

HB 43 – Offenses Evidencing Prejudice (Similar CS/SB 194)

Amends s. 775.085, F.S., including that the commission of a felony or misdemeanor evidences prejudice “in whole or in part” for each potential victim category, and also adds “gender” and “gender identity” to the potential basis for prejudice, while also deleting victim and adding “any person” in its place. Gender identity is defined as “a person’s gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.” This bill also amends s. 775.0863, F.S., also adding “in whole or in part” for evidencing prejudice while committing an offense against “any person” (replacing victim) with a disability. Disability is now defined as “a physical or mental impairment that substantially limits one or more of a person’s major life activities.” With this bill, the penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if during the commission of such felony or misdemeanor evidencing prejudice is in whole or in part based on currently existing victim categories, as well as gender or gender identity and the newly expanded definition of disability.

- 2nd degree misdemeanor increased to 1st degree misdemeanor
- 1st degree misdemeanor increased to 3rd degree felony
- 3rd degree felony increased to 2nd degree felony
- 2nd degree felony increased to 1st degree felony
- 1st degree felony increased to life felony

Nationwide, the Uniform Crime Reports (UCR) for 2019 note that there were 67 known offenders who committed offenses with Anti-Male/Anti-Female motivations. There were 233 known offenders who committed offenses with Anti-Transgender/Anti-Gender Non-Conforming motivations. However, it is unknown how many states currently have these laws. Per FDLE’s statewide UCR, in 2019, there were 8 offenses motivated by Anti-Lesbian, Gay, Bisexual, Transgender (Mixed Group), with 3 arrests, and no offenses based on mental disabilities. There were no offenses based on physical disabilities. Also per FDLE’s Computerized Criminal History (CCH) files, in FY 19-20, there were 5 arrests and no convictions under s. 775.085, F.S., with arrests possibly overlapping with UCR. In FY 18-19, there were four arrests and one conviction under this statute. There were no arrests under s. 775.0863, F.S. and nobody has been sentenced for evidencing prejudice during an offense against someone with a mental or physical disability. However, since these statutes reclassify felonies, such acts might not be captured in the initial arrest.

Since July 1, 2012 there have been 3 adjudications withheld for 3rd degree felonies under s. 775.085, F.S., and one 1st degree misdemeanor guilty conviction and one 3rd degree felony conviction. Per DOC, in FY 18-19 and FY 19-20, there were no new commitments for a misdemeanor that was elevated to a felony by this statute. Furthermore, DOC does not have data available on those felonies that were increased due to this statute.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

Requested by: Senate