62 beings.

63 (f) "National origin" means where a person was born or the  
64 national origin of an ancestor or the country of origin of a  
65 person's forebears naturally, by marriage, or by adoption.

66 (g) "Physical or mental disability" means a person who has  
67 a physical or mental impairment that substantially limits one or  
68 more major life activities of the individual. As used in this  
69 paragraph, the term:

70 1. "Major life activity" means a function such as caring  
71 for one's self, performing manual tasks, walking, seeing,  
72 hearing, speaking, breathing, learning, and working.

73 2. "Physical or mental impairment" means:

74 a. A physiological disorder or condition, disfigurement, or  
75 anatomical loss that affects one or more bodily functions; or

76 b. A mental or psychological disorder that meets one of the  
77 diagnostic categories specified in the most recent edition of  
78 the Diagnostic and Statistical Manual of Mental Disorders  
79 published by the American Psychiatric Association, such as an  
80 intellectual or developmental disability, organic brain  
81 syndrome, traumatic brain injury, posttraumatic stress disorder,  
82 or an emotional or mental illness.

83 (h) "Race" includes traits historically associated with  
84 race, including, but not limited to, hair texture, hair type,  
85 and protective hairstyles such as braids, locs, and twists.

86 (i) "Religion" means all aspects of religious observance  
87 and practice, as well as religious belief.

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88           (j) "Sexual orientation" means being heterosexual,  
89 bisexual, or homosexual, or the perception that an individual is  
90 heterosexual, bisexual, or homosexual, or the perception that an  
91 individual is associated with individuals who are heterosexual,  
92 bisexual, or homosexual.

93           (k) "Victim" includes, but is not limited to, all of the  
94 following:

95           1. An individual.

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

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

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

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

115           Section 2. Section 775.0863, Florida Statutes, is reordered  
116 and amended to read:

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117 775.0863 Evidencing prejudice while committing offense  
118 against person with mental or physical disability;  
119 reclassification.-

120 (2)~~(1)(a)~~ The penalty for any felony or misdemeanor must  
121 ~~shall~~ be reclassified as provided in this subsection if the  
122 commission of such felony or misdemeanor evidences prejudice  
123 based in whole or in part on an actual or perceived a mental or  
124 physical disability of the victim:

125 (a)1. A misdemeanor of the second degree is reclassified to  
126 a misdemeanor of the first degree.

127 (b)2. A misdemeanor of the first degree is reclassified to  
128 a felony of the third degree.

129 (c)3. A felony of the third degree is reclassified to a  
130 felony of the second degree.

131 (d)4. A felony of the second degree is reclassified to a  
132 felony of the first degree.

133 (e)5. A felony of the first degree is reclassified to a  
134 life felony.

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

136 (a) "Mental or physical disability" means a condition of  
137 mental or physical incapacitation due to a developmental  
138 disability, organic brain damage, or mental illness, and one or  
139 more mental or physical limitations that restrict a person's  
140 ability to perform the normal activities of daily living.

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

143 1. An individual.

144 2. A public or private organization that owns property that  
145 is defaced, damaged, or destroyed based upon the perpetrator's

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146 prejudice against a person or a group within a class delineated  
147 in this section.

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

152 (3)~~(2)~~ A person or an organization that establishes by  
153 clear and convincing evidence that it has been coerced,  
154 intimidated, or threatened in violation of this section has a  
155 civil cause of action for treble damages, an injunction, or any  
156 other appropriate relief in law or in equity. Upon prevailing in  
157 such civil action, the plaintiff may recover reasonable attorney  
158 fees and costs.

159 (4)~~(3)~~ It is an essential element of this section that the  
160 record reflect that the defendant perceived, knew, or had  
161 reasonable grounds to know or perceive that the victim was  
162 within the class delineated in this section.

163 Section 3. This act shall take effect July 1, 2023.