

CHAPTER 2016-81

House Bill No. 387

An act relating to offenses evidencing prejudice; providing a short title; amending s. 775.085, F.S.; deleting provisions relating to reclassification of offenses committed while evidencing prejudice based on a mental or physical disability of the victim; creating s. 775.0863, F.S.; providing for reclassification of offenses committed while evidencing prejudice based on a mental or physical disability of the victim; defining the term “mental or physical disability”; providing for a civil cause of action for violations; providing for recovery of treble damages, costs, and attorney fees; specifying an essential element of the offense; amending s. 921.0022, F.S.; revising references to offense reclassification provisions; providing an effective date.

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

Section 1. This act may be cited as “Carl’s Law.”

Section 2. Subsections (1) and (2) of section 775.085, Florida Statutes, are amended to read:

775.085 Evidencing prejudice while committing offense; reclassification.

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

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

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

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

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

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

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

~~1. “Mental or physical disability” means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more~~

~~physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.~~

~~1.2.~~ “Advanced age” means that the victim is older than 65 years of age.

~~2.3.~~ “Homeless status” means that the victim:

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

b. Has a primary nighttime residence that is:

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

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

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

Section 3. Section 775.0863, Florida Statutes, is created to read:

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

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

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

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

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

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

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

(b) As used in paragraph (a), the term “mental or physical disability” means a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living.

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

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

Section 4. Subsection (2) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

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

Section 5. This act shall take effect October 1, 2016.

Approved by the Governor March 24, 2016.

Filed in Office Secretary of State March 24, 2016.