

By Senator Osgood

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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 of a victim;
6 specifying that the reclassification occurs if the
7 crime was based in whole or in part on the actual or
8 perceived race, color, ancestry, ethnicity, religion,
9 gender, sexual orientation, national origin, homeless
10 status, or advanced age of the victim; defining terms;
11 making technical changes; reordering and amending s.
12 775.0863, F.S.; providing for the reclassification of
13 a crime if it was based in whole or in part on the
14 actual or perceived mental or physical disability of
15 the victim; revising the definition of the term
16 "mental or physical disability"; defining the term
17 "victim"; making technical changes; providing an
18 effective date.

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

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

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

26 (2)~~(1)(a)~~ The penalty for any felony or misdemeanor must
27 ~~shall~~ be reclassified as provided in this subsection if the
28 commission of such felony or misdemeanor evidences prejudice
29 based in whole or in part on the actual or perceived race,

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30 color, ancestry, ethnicity, religion, gender, sexual
31 orientation, national origin, homeless status, or advanced age
32 of the victim:

33 (a)1. A misdemeanor of the second degree is reclassified to
34 a misdemeanor of the first degree.

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

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

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

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

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

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

46 (b) "Ethnicity" means the cultural characteristics and what
47 makes someone part of a particular ethnic group.

48 (c) "Gender" means the sex assigned to an individual at
49 birth.

50 (d)2. "Homeless status" means that the victim:

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

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

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

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

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59 (e) "National origin" means the country in which a person
60 was born or the nationality of an ancestor or the country of
61 origin of a person's ancestors naturally, by marriage, or by
62 adoption.

63 (f) "Race" includes traits historically associated with
64 race, including, but not limited to, hair texture, hair type,
65 and protective hairstyles, such as braids, locs, and twists.

66 (g) "Religion" means all aspects of religious observance,
67 practice, and belief.

68 (h) "Victim" includes, but is not limited to, all of the
69 following:

70 1. An individual.

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

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

79 (3)(2) A person or an organization that establishes by
80 clear and convincing evidence that it has been coerced,
81 intimidated, or threatened in violation of this section has a
82 civil cause of action for treble damages, an injunction, or any
83 other appropriate relief in law or in equity. Upon prevailing in
84 such civil action, the plaintiff may recover reasonable attorney
85 fees and costs.

86 (4)(3) It is an essential element of this section that the
87 record reflect that the defendant perceived, knew, or had

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88 reasonable grounds to know or perceive that the victim was
89 included in a ~~within the~~ class delineated in this section.

90 Section 2. Section 775.0863, Florida Statutes, is reordered
91 and amended to read:

92 775.0863 Evidencing prejudice while committing offense
93 against person with mental or physical disability;
94 reclassification.—

95 (2)~~(1)(a)~~ The penalty for any felony or misdemeanor must
96 ~~shall~~ be reclassified as provided in this subsection if the
97 commission of such felony or misdemeanor evidences prejudice
98 based in whole or in part on an actual or perceived ~~a~~ mental or
99 physical disability of the victim:

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

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

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

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

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

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

111 (a) "Mental or physical disability" means:

112 1. A condition of mental or physical incapacitation due to
113 a developmental disability, organic brain damage, or mental
114 illness, and one or more mental or physical limitations that
115 restrict a person's ability to perform the normal activities of
116 daily living; or

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117 2. A mental or physical impairment that substantially
118 limits one or more major life activities of an individual. As
119 used in this subparagraph, the term:

120 a. "Major life activity" means an important function of an
121 individual, such as caring for one's self, performing manual
122 tasks, walking, seeing, hearing, speaking, breathing, learning,
123 or working.

124 b. "Mental or physical impairment" means:

125 (I) A physiological disorder or condition, disfigurement,
126 or anatomical loss that affects one or more bodily functions; or

127 (II) A mental or psychological disorder that is addressed
128 in one of the diagnostic categories specified in the most recent
129 edition of the Diagnostic and Statistical Manual of Mental
130 Disorders published by the American Psychiatric Association,
131 such as an intellectual or developmental disability, organic
132 brain syndrome, a traumatic brain injury, posttraumatic stress
133 disorder, or an emotional or mental illness.

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

136 1. An individual.

137 2. A public or private organization that owns property that
138 is defaced, damaged, or destroyed based upon the perpetrator's
139 prejudice against a person or a group included in the class
140 delineated in this section.

141 3. A state entity or a local governmental entity as defined
142 in s. 164.1031 which owns property that is defaced, damaged, or
143 destroyed based upon the perpetrator's prejudice against a
144 person or a group included in the class delineated in this
145 section.

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146 (3)~~(2)~~ A person or an organization that establishes by
147 clear and convincing evidence that it has been coerced,
148 intimidated, or threatened in violation of this section has a
149 civil cause of action for treble damages, an injunction, or any
150 other appropriate relief in law or in equity. Upon prevailing in
151 such civil action, the plaintiff may recover reasonable attorney
152 fees and costs.

153 (4)~~(3)~~ It is an essential element of this section that the
154 record reflect that the defendant perceived, knew, or had
155 reasonable grounds to know or perceive that the victim was
156 included in ~~within~~ the class delineated in this section.

157 Section 3. This act shall take effect July 1, 2024.