

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1287 w/CS Criminal Offenses

SPONSOR(S): Barreiro

TIED BILLS: IDEN./SIM. BILLS: SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice	6 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	17 Y, 0 N w/CS	Kramer	De La Paz
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

HB 1287 with committee substitute amends s. 812.0145, F.S. which relates to theft from an elderly victim to provide for a three year minimum mandatory sentence for theft of over \$1,000 from a victim age 65 or older. The committee substitute removes the provision that requires proof that the offender knew or had reason to know the age of the victim.

The committee substitute also amends the statute relating to exploitation of an elderly person or disabled adult to provide that if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$1,000 or more, the court must sentence the offender to a mandatory minimum sentence of three years imprisonment. If the property is valued at \$100,000 or more, the court must sentence the offender to a minimum mandatory five year sentence.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1287b.ps.doc
DATE: April 10, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Theft: The theft statute provides the following:

A person commits theft if he or she knowingly obtains or uses or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

1. Deprive the other person of a right to the property or a benefit from the property or
2. Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

s. 812.014, F.S.

Theft of property valued between \$100 and \$300 is considered “petit theft” and is a first degree misdemeanor. Theft of property worth between \$300 and \$20,000 is a third degree felony.¹ Theft of property worth more than \$20,000 but less than \$100,000 is a second degree felony. Theft of property worth more than \$100,000 is a first degree felony.

During the 2002 session, legislation passed² which specifically applied to theft offenses committed against a victim age 65 or older. As a result, section 812.0145, requires the reclassification of penalties for theft when the offender knows or has reason to believe that the victim is over the age of 65, as follows:

1. If the “funds, assets, or property involved in the theft” from a person over 65 are valued at \$50,000 or more, the offense is a first degree felony.
2. If the funds, assets or property involved in the theft from a person over 65 is valued at \$10,000 or more but less than \$50,000, the offense is a second degree felony.

¹ Within the third degree felony theft category, the value of the stolen property is further divided and are assigned different rankings in the offense severity ranking chart of the Criminal Punishment Code. Theft of property valued at more than \$300 and less than \$5,000 is a Level 2 offense. Theft of property valued at \$5,000 but less than \$10,000 is a Level 3 offense. Theft of property worth more than \$10,000 but less than \$20,000 is a Level 4 offense. Thus, while the maximum penalty for a theft of any amount of property between \$300 and \$20,000 would have the same maximum sentence of five years in prison, the lowest permissible sentence would depend on the value of the property.

² Chapter 2002-162; Passed as HB 835 by Rep. Gardiner.

3. If the funds, assets or property involved in the theft from a person over 65 is valued at \$300 or more but less than \$10,000, the offense is a third degree felony.

The chapter law also ranked the newly created theft offenses in the offense severity ranking chart of the Criminal Punishment Code. Theft of between \$300 and \$10,000 was ranked in level 3, theft of between \$10,000 and \$50,000 was ranked in level 5 and theft of more than \$100,000 was ranked in level 7.

Changes made by CS/HB 1287: The committee substitute amends section 812.0145 to remove the provision that requires proof that the offender knew or had reason to know the age of the victim. The committee substitute also lowers the threshold for the second degree felony theft offense from \$10,000 to \$1,000. The committee substitute further provides that a judge will be required to impose a minimum mandatory sentence of three years imprisonment on an offender convicted of theft of property valued at \$1,000 or more from an elderly victim.

Exploitation of Elderly or Disabled Adult: Section 825.103 provides penalties for the exploitation of an elderly person or disabled adult as follows:

(1) "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.

(2) (a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$100,000 or more, the offender commits a felony of the first degree.

(b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$20,000, the offender commits a felony of the third degree.

CS/HB 1287 amends this section to provide that if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$1,000 or more, the offense is a second degree felony which requires the imposition of a three year minimum mandatory sentence. The committee substitute requires the imposition of a five year minimum mandatory sentence if the property is valued at \$100,000 or more.

C. SECTION DIRECTORY:

Section 1: Providing that act may be cited as "The Seniors' Safety Act of 2003".

Section 2: Amending s. 812.0145, F.S.; relating to theft from persons 65 years of age or older; provides minimum mandatory sentence for theft from a person 65 years of age or older.

Section 3: Amending s. 825.103; relating to exploitation of an elderly person or disabled adult; provides minimum mandatory sentence.

Section 4: Amending s. 921.0022, F.S.; makes corresponding changes to the offense severity ranking chart of the Criminal Punishment Code.

Section 5: Providing effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this committee substitute which is substantially altered from the original bill. The statute specifically relating to theft against the elderly has only been in effect since the 2002 session. As a result, it is not possible to determine how many theft offenses are committed against a victim age 65 or older in Florida each year. However, approximately 17.5 percent of the state population of 16.9 million is age 65 or older. The bill removes an element of the current offense by removing the requirement that the offender knew or should have known the age of the victim. This may result in an increased number of convictions for the offense. Further, the bill lowers the second degree felony threshold for the offenses of theft from the elderly and exploitation of the elderly to property valued in excess of \$1,000 and requires the imposition of a three year minimum mandatory sentence. This could lead to an increased number of offenders being incarcerated for these offenses. To illustrate: theft of \$2,000 from an elderly adult is currently a third degree felony³. The permissible sentence for this offense (which is ranked in level 3 of the offense severity ranking chart) would range from any non-state prison sanction (for example, a fine, county jail or probation) up to five years in prison. As a result of this committee substitute, the identical offense would be a second degree felony which would require the imposition of a three year minimum mandatory sentence and would be punishable by up to fifteen years in prison.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³ s. 812.0145(2)(c), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Original bill: As originally filed, HB 1287 removed most of the language that was adopted during the 2002 session relating to theft from an elderly person. The bill replaced this language by providing that if the funds, assets, or property involved in a theft from a person 65 years of age or older is valued at \$10,000 or more, the court must impose a mandatory minimum sentence of three years imprisonment. The bill further provided that the minimum mandatory sentence does not apply to the theft of one or more motor vehicles, regardless of their value.

Subcommittee on Criminal Justice: The subcommittee recommended the adoption of a strike-all amendment. The strike-all amended the existing theft from the elderly statute to provide for a three year minimum mandatory sentence for theft of more than \$10,000 from an elderly victim. The amendment also provided for a three year minimum mandatory sentence for exploitation of the elderly when the amount of property involved is valued at \$20,000 or more and a five year minimum mandatory sentence when the amount of property involved is valued at \$50,000 or more. The amendment removed the provision of the bill which would have required the reclassification of all felony offenses committed against an elderly person.

Committee on Public Safety & Crime Prevention: The committee adopted a substitute amendment which applied the three year minimum mandatory sentence for theft against an elderly victim to theft of \$1,000 or more. The amendment also provided for a three year minimum mandatory sentence for exploitation of the elderly when the amount of property involved is valued at \$1,000 or more and a five year minimum mandatory sentence when the amount of property involved in valued at \$50,000 or more. The bill was then made a committee substitute.