

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 197 Protection and Care of Elders  
**SPONSOR(S):** McInvale and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 96

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>5 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Elder &amp; Long-Term Care Committee</u>	<u>6 Y, 0 N</u>	<u>Walsh</u>	<u>Liem</u>
3) <u>Justice Appropriations Committee</u>	<u>7 Y, 0 N</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill reclassifies the offense 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 Criminal Justice Impact Conference has determined that this bill would have an insignificant prison bed impact for the state. The required law enforcement training is already being implemented; therefore no additional fiscal impact to state government is expected.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: This bill increases the severity of the sanction for potentially injurious behavior.

#### B. EFFECT OF PROPOSED CHANGES:

*Abuse of elderly person or disabled adult:* Chapter 825, F.S., provides criminal penalties for offenses committed against elderly persons<sup>1</sup> and disabled adults<sup>2</sup>. 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.

The bill reclassifies the offense of aggravated abuse of an elderly person or disabled adult from a second degree to a first degree felony. Aggravated child abuse is currently a first degree felony.<sup>3</sup> 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 does not change the ranking of the offense within the offense severity ranking chart of the Criminal Punishment Code. The offense of aggravated abuse of an elderly person or disabled adult is currently ranked in level eight of the chart. As under current law, the lowest permissible sentence for a first time offender who commits this offense and has no additional sentencing factors will be 36 months in prison.

*Law enforcement training:* Sections 943.171 through 943.17295, F.S., contain a number of specific requirements relevant to law enforcement officer training including training in subjects such as victims assistance, juvenile sexual offender investigations, and domestic violence cases. The bill creates s. 943.17296, F.S., which requires certified law enforcement officers to receive training in identification and investigation of abuse and neglect either as a part of basic recruit training or through continuing education. The training must be developed in consultation with the Department of Elderly Affairs and must incorporate instruction on identification and appropriate responses to persons suffering from dementia and on the identification and investigation of elder abuse and neglect. This training must be completed by June 30, 2008. An officer's certification shall become inactive if he or she does not complete the training by the deadline. Completion of the training allows the certification to be reactivated.

#### C. SECTION DIRECTORY:

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<sup>1</sup> "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.

<sup>2</sup> "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.

<sup>3</sup> s. 827.03(3), F.S.

Section 1. 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. Amends section 921.0022, F.S., the Offense Severity Ranking Chart, to conform to the change made in section 1 of the bill.

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

Section 4. Provides effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has determined that this bill would have an insignificant prison bed impact on the Department of Corrections. The law enforcement training in identification and investigation of elder abuse and neglect that is required by this bill has already been reviewed by the Criminal Justice Standards and Training Commission staff and by the Department of Elderly Affairs and is currently included in the state's law enforcement training curriculum.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill reclassifies the offense of aggravated abuse of an elderly person from a second degree to a first degree felony. This will increase the maximum sentence for the offense from 15 years to 30 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.

## **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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**