

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 387 Offenses Evidencing Prejudice

**SPONSOR(S):** Stevenson and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	Smith	Lloyd
3) Judiciary Committee		Keegan	Havlicak

### SUMMARY ANALYSIS

Over the years, news outlets have reported a number of violent crimes against mentally and physically disabled people, often involving horrific acts of violence and cruelty. In August 2015, a thirty-six-year-old autistic St. Augustine resident named Carl Starke was followed home and murdered by several individuals, reportedly because he was seen as a “soft target.”

Currently, section 775.085, F.S., authorizes civil remedies and reclassifies the criminal penalty for any felony or misdemeanor offense if the circumstances evidence prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or the advanced age of the victim.

The bill removes prejudice based on mental or physical disability as a factor for reclassifying an offense under s. 775.085, F.S. The bill creates a new section of law, s. 775.0863, F.S., to establish a separate hate crime penalty statute specifically for crimes evidencing prejudice based on mental or physical disability. The new section's language is substantively identical to the language currently in s. 775.085, F.S., which authorizes civil remedies and reclassifies the penalty for any felony or misdemeanor offense if the circumstances evidence prejudice based on mental or physical disability. Offenses that fall under the statute are reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree is reclassified to a life felony.

The new section created by the bill is substantively identical to existing law.

The bill has no fiscal impact.

The new section of law is cited as “Carl’s Law.”

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **The Current Situation**

##### Hate Crimes

Over the years, news outlets have reported a number of violent crimes against mentally and physically disabled people, often involving horrific acts of cruelty and violence.<sup>1</sup> In August 2015, a thirty-six-year-old autistic St. Augustine resident named Carl Starke was followed home and murdered by several individuals who were reportedly looking for cars to steal.<sup>2</sup> During the investigation that resulted in the days following Carl Starke's murder, the St. Johns County Sheriff, David Shoar, stated that Starke was victimized because he was seen as a "soft target" by the criminals.<sup>3</sup>

Section 775.085, F.S., reclassifies the penalty for any felony or misdemeanor offense if the circumstances evidence prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or the advanced age of the victim. This is commonly referred to as the "hate crime" statute. Offenses that fall under the statute are reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree is reclassified to a life felony.

Reclassification of an offense increases the minimum and maximum penalties that a judge may impose for an offense.

A violation of this section may also be addressed by civil action. Section 775.085, F.S., authorizes an aggrieved party<sup>4</sup> to file a civil suit when it is established by clear and convincing evidence<sup>5</sup> that the aggrieved party has been coerced, intimidated, or threatened in violation of this section.<sup>6</sup> A prevailing plaintiff is entitled to treble damages,<sup>7</sup> an injunction, reasonable attorney fees, or any other appropriate relief.<sup>8</sup>

##### Criminal Penalties

Sections 775.082 and 775.083, F.S., establish the following penalties applicable to felony and misdemeanor criminal offenses:

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<sup>1</sup> WPVI-TV, *Linda Weston Pleads Guilty in Tacony Dungeon Case*, 6 ABC ACTION NEWS (Sept. 9, 2015), <http://6abc.com/news/weston-pleads-guilty-in-tacony-dungeon-case/975747/> (last visited Nov. 20, 2015); David Shortell & Morgan Winsor, *Videos of Mentally Disabled Man Being Beaten Lead to Hate Crime Charges*, CNN (Sept. 23, 2014), <http://www.cnn.com/2014/09/22/justice/delaware-disabled-man-beaten/> (last visited Nov. 20, 2015).

<sup>2</sup> Jenna Carpenter, *Shoar: Suspects in Vista Cove Killing Targeted Autistic Man*, THE ST. AUGUSTINE RECORD (Aug. 21, 2015), <http://staugustine.com/news/local-news/2015-08-21/two-suspects-identified-tuesday-homicide#.Vk9nSk3ltHh> (last visited Nov. 20, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> Section 775.085(2), F.S., specifies that an aggrieved party that brings suit pursuant to this section must be a person or an organization.

<sup>5</sup> Clear and convincing evidence is established when the evidence is of such weight that it "produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

<sup>6</sup> s. 775.085(2), F.S.

<sup>7</sup> Treble damages are authorized as a civil remedy for criminal practices in other areas of statute. *See, e.g.*, s. 772.11, F.S. Treble damages are defined as a remedy equal to three times the amount of actual financial losses suffered by the aggrieved party. LEGAL INFORMATION INSTITUTE, *Treble Damages*, [https://www.law.cornell.edu/wex/treble\\_damages](https://www.law.cornell.edu/wex/treble_damages) (last visited Feb. 2, 2016).

<sup>8</sup> *Id.*

- A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole;
- A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine;
- A first degree felony is punishable by up to thirty years imprisonment and a \$10,000 fine;
- A second degree felony is punishable by up to fifteen years imprisonment and a \$10,000 fine;
- A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.
- A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine.
- A second degree misdemeanor is punishable by up to sixty days in jail and a \$500 fine.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>9</sup> Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense.<sup>10</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>11</sup>

A defendant's sentence is calculated based on points assigned for factors including the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.<sup>12</sup> A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.<sup>13</sup> The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense (the statutory maximum sentences for felonies are described above).<sup>14</sup>

### **Effect of the Bill**

The bill removes prejudice based on mental or physical disability as a factor for reclassifying an offense under s. 775.085, F.S. The bill creates a new section of law, s. 775.0863, F.S., to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. The new section's language is substantively identical to the language in s. 775.085, F.S., which authorizes civil remedies and reclassifies the penalty for any felony or misdemeanor offense if the circumstances evidence prejudice based on mental or physical disability. Offenses that fall under the statute are reclassified as follows:

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- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree is reclassified to a life felony.

The new section of law is cited as "Carl's Law."

The bill adds cross-references to the Offense Severity Ranking Chart, providing that the reclassification of the degree of a felony through application of ss. 775.085 and 775.0863, F.S., shall not cause the offense to become unlisted in the Offense Severity Ranking Chart.

The bill is effective October, 1, 2016.

## **B. SECTION DIRECTORY:**

Section 1. cites the act as "Carl's Law."

<sup>9</sup> s. 921.002, F.S.

<sup>10</sup> s. 921.0022, F.S.

<sup>11</sup> s. 921.0023, F.S.

<sup>12</sup> s. 921.0024, F.S.

<sup>13</sup> *Id.* Section 921.0026, F.S., prohibits a judge from imposing a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."

<sup>14</sup> Section 921.0024(2), F.S.

Section 2. amends s. 775.085, F.S., relating to evidencing prejudice while committing offense; reclassification.

Section 3. creates s. 775.0863, F.S., relating to evidencing prejudice while committing offense against person with mental or physical disability.

Section 4. amends s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 5. provides an effective date of October 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill language is substantively identical to existing law and should have no fiscal impact on state government revenues.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill language is substantively identical to existing law and should have no fiscal impact on local government revenues.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.