

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 399

Criminal Offenses

**SPONSOR(S):** Davis

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 140

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Elder &amp; Long-Term Care Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></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

HB 399 provides for increased penalties for offenses committed against an elderly or disabled victim as follows:

- The bill provides for the reclassification of all felony offenses committed against an elderly person or disabled adult regardless of whether the offender was aware of the age or infirmity of the victim. Under this provision, a felony committed against an elderly or disabled victim will be reclassified as follows: a third degree felony will be reclassified to a second degree felony; a second degree felony will be reclassified to a first degree felony and a first degree felony will be reclassified to a first degree felony punishable by a life sentence. This will have the affect of increasing the maximum sentence which can be imposed for the offense.
- The bill also removes language that was adopted during the 2002 session which specifically applied to theft offenses committed against a victim age 65 or older. The bill replaces 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 also amends the section of 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 \$10,000 or more, the court must sentence the offender to a mandatory minimum sentence of three years imprisonment.

The Criminal Justice Impact Conference met on January 9, 2006 to consider the prison bed impact of this bill on the Department of Corrections and determined that the bill could potentially have a significant impact on the prison bed population at the Department of Corrections. See fiscal comments section.

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

**STORAGE NAME:** h0399a.CRJU.doc

**DATE:** 1/25/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the sanctions for offenses committed against elderly persons and disabled adults and will require the imposition of minimum mandatory sentences in certain circumstances.

Promote personal responsibility: The bill reclassifies the degree of felony offenses committed against elderly persons and disabled adults.

#### B. EFFECT OF PROPOSED CHANGES:

*Reclassification of all felony offenses committed against elderly or disabled:* Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified<sup>1</sup> if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or *advanced age* of the victim. The term advanced age is defined to mean that the victim is older than 65 years of age.

HB 399 creates section 775.0847 which provides for the reclassification of felony offenses committed upon:

1. a person 65 years of age or older;
2. a person 60 years of age or older<sup>2</sup> 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; or
3. a disabled adult<sup>3</sup> which is defined as 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, 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

HB 399 provides that a felony offense committed against a victim listed above will be reclassified *regardless of whether the offender knew or had reason to know the age, infirmity or disability of the victim* as follows:

- A third degree felony will be reclassified to a second degree felony.
- A second degree felony will be reclassified to a first degree felony.
- A first degree felony will be reclassified to a felony of the first degree, punishable by life imprisonment.

The reclassification of these offenses will have the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.<sup>4</sup>

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<sup>1</sup> Under the section, a second degree misdemeanor is reclassified as a first degree misdemeanor; a first degree misdemeanor is reclassified as a third degree felony; a third degree felony will be reclassified to a second degree felony; a second degree felony will be reclassified to a first degree felony and a first degree felony will be reclassified to a felony of the first degree, punishable by life imprisonment.

<sup>2</sup> This definition is contained in s. 825.101(5), F.S.

<sup>3</sup> This definition is contained in s. 825.101(4), F.S.

<sup>4</sup> s. 775.082, F.S.

*Assault or Battery on Victim Age 65 or Older:* Currently, section 784.08 provides that when a person is charged with committing assault<sup>5</sup>, aggravated assault<sup>6</sup>, battery<sup>7</sup> or aggravated battery<sup>8</sup> against a victim age 65 or older, the assault or battery offense is reclassified as follows:

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

The section also applies a three year minimum mandatory sentence<sup>9</sup> against an offender who has been convicted of aggravated assault or aggravated battery against an elderly person.

HB 399 amends this section to remove the reclassification for aggravated assault and aggravated battery offenses committed against an elderly person, presumably because the newly created s. 775.0847, F.S. (discussed above) will cover those felony reclassifications.

*Theft:* The theft statute, section 812.014, F.S. 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.

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.<sup>10</sup> 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.

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<sup>5</sup> An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011, F.S.

<sup>6</sup> An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

<sup>7</sup> A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S.

<sup>8</sup> An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

<sup>9</sup> This provision is contained in s. 784.08(1), F.S.

<sup>10</sup> 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.

During the 2002 session, legislation passed<sup>11</sup> which specifically applied to theft offenses committed against a victim age 65 or older 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.
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.

Section 812.0145 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.<sup>12</sup>

HB 399 removes most of the language that was adopted during the 2002 session relating to theft from an elderly person. The bill replaces 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 provides that the minimum mandatory sentence does not apply to the theft of one or more motor vehicles, regardless of their value.

*Exploitation of Elderly or Disabled Adult:* Currently, 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.

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<sup>11</sup> Chapter 2002-162; Passed as HB 835 by Rep. Gardiner.

<sup>12</sup> s. 921.0022, F.S. The lowest permissible sentence for an offense ranked in level 3 or level five of the offense severity ranking chart is any non-state prison sanction. The lowest permissible sentence for an offense ranked in level 7 of the offense severity ranking chart is 21 months in state prison. The maximum sentence for a third degree felony is five years in prison, for a second degree felony is fifteen years in prison and for a first degree felony is thirty years in prison. s. 775.082, F.S.

(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.

The bill 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 \$10,000 or more, the court must sentence the offender to a mandatory minimum sentence of three years imprisonment.

The bill also makes corresponding changes to section 775.0877, F.S. relating to mandatory orders for HIV testing in cases involving certain assault and battery offenses and to section 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code.

#### C. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as "The Seniors' Safety Act".

Section 2. Creates s. 775.0847, F.S.; providing for reclassification of felony offenses committed against elderly or disabled person.

Section 3. Amends s. 784.08, F.S.; relating to assault or battery on persons 65 years of age or older.

Section 4. Amends s. 812.0145, F.S.; relating to theft from persons 65 years of age or older.

Section 5. Amends s. 825.103, F.S.; relating to exploitation of an elderly person or disabled adult.

Section 6. Amends s. 775.0877; relating to criminal transmission of HIV; changing cross-reference.

Section 7. Amends s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code.

Section 8. Provides effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Criminal Justice Impact Conference met on January 9, 2006 to consider the prison bed impact of this bill on the Department of Corrections. The conference determined that the bill could potentially have a significant impact on the prison bed population at the Department of Corrections. The bill provides for the reclassification of all felony offenses committed against an elderly or disabled victim, regardless of whether the offender knew the age, infirmity or disability of the victim. It is not possible to determine how many felonies 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 also requires the imposition of a mandatory minimum three year prison

sentence for the offense of theft against an elderly person and the offense of exploitation of an elderly person or disabled adult.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**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:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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