

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1222

INTRODUCER: Senator Richter

SUBJECT: Protection of Vulnerable Persons

DATE: March 12, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			AP	
4.				
5.				
6.				

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**I. Summary:**

SB 1222 amends s. 812.0145, F.S., theft of persons at least 65 years old, by deleting the minimum threshold amount (\$300) necessary to trigger the enhanced third degree felony penalty when committing theft against a person 65 years of age or older.

The bill amends ch. 825, F.S., abuse, neglect, and exploitation of elderly persons and disabled adults, by deleting the definitions of “disabled adult” and “elderly person” and instead, substituting “vulnerable adult.” The bill deletes the definition “lacks capacity to consent” and instead, substitutes “vulnerable adult’s ability to consent is impaired,” along with a definition of “impaired.”

The definitions of “deception” and “intimidation” are also deleted from the statute, resulting in fewer elements of the crime that must be proved in a prosecution for exploitation of a vulnerable adult by someone who stands in a position of trust or has a business relationship with the vulnerable adult.

Finally, the bill amends numerous statutes to conform with the terminology changes made by the bill.

This bill substantially amends the following sections of the Florida Statutes: 812.0145, 825.101, 825.102, 825.1025, 825.103, 825.105, and 825.106, and conforms 90.803, 435.04, 775.084, 775.0844, 775.0877, 782.07, 921.0022, 948.06, 960.003 and 1012.315 to changes made by the bill.

## II. Present Situation:

Section 812.0145, F.S., provides enhanced criminal penalties for committing theft against persons 65 years of age or older as follows:

- If the funds, assets, or property involved is valued at \$50,000 or more, it is a first degree felony<sup>1</sup>;
- If the funds, assets, or property involved is valued at \$10,000 or more, but less than \$50,000, it is a second degree felony<sup>2</sup>; and
- If the funds, assets, or property involved is valued at \$300 or more, but less than \$10,000, it is a third degree felony.<sup>3,4</sup>

Chapter 825, F.S., proscribes the offenses of abusing, neglecting, and exploiting elderly persons and disabled adults.<sup>5</sup> “Disabled adult” is defined to include a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.<sup>6</sup> “Elderly person” is defined to include a person at least 60 years old who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability to provide adequately for his or her own care is impaired.<sup>7</sup>

Chapter 415, F.S., encompassing the “Adult Protective Services Act,” does not use the terms “disabled adult” or “elderly person” but rather provides a definition of “vulnerable adult.” This definition means a person 18 years of age or older whose ability to perform normal activities of daily living or provide for his or her care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.<sup>8</sup>

Although there is no current statutory definition of “impaired” in either statute, there are definitions provided for “deception” and “intimidation.” Both are elements of the crime of exploitation in s. 825.103, F.S.<sup>9</sup> The phrase “lacks capacity to consent”<sup>10</sup> is also defined in statute

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<sup>1</sup> Punishable by up to 30 years in prison and up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Punishable by up to 15 years in prison and up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Punishable by up to 5 years in prison and up to \$5,000 in fines. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 812.0145(2)(a), (b), and (c), F.S.

<sup>5</sup> Sections 825.102, 825.1025, and 825.103, F.S.

<sup>6</sup> Section 825.101(4), F.S.

<sup>7</sup> Section 825.101(5), F.S.

<sup>8</sup> Section 415.102(27), F.S.

<sup>9</sup> Section 825.101(3) (8), F.S. “Deception” means misrepresenting or concealing a material fact relating to: (a) services rendered when such services are intended to benefit an elderly person or disabled adult; terms of a contract or agreement entered into with an elderly person or disabled adult; or an existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or (b) using any misrepresentation to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement. “Intimidation” means communication to an elderly person or disabled adult that he or she will be deprived of basic necessities or will suffer physical violence.

<sup>10</sup> Section 825.101(9), F.S. It means an impairment by mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes

because it is necessary to prove when prosecuting someone for exploitation of an elderly person or disabled adult<sup>11</sup> or committing lewd or lascivious offenses against an elderly person or disabled adult.<sup>12</sup>

### III. Effect of Proposed Changes:

The bill amends s. 812.0145, F.S., theft of persons at least 65 years old, by deleting the minimum threshold amount (\$300) necessary to trigger the enhanced third degree felony penalty when committing theft against a person 65 years of age or older. So, rather than currently requiring the value of property involved be at least \$300 and not more than \$10,000, the bill broadens it so that any value under \$10,000 triggers the third degree felony penalty.

The bill also amends ch. 825, F.S., abuse, neglect, and exploitation of elderly persons and disabled adults, by deleting the definitions of “disabled adult” and “elderly person” and instead, substituting “vulnerable adult.” “Vulnerable adult” is defined to mean a person 18 years of age or older whose ability to perform normal activities of daily living or provide for his or her care or protection is impaired.

“Impaired” is also newly defined to mean any loss or abnormality of psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, brain damage, or the infirmities of aging resulting in a decreased ability to perform mental tasks and physical activities of daily living. (Although the newly created definition of “vulnerable adult” is different from the definition currently found in the adult protective services chapter, ch. 415, F.S., by reading together the new definitions of “vulnerable adult” and “impaired,” they are similar to the definition in ch. 415, F.S.)

The bill also deletes the definition “lacks capacity to consent” and instead, substitutes “vulnerable adult’s ability to consent is impaired.” This phrase comes into play when prosecuting someone for exploiting an elderly person or disabled adult or committing lewd or lascivious offenses against such vulnerable adults.

The definitions of “deception” and “intimidation” are also deleted from the statute, resulting in fewer elements of the crime that must be proved in a prosecution for exploitation of a vulnerable adult by someone who stands in a position of trust or has a business relationship with the vulnerable adult. (Intent and knowledge must still be proven under the bill.)

Finally, the bill amends numerous statutes to conform with the terminology changes made by the bill.

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an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning himself or his property.

<sup>11</sup> Section 825.103, F.S.

<sup>12</sup> Section 825.1025, F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill may result in more prosecutions for theft and exploitation of persons 65 years of age or older, thereby protecting more of the state's vulnerable citizens.

**C. Government Sector Impact:**

This bill may result in more third degree felony prosecutions for theft of persons 65 years of age or older. However, the Criminal Justice Impact Conference has not yet met to determine whether this bill will have any impact on prison bed space.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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