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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 479
RELATING TO: Elderly/Disabled Adults/Exploitation
SPONSOR(S): Representatives Slosberg and Gannon
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
 - (2) CRIME PREVENTION CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Florida criminal law currently prohibits "abuse, aggravated abuse, or neglect of an elderly person or disabled adult." The present statute of limitations for this crime is four years. CS/HB 479 extends the statute of limitations for this crime to five years.

Current law also prohibits "exploitation of an elderly person or disabled adult." The present statute of limitations for this crime varies from three to four years depending on the value of the assets stolen. This bill replaces this with a five-year statute of limitations, regardless of offense level.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

Generally

Chapter 825, F.S., provides criminal penalties for certain actions constituting abuse, neglect, or exploitation of an elderly person or a disabled adult. Section 825.011(4), F.S., defines "disabled adult" to mean

a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

Section 825.011(5), F.S., defines "elderly person" to mean

a person 60 years of age or older 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 of the person to provide adequately for the person's own care or protection is impaired.

Abuse, Aggravated Abuse, and Neglect of an Elderly Person or Disabled Adult

Section 825.102(1), F.S., defines "abuse of an elderly person or disabled adult" as:

- (a) Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;
- (b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

Section 825.102(2), F.S., provides that "aggravated abuse of an elderly person or disabled adult" occurs when a person

- (a) Commits aggravated battery on an elderly person or disabled adult;

(b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or

(c) Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

Section 825.102(3)(a), F.S. specifies that "neglect of an elderly person or disabled adult" means:

1. A caregiver's failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person's or disabled adult's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult; or

2. A caregiver's failure to make a reasonable effort to protect an elderly person or disabled adult from abuse, neglect, or exploitation by another person.

Section 825.101(2), F.S., defines a "caregiver" as "a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult."

Under s. 775.15(1)(g), F.S., the statute of limitations for abuse, aggravated abuse, or neglect of an elderly person or disabled adult is currently four years.

Exploitation of an Elderly Person or Disabled Adult

Section 825.103(1), F.S., provides that "exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult; or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

Section 825.101(11), F.S., defines "position of trust and confidence" with respect to an elderly person or a disabled adult, to mean the position of a person who:

(a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;

(b) Is a joint tenant or tenant in common with the elderly person or disabled adult;

(c) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(d) Is a caregiver of the elderly person or disabled adult or is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

Exploitation of an elderly person or disabled adult ("exploitation") is a first-degree felony if the funds, assets or property stolen are valued at \$100,000 or more,¹ a second-degree felony if valued between \$20,000 and \$100,000,² and a third-degree felony if valued at less than \$20,000.³

The general statute of limitations for criminal cases specifies that:

- "prosecution for a capital felony, a life felony or a felony that resulted in a death may be commenced at any time;"⁴
- a first-degree felony must be prosecuted within four years;⁵
- any other felony within three years;⁶
- a first-degree misdemeanor within two years;⁷ and
- a second-degree misdemeanor or noncriminal violation within one year.⁸

Thus, in general, the statute of limitations for exploitation of an elderly person or disabled adult is 4 years if the funds, assets or property stolen are valued at \$100,000 or more; and is 3 years if valued at less than \$100,000.

Tolling Criminal Statutes of Limitations

Criminal statutes of limitations are tolled "during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state."⁹ However, this tolling cannot extend the period of limitations by more than three years.¹⁰

Section 775.15(3), F.S., provides that even if a criminal statute of limitations has expired,

a prosecution may still be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year of after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself a party to the offense,

¹ See s. 825.103(2)(a), F.S.

² See s. 825.103(2)(b), F.S.

³ See s. 825.103(2)(c), F.S.

⁴ Section 775.15(1)(a), F.S.

⁵ See s. 775.15(2)(a), F.S.

⁶ See s. 775.15(2)(b), F.S.

⁷ See s. 775.15(2)(c), F.S.

⁸ See s. 775.15(2)(d), F.S.

⁹ Section 775.15(6), F.S.

¹⁰ See *id.*

but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he or she leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.

C. EFFECT OF PROPOSED CHANGES:

This bill provides a five-year statute of limitations extends the statute of limitations for abuse, aggravated abuse, or neglect, of an elderly person from four to five years. This bill also provides a five-year statute of limitations in which to bring to criminal charges for exploitation of an elderly person or disabled adult, regardless of offense level.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Ex post facto laws are prohibited by both Art. I, s. 9 of the United States Constitution, and Art. I, s. 10 of the Florida Constitution. The Supreme Court of the United States first construed this prohibition over two hundred years ago in *Calder v. Bull*.¹¹ In his opinion in *Calder*, Justice Chase noted that the expression “*ex post facto*” “had been in use long before the revolution,”¹² and summarized what fell within the prohibition:

1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender.¹³

In short, legislation may not retroactively alter substantive criminal law.¹⁴ However, “[a] retrospective law that merely alters procedural rather than substantive matters, without increasing the punishment or changing the elements of the crime, is not an *ex post facto* law, even though it may work to the disadvantage of a criminal defendant.”¹⁵

The Supreme Court of Florida has ruled that criminal statutes of limitations are substantive rather than procedural.¹⁶ Hence, a crime is governed by the statute of limitations in effect when it is committed.¹⁷ Abuse or neglect committed before this bill’s effective date would therefore probably be governed by the current four-year statute of limitations. Likewise, exploitation committed before this bill’s effective date would probably be governed by the current offense-level-specific statute of limitations.

B. RULE-MAKING AUTHORITY:

None.

¹¹ 3 U.S. (3 Dall.) 386 (1798).

¹² *Id.* at 391 (Chase, J.).

¹³ *Id.* at 390 (Chase, J.).

¹⁴ *See, e.g., Miller v. Florida*, 482 U.S. 423 (1987); *State v. Hootman*, 709 So.2d 1357 (Fla. 1998); *Gwong v. Singletary*, 683 So.2d 109 (Fla. 1996).

¹⁵ 10 FLA. JUR. 2D CONSTITUTIONAL LAW § 345 (1997) (citing *Miller*; *Hock v. Singletary*, 41 F.3d 1470 (11th Cir. 1995); *Dugger v. Rodrick*, 584 So.2d 2 (Fla. 1991)).

¹⁶ *See Rubin v. State*, 390 So.2d 322 (Fla. 1980).

¹⁷ *See State v. Wadsworth*, 293 So.2d 345, 347 (Fla. 1974).

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Council on Smarter Government adopted this council substitute for HB 479. This substitute removes the original bill's reference to the statute of limitations applicable to civil actions, removes the original bill's tolling provisions in favor of current statutory tolling, and provides that a 5-year statute of limitations applies to felony violations of both s. 825.102, F.S. (abuse, aggravated abuse or neglect of an elderly person or disabled adult) and s. 825.103, F.S. (exploitation of an elderly person or disabled adult).

The bill was then reported favorably, as amended.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

David L. Jaroslav, J.D.

Staff Director:

Nathan L. Bond, J.D.

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION CORRECTIONS & SAFETY:

Prepared by:

Eric S. Haug

Staff Director:

Trina Kramer

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

David L. Jaroslav, J.D.

Staff Director:

Don Rubottom