

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 379 Elder Abuse and Neglect
SPONSOR(S): McInvale
TIED BILLS:

IDEN./SIM. BILLS: CS/SB 448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	<u>14 Y, 0 N w/CS</u>	<u>Meyer</u>	<u>Liem</u>
2) <u>Public Safety & Crime Prevention</u>	<u>18 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
3) <u>Public Safety Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill revises the crime of aggravated abuse of an elderly or disabled person from a second degree felony to a first degree felony. The bill requires certified law enforcement personnel to receive training in the identification and investigation of elder abuse and neglect.

The bill designates a new Memory Disorder Clinic as part of the Alzheimer's Disease Initiative and establishes a workgroup to evaluate the use of the Florida Mental Health Act for persons with dementia. The workgroup must submit its report and recommendations by January 1, 2005, and stands repealed February 1, 2005.

This act shall take effect July 1, 2004.

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

STORAGE NAME: h0379c.ps.doc
DATE: April 15, 2004

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

Background

Chapter 825, F.S., provides criminal penalties for offenses committed against elderly persons¹ and disabled adults². Section 825.102(2), F.S., specifies that a person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the second degree. According to this provision, aggravated abuse of an elderly person or disabled adult occurs when a person:

1. Commits aggravated battery on an elderly person or disabled adult;
2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
3. 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 921.0022, F.S., contains the offense severity ranking chart which is used to compute a sentence score for felony offenders. Currently, the offense of aggravated abuse of an elderly person or disabled adult is ranked in level eight.

The Alzheimer's Disease Initiative (ADI) is found in chapter 430. The ADI includes an Advisory Council appointed by the Governor and programs that include Model Day Care, Respite, the Brain Bank Program, and Memory Disorder Clinics (MDC). The statute currently designates 13 MDCs around the state.

Effect

The bill increases the penalty for aggravated abuse of an elder from a second degree to a first degree felony. This will have the effect of increasing the maximum sentence for the offense from fifteen years in prison to thirty years in prison. The bill creates s. 943.17296, F.S. which requires certified law enforcement officers to receive training³ in identification and investigation of abuse and neglect either as a part of basic recruit training or through continuing education. This training must be completed by June

¹ "Elderly person" means 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. s. 825.101(5), F.S.

² "Disabled adult" means 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. s. 825.101(4), F.S.

³ Sections 943.171 through 943.17295, F.S. contain a number of specific requirements relevant to officer training including training in topics such as victims assistance, juvenile sexual offender investigation, and domestic violence cases.

30, 2008. An officer's certification is inactive if he or she does not complete the training by the deadline. Completion of the training allows the certification to be reactivated.

The bill designates a new Memory Disorder Clinic (MDC) under the Alzheimer's Disease Initiative in Clearwater which is a part of the Department of Elder Affairs' Planning & Service Area (PSA) 5. PSA 5 is the only PSA that does not have at least one MDC. The bill also creates a workgroup at the Florida Mental Health Institute at the University of South Florida. The workgroup is to study the use of the Florida Mental Health Act for involuntary commitment of elderly persons who have dementia. The workgroup is to report its findings and recommendations to the Legislature by January 1, 2005. The workgroup is repealed effective February 1, 2005.

C. SECTION DIRECTORY:

Section 1. This section amends section 825.102, F.S., to reclassify aggravated abuse of an elderly or disabled person from a felony of the 2nd degree to a felony of the 1st degree.

Section 2. This section amends section 921.0022, F.S., the Severity Ranking Chart, to conform to the change made in section 1 of the bill.

Section 3. This section creates section 943.17296, F.S., related to training for certified law enforcement officers.

Section 4. This section designates a new Memory Disorder Clinic in section 430.502, F.S.

Section 5. This section creates a workgroup at the Florida Mental Health Institute at the University of South Florida to study the use of the Florida Mental Health Act for persons with dementia.

Section 6. This act shall take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No new revenues are identified.

2. Expenditures:

The Criminal Justice Impact Conference has not considered the impact of this bill on the Department of Corrections. The bill increases the severity of the offense of aggravated abuse of an elderly person from a second degree felony to a first degree felony. This will increase the maximum sentence for the offense from fifteen years to thirty years. The bill does not change the ranking of the offense within the Offense Severity Ranking Chart of the Criminal Punishment Code. The offense is currently ranked in level 8. As a result, the lowest permissible sentence for a first time offender will be 36 months in prison as it is under current law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

No revenue is identified.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None is projected.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

HB 379 amends a section of statute relating to offenses committed against an elderly person or disabled adult and creates a section of statute requiring certified law enforcement officers to complete training on identification and investigation of elder abuse and neglect. The bill also creates a memory disorder clinic at Morton Plant Hospital in Pinellas County and creates a workgroup relating to older adults who are subject to involuntary treatment.

This bill may be challenged as violating Florida's constitutional single subject requirement which states that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." Art. III, § 6, Fla. Const. In determining whether an act violates the single subject rule, the Florida Supreme Court has examined whether the provisions of an act have a "natural or logical connection". State v. Thompson, 750 So.2d 643, 647 (Fla. 1999); Florida Dept. of Highway Safety and Motor Vehicles v. Critchfield, 842 So.2d 782 (Fla.2003)(holding that section of chapter law involving assigning bad check debt to a private debt collector had no natural or logical connection to the law's subject matter of driver's licenses, operation of motor vehicles, and vehicle registrations).

B. RULE-MAKING AUTHORITY:

No rule making authority is provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill was substantially changed by amendment in the Future of Florida Families Committee. The analysis above is of HB 379 with CS.