

CHAPTER 97-39

House Bill No. 385

An act relating to sentencing; amending s. 775.0845, F.S.; restating legislative intent with respect to sentencing for offenses committed while wearing a mask, hood, or similar device; providing an effective date.

WHEREAS, in *Cabal v. State*, 678 So.2d 315 (Fla. 1996), the Florida Supreme Court held that the 1993 version of section 775.0845, Florida Statutes, is a penalty enhancement statute rather than a substantive reclassification statute, and

WHEREAS, in dicta to the *Cabal* opinion, the court recognized that in 1995 the Legislature amended section 775.0845, Florida Statutes, and

WHEREAS, in this dicta the court did not address whether the amended section 775.0845, Florida Statutes, is a substantive reclassification statute, because the amended statute was not at issue in the *Cabal* case, and

WHEREAS, the Legislature finds that a court will likely address this issue at some future date, and

WHEREAS, the Legislature further finds that section 775.0845, Florida Statutes, should be amended to provide additional clarification to the courts that the legislative intent behind the statute is not to enhance a penalty but to reclassify an offense the next higher degree, NOW, THEREFORE,

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

Section 1. Section 775.0845, Florida Statutes, is amended to read:

775.0845 Wearing mask while committing offense; reclassification enhanced penalties.—~~The felony or misdemeanor degree of penalty for any criminal offense, other than a violation of ss. 876.12-876.15, shall be increased as provided in this section if, while committing the offense, the offender was wearing a hood, mask, or other device that concealed his or her identity.~~

(1)(a) In the case of a misdemeanor of the second degree, the offense is reclassified to shall be punishable as if it were a misdemeanor of the first degree.

(b) In the case of a misdemeanor of the first degree, the offense is reclassified to shall be punishable as if it were a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 2 of the offense severity ranking chart.

(2)(a) In the case of a felony of the third degree, the offense is reclassified to shall be punishable as if it were a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to shall be punishable as if it were a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that ~~which~~ is reclassified under this subsection is ranked one level above the ranking under s. 921.0012 or s. 921.0013 of the offense committed.

Section 2. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 1, 1997.

Filed in Office Secretary of State April 30, 1997.