

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 576
SPONSOR: Judiciary Committee and Senators Fasano, Argenziano, and Lynn
SUBJECT: The Seniors' Safety Act
DATE: February 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Matthews</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute, which the bill states may be cited as “The Senior’s Safety Act, revises the law governing reclassification of certain felony offenses when those offenses are committed against elderly persons and disabled adults. Specifically, the committee substitute:

- Creates a general reclassification provision to apply to any felony offense when such offense is committed against either persons who are 65 years of age or older, persons who are 60 years of age or older and who suffer from mental, physical or mental disability or infirmity, or persons who are 18 years of age or older and who suffer from mental or physical incapacity or limitation, regardless of whether the offender knew or should have known the victim’s age, infirmity, or disability (replaces current provisions of law governing reclassification of aggravated assault, aggravated battery, and theft as solely applied to elderly persons).
- Mandates the imposition of a 3-year minimum sentence of imprisonment for theft offenses under chapter 812, F.S., when such offenses are committed against a person who is 65 years of age or older, and for offenses involving exploitation under chapter 825, F.S., when such offenses are committed against elderly persons and disabled adults as defined in that chapter provided the offense of theft or exploitation involves property valued at \$10,000 or more.
- Provides an exception to the mandatory 3-year minimum sentence of imprisonment for certain theft and exploitation felony offenses if the property involved is an auto regardless of the value.
- Confirms statutory cross-references in s. 775.0877, F.S., relating to requisite HIV testing orders in certain cases of assault and battery, and in s. 921.0022, F.S., relating to the

sentencing guidelines, to reflect the amendments made to ss. 784.08, 812.0145, and 825.103, F.S.

This committee substitute substantially amends the following sections of Florida Statutes: 784.08, 812.0145, 825.103, 775.0877, and 921.0022. This committee substitute creates s. 775.0847 of the Florida Statutes.

II. Present Situation:

Under Florida law, certain criminal offenses are classified at a higher degree of offense, receive enhanced penalties, or are subject to reclassification at the next higher degree when those offenses are committed against elderly persons or disabled adults.

Reclassification of Assault and Battery Offenses

Chapter 784, F.S., governs the offenses of assault, battery, and culpable negligence. When the offense of assault, battery, aggravated assault, or aggravated battery is committed against an elderly person who is 65 years of age or older, the offense is *reclassified* at the next higher degree¹ in the following ways:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of aggravated assault, from a third degree felony to a second degree felony.
- In the case of aggravated battery, from a second degree felony to a first degree felony.

It does not matter whether or not the offender knew or could have reason to know that the victim was 65 years of age or older. *Id.* If the offender is convicted of aggravated assault or aggravated battery then the offender must be sentenced to a mandatory minimum 3-year term of imprisonment, fined not more than \$10,000, ordered to provide restitution to the victim, and required to perform up to 500 hours of community service work.² Adjudication of guilt or imposition of sentence can not be suspended, deferred, or withheld.

Reclassification of Theft Offenses

Chapter 812, F.S., governs theft offenses. When a theft offense is committed against a person 65 years of age or older, then the offense for which the person is charged is to be *reclassified* as follows³:

- If the funds, assets, or property involved in the theft is valued at \$300 or more, but less than \$10,000, the offender commits a third degree felony. In reality, this provision is not a true reclassification since the general theft statute already penalizes this offense as a third degree felony regardless of the age of the victim.
- If the funds, assets, or property involved in the theft is valued at \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.

¹ See s. 784.08(2), F.S.

² See s. 784.08(1), F.S.

³ See s. 812.0145(2), F.S. This statutory provision was enacted in 2002

- If the funds, assets, or property involved in the theft is valued at \$50,000 or more, the offender commits a first degree felony.

In order to be charged with a theft offense against an elderly person, the offender must have known or have reason to believe that the victim was 65 years of age or older. If the offender is convicted of a theft offense of more than \$1,000 from a person 65 years of age or older, then the court must order the offender to pay restitution to the victim and to perform up to 500 hours of community service work.⁴ Restitution and community service work are in addition to any fine or sentence which may be imposed and not in lieu of a fine or sentence.

Classification of the Offense of Exploitation

Chapter 825, F.S., specifically governs offenses of abuse, neglect, ‘financial’ exploitation, and lewd or lascivious acts committed upon or in the presence of elderly persons and disabled adults. The particular offense of exploitation is defined as⁵:

- 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: ... stands in a position of trust and confidence with the elderly person or disabled adult; or ... has a business relationship with the elderly person or disabled adult, or
- 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.

For purposes of the offense of exploitation, chapter 825, F.S., defines an elderly person differently from who is an elderly person for purposes of assault and battery offenses under chapter 784, F.S., and theft offenses under chapter 812, F.S. Whereas the offenses for assault, battery, and theft committed against an elderly person refer to someone who is 65 years of age or older, the offense of exploitation committed against an elderly person refers to someone who is 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 dysfunction, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.”⁶ In addition, the offense of exploitation applies when the offense is committed against a disabled adult who is defined as “someone who is 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain

⁴ See s. 812.0145(1), F.S.

⁵ See s. 825.103(1), F.S..

⁶ See s. 825.101(5), F.S.

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.”⁷

If a person commits the offense of exploitation against an elderly person or disabled adult, the offense is classified under s. 825.103(2), F.S., as follows:

- If the funds, assets, or property involved is valued at less than \$20,000, the offender commits a third degree felony.
- If the funds, assets, or property involved is valued at \$20,000 or more, but less than \$100,000, the offender commits a second degree felony.
- If the funds, assets, or property involved is valued at \$100,000 or more, the offender commits a first degree felony.

It is not a defense for the offender if he or she did not know the victim's age.⁸

III. Effect of Proposed Changes:

Provided is a section-by-section analysis of SB 576:

Citation

The committee substitute states that this act may be cited as “The Seniors’ Safety Act.” The Act however applies equally to elderly persons who may be as young as 60 years of age and disabled adults who may be as young as 18 years of age.

General Felony Reclassification

The committee substitute creates s. 775.0847, F.S., to create a general felony reclassification provision. The section provides for the automatic reclassification of any third degree felony offense, second degree felony offense, or first degree felony offense (not punishable by life imprisonment) whenever a person is charged with committing any felony offense against a person who is 65 years of age or older, a person who is 60 years of age or older and who is mentally, physically or emotionally disabled or infirm (i.e., elderly person as defined in chapter 825, F.S.), or a person who is 18 years of age or older and who suffers from a mental or physical incapacity (i.e., disabled adult as defined in chapter 825, F.S.) This reclassification provision applies regardless of whether or not the offender knows or has reason to know the age, infirmity, or disability of the victim.

The new section reclassifies the felony degree of such offenses as follows:

- In the case of a third degree felony, the offense is reclassified to a second degree felony.
- In the case of a second degree felony, the offense is reclassified to a first degree felony.
- In the case of a first degree felony, the offense is reclassified to a first degree felony, punishable by life imprisonment.

This new felony reclassification provision may result in a greater punishment for felony theft offenses than currently exists under s. 812.0145, F.S. Two examples illustrate the differences. If

⁷ See s.825.101(4), F.S.

⁸ See s. 825.104, F.S.

a person stole property valued at \$101,000 from a 65 year-old person, this would be a first degree felony under s. 812.014, F.S. However, current s. 812.0145, F.S., does not provide for a reclassification resulting in a greater punishment than provided under s. 812.014, F.S. Under the new s. 775.0847, F.S., the first degree felony is reclassified as a first degree felony, punishable by life imprisonment (in contrast to a term of imprisonment not exceeding 30 years, which is the punishment for a first degree felony under s. 775.082, F.S.)⁹ Another example is if a person stole property valued at \$20,000 from a 65 year-old person, this would be a second degree felony under s. 812.014, F.S. However, again, current s. 812.0145, F.S., does not provide for a reclassification resulting in a greater punishment than that provided under s. 812.014, F.S.

The new felony reclassification provision also eliminates some of the anomalies that existed in s. 812.0145, F.S., as illustrated in the aforementioned examples because reclassifications under s. 812.0145, F.S., were based on ranges of property value that did not correspond directly to the ranges of property value for the specific felony theft offenses in the general theft statute under s. 812.014, F.S. The new felony reclassification provision creates a simplified formula for reclassification based on the underlying offense whenever that offense is committed against a person 65 years of age or older or an elderly person or disabled adult as defined by s. 825.101, F.S.

As it relates to the felony offenses for aggravated assault and aggravated battery committed against elderly persons, the new general felony reclassification provision does not result in a different reclassification for these offenses since s. 784.08, F.S., reclassifies aggravated assault and aggravated battery by one higher degree, which is also the reclassification formula under the new s. 775.0847, F.S.

The new general reclassification statute (s. 775.0847, F.S.) departs from the existing reclassification provisions in three significant ways:

- 1) Felony reclassification will apply to all felony offenses. Only a handful of felony offenses including assault, battery, or theft committed against a victim who is 65 years of age or older are currently reclassified. Conforming amendments are made to s. 784.04, F.S., relating to the reclassification of assault or battery offenses committed against persons who are 65 years of age or older, and s. 812.0145, F.S., relating to the reclassification of theft offenses against persons who are 65 years of age or older, to reflect that the current felony reclassification provisions under these sections will now be replaced and governed by the general felony reclassification provision in s. 775.0847, F.S.
- 2) Felony reclassification will apply to felony offenses committed against broader classes of victims. The new felony reclassification provision will now apply to any felony offense committed against persons who are 65 years of age or older, elderly persons defined under s. 825.101(5), F.S. (i.e., persons who are 60 years of age or older and suffer some mental, physical, or emotional disability or infirmity), and disabled adults who are defined under s. 821.101(4), F.S., (i.e., persons who are 18 years of age or more and who suffer from mental or physical disability). In reality, the likely net effect of this reclassification provision

⁹ That is, unless another statute provides for a term of imprisonment for life or imprisonment for a term of years not exceeding life imprisonment

is that no true distinction will exist between elderly persons who are 65 years of age or older and elderly persons (as defined under chapter 825, F.S.), who are 60 years of age and have some mental, physical, or emotional disability or infirmity.

- 3) The new felony reclassification provision will apply regardless of whether the offender knows or has reason to know the victim's age, infirmity, or disability no matter what felony offense. This represents a change from current law in that knowledge or reason to believe a victim is 65 years of age or older is a requisite element of a felony theft offense in order to be charged under s. 812.0145, F.S. This does not represent a change from current reclassification law for assault and battery offenses under s. 784.08, F.S., for which the reclassification applies regardless of whether the person committing the offense knows or has reason to know the age of the victim.

Sentencing for Certain Felony Offenses

The committee substitute amends s. 812.0145, F.S., relating to theft, to require the imposition of a minimum 3-year sentence of imprisonment when the theft is committed against persons who are 65 years of age or older and which involve funds, assets, or property valued at \$10,000 or more. However, auto theft is exempted from the minimum mandatory sentencing provision. This provision is similar to an existing provision under s. 784.08, F.S., which requires a 3-year minimum sentence of imprisonment in aggravated assault and aggravated battery offenses committed against persons who are 65 years of age or older. The amendment to s. 812.0145, F.S., also provides language relating to how this section is to be construed with other laws. First, the court is not precluded from imposing a greater sentence of imprisonment if otherwise authorized by law. Second, if the minimum mandatory term exceeds the maximum sentence authorized by s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., or the Criminal Punishment Code, the minimum mandatory sentence must be imposed. Third, if the sentence that could be imposed under any of the referenced sections or the Code exceeds the minimum mandatory term, the sentence imposed must include the minimum mandatory term. These new sentencing provisions only apply to victims of theft who are 65 years of age or older.

The committee substitute also amends s. 825.103, F.S., relating to exploitation of an elderly person or disabled adult, to create two new subsections that adopt identical minimum mandatory sentencing language adopted to the theft offenses committed against elderly persons. That is, the court must impose a 3-year minimum sentence of imprisonment for exploitation if the funds, assets or property are valued at \$10,000. Auto theft is exempted from such sentencing. The amendment also includes language pertaining to the imposition or construction of the mandatory minimum term in relation to other laws (identical to the language provided in the amendment of s. 812.0145, F.S.).

Miscellaneous

The committee substitute amends s. 775.0877, F.S., relating to the mandatory order for HIV testing in cases involving certain assault and battery offenses, to conform the cross-reference to s. 784.08, F.S., as revised by the committee substitute.

Section 812.0145, F.S., is also amended to conform the catchline to reflect that this section no longer deals with reclassification of felony theft offenses but applies to penalties for theft offenses committed against elderly persons.

Section 921.0022(3), F.S., relating to the sentencing guidelines under the Criminal Punishment Code as applied to offenses committed on or after October 1, 1998, is also revised to conform the cross-references to ss. 784.08 and 812.0145, F.S., relating to the old reclassification provisions for the offenses of aggravated assault, aggravated battery, and theft committed against elderly persons, respectively. Since the committee substitute specifically eliminates or revises the substance of s. 784.08(2)(a)-(b), F.S., and s. 812.0145(2)(a)-(c), F.S., which are now subsumed by the new general reclassification provision, certain cross-references to these sections in the sentencing guidelines had to be removed or revised to reflect the renumbering of paragraphs or subsections.

The new general felony reclassification provision does not create any new severity offense ranking level for any offense that is not already provided for in the existing sentencing guidelines. The new provision also does not affect offense severity ranking levels that exist currently for the offenses of aggravated assault and aggravated battery committed against elderly persons since these offenses already receive the same respective offense severity ranking levels for aggravated assault and aggravated battery without regard to the age, infirmity or disability of the victim. However, the new provision does affect the offense severity ranking levels for reclassified felony theft offenses committed against elderly persons under s. 812.0145(2)(a)-(b), F.S. Under current law, reclassified felony theft offenses based on whether the stolen funds, assets, or property was valued between \$10,000 and \$50,000, or was valued at \$50,000 or more receive offense severity ranking levels of 7 and 5, respectively. Since the ranges of property value for these reclassified felony theft offenses committed against elderly persons in s. 812.0145, F.S., never corresponded exactly to the ranges for property value under the general theft statute, the offense severity ranking level was not always the same. Since those reclassified theft offenses are now subsumed by the new general felony reclassification provisions, they will be governed by the offense severity ranking level given in the sentencing guidelines for the particular offense under the general theft statute in s. 812.014, F.S.

Section 921.0022(3)(b), F.S., is also amended to make a scrivener's change to incorporate the contents of a history note to s. 590.28(1), F.S., as cross-referenced in the sentencing guidelines, into the substantive part of the sentencing guidelines. The history note had indicated that the catchline for the offense under s. 590.28, F.S., had changed since 2000. The change encumbered by this committee substitute does not affect the offense severity ranking level for this offense in any way.

Effective Date

The committee substitute provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has reviewed this committee substitute and reports that there will be a potentially significant impact upon prison beds and the criminal justice system. The Department of Corrections' staff indicates the committee substitute has a yet indeterminate future impact on the prison population due to the minimum mandatory sentencing provisions and the creation of enhanced felony offenses committed against elderly persons and disabled adults.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- This committee substitute creates a potentially unintended consequence. It takes an element of the original offense and uses that same element again to enhance or reclassify the degree of the offense at the next higher degree. For example, under the new s. 775.0847, F.S., the following existing felony offenses would be reclassified at the next higher offense level based on the fact that the crime was committed against an elderly person or disabled adult even though that fact is already an element of the original offense before the reclassification occurs:
 - ✓ Section 782.07(2), F.S., makes it a first degree felony offense of aggravated manslaughter to cause the death of an elderly person or disabled adult by culpable negligence.
 - ✓ Section 825.102, F.S., provides felony offenses for neglect, abuse, or aggravated abuse of an elderly person or disabled adult.
 - ✓ Section 825.1025, F.S., provides felony offenses for lewd or lascivious offenses upon or in the presence of an elderly person or disabled adult.
 - ✓ Section 825.103, F.S., provides felony offenses for exploitation committed against an elderly person or disabled adult.

- The committee substitute does not address the inconsistency that has developed in the criminal law applying to the age threshold for the class of elderly persons. For example, the age threshold for the hate crime enhancement law under s. 775.085, F.S., against *victims of advanced age* is someone who is *over 65 years of age*. However, the current age threshold for reclassifying misdemeanor offenses of battery or assault under s. 784.08, F.S., and for imposing a 3-year minimum sentence of imprisonment for aggravated assault and aggravated battery committed against an elderly person is 65 years of age or older. The age threshold for the imposition of a 3-year minimum sentence of imprisonment as required by this committee substitute for theft offenses committed against an elderly person is based on someone who is 65 years of age or older. In contrast, the age threshold for the imposition of the mandatory 3-year minimum sentence of imprisonment for exploitation committed against an elderly person under s. 825.103, F.S., is based on someone who is 60 years of age or older qualified by some mental, physical or emotional disability or infirmity. Yet, the net practical effect of the new general felony reclassification under s. 775.0847, F.S., (general reclassification provision which does not require that the offender have known or had reason to know the age, infirmity or disability of his victim), is to blur further the distinction being drawn between the class of elderly persons who are 65 years of age or older and the class of elderly persons who are 60 years of age or older and have some mental, physical or emotional infirmity or disability.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
