

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 292

INTRODUCER: Senators Fasano and King

SUBJECT: Criminal Offenses Against Elderly

DATE: April 6, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			CF	
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill creates “The Senior’s Safety Act,” which revises the law governing reclassification of certain felony offenses when those offenses are committed against elderly persons and disabled adults. Specifically, the bill:

- Creates a reclassification provision to apply to any third, second, or first degree felony offense when such offense is committed upon a person who is 65 years of age or older, an “elderly person” as defined in ch. 825, F.S. (a person who is 60 years of age or older and who suffers from certain mental, physical or emotional dysfunctions), or a “disabled adult” as defined in ch. 825, F.S. (a person who is 18 years of age or older and who suffers from certain mental or physical incapacitations or limitations), regardless of whether the offender knew or had reason to know the victim’s age, infirmity, or disability. (Replaces current felony reclassification provisions relevant to aggravated assault, aggravated battery, and theft upon persons 65 years of age or older.)
- Mandates a 3-year mandatory minimum term of imprisonment for theft from a person who is 65 years of age or older, and for exploitation of an elderly person or disabled adult as defined in that chapter, if the theft or exploitation involves funds, assets, or property valued at \$10,000 or more.
- Provides an exception to the 3-year mandatory minimum term of imprisonment for theft from a person 65 years of age or older if the property involved is one or more motor vehicles, regardless of associated value.

This bill substantially amends the following sections of Florida Statutes: 784.08, 812.0145, 825.103, 775.0877, and 921.0022. This bill also creates section 775.0847 of the Florida Statutes.

II. Present Situation:

Assault and Battery Offenses

Section 784.08(2), F.S., provides that whenever a person is charged with committing assault, battery, aggravated assault, or aggravated battery upon a person who is 65 years of age or older, *regardless of whether he or she knows or has reason to know the age of the victim*, the offense is reclassified to the next higher degree in the following manner:

- 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.

Further, if the offender is convicted of aggravated assault or aggravated battery, the offender must be sentenced to a 3-year mandatory minimum term of imprisonment, fined not more than \$10,000, ordered to make restitution to the victim, and required to perform up to 500 hours of community service work.¹ Adjudication of guilt or imposition of sentence cannot be suspended, deferred, or withheld.

Theft Offenses

Section 812.0145(2), F.S., provides that whenever a person is charged with committing theft from a person 65 years of age or older, *when he or she knows or has reason to believe that the victim was 65 years of age or older*, the charged theft offense is reclassified as follows:

- 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.²
- 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.³
- If the funds, assets, or property involved in the theft is valued at \$50,000 or more, the offender commits a first degree felony.⁴

Further, 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 make restitution to the victim and to perform up to 500 hours of community service work.⁵

¹ See s. 784.08(1), F.S.

² In reality, this provision is not a true reclassification since the general theft statute, s. 812.014, F.S., already penalizes theft of property valued at \$300 or more, but less than \$10,000, as a third degree felony.

³ In reality, this provision is only a partial reclassification. Under s. 812.014, F.S., theft of property valued at \$10,000 or more, but less than \$20,000 is a third degree felony, so s. 812.0145, F.S., would truly reclassify the felony degree of this theft. However, under s. 812.014, F.S., it is a second degree felony to commit theft of property valued at \$20,000 or more, but less than \$100,000.

⁴ In reality, this provision is only a partial reclassification. Under s. 812.014, theft of property valued at \$50,000 or more, but less than \$100,000 is a second degree felony, so s. 812.0145, F.S., would truly reclassify the felony degree of this theft. However, under s. 812.014, F.S., it is a first degree felony to commit theft of property valued at \$100,000 or more.

⁵ See s. 812.0145(1), F.S.

Exploitation Offenses

The offense of exploitation is defined in s. 825.103(1), F.S., as:

- (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
- 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.

The term "elderly person" is defined in s. 825.101(5), F.S., as a person 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." A "disabled adult" is defined in s. 825.101(4), F.S., 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 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."

If a person commits the offense of exploitation against an elderly person or disabled adult, the offense is punished under s. 825.103(2), F.S.,⁶ 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.

Section 825.105, F.S., provides that it does not constitute a defense to a prosecution for any violation of ch. 825, F.S., that the accused did not know the age of the victim.

III. Effect of Proposed Changes:

The bill creates "The Seniors' Safety Act." However, changes to the law also affect offenses against disabled adults (who may be as young as 18 years of age).

⁶ This section does not provide for reclassification of the degree of an offense.

The bill creates s. 775.0847, F.S., which provides for reclassification of any third degree felony offense, second degree felony offense, or first degree felony offense whenever a person is charged with committing such offense upon a person who is 65 years of age or older, an “elderly person” as defined in ch. 825, F.S., or a “disabled adult” as defined in ch. 825, F.S., *regardless of whether the person charged knew or had reason to know the age, infirmity, or disability of the victim.*⁷

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.

The bill repeals current felony reclassification provisions in s. 784.08, F.S., relating to aggravated assault and aggravated battery upon a person who is 65 years of age or older. Current reclassification provisions in this section relating to misdemeanor assault and misdemeanor battery are retained. Effectively, the felony reclassification provisions in newly created s. 775.0847, F.S., will apply to aggravated assault and aggravated battery on a person who is 65 years of age or older.

The bill repeals the current reclassification provisions in s. 812.0145, F.S., relating to theft from a person who is 65 years of age or older.⁸ Effectively, the felony reclassification provisions in newly created s. 775.0847, F.S., will apply to this theft. Additionally, the repeal of the current reclassification provisions in s. 812.0145, F.S., will eliminate sentencing anomalies resulting from the fact that the reclassification provisions of this section were triggered, in part, by theft of property in value ranges that did not correspond with value ranges in the general theft statute, s. 812.014, F.S.

The bill also amends s. 812.0145, F.S., to require that a 3-year mandatory minimum term of imprisonment be imposed when the theft is committed against a person who is 65 years of age or older if the theft is of funds, assets, or property valued at \$10,000 or more. However, theft of one or more motor vehicles, regardless of associated value, is exempted from the mandatory minimum sentencing provision.

The bill also amends s. 812.0145, F.S., to provide language relating to how this section is to be construed in relation to other laws. If the mandatory minimum term exceeds the maximum

⁷ Presumably, the felony reclassification provisions of s. 775.0847, F.S., were intended to apply to a felony offense committed against an elderly person or disabled adult even if that offense contains as an element that the victim is an elderly person or disabled adult. The bill does not contain any language similar to that provided, for example, in s. 775.087(1), F.S., which reclassifies a felony when, during the commission of that felony, the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, “except a felony in which the use of a weapon or firearm is an essential element[.]” Since the felony reclassification provisions are mandatory (“shall be reclassified”), it appears that the reclassification provision would effectively supersede (in all cases in which the offense is charged) the felony degree assigned to such felonies in the sections in which they appear.

⁸ The catch line in s. 812.0145, F.S., is amended to reflect that this section no longer applies to reclassification of felony theft offenses, but rather applies to penalties for theft offenses committed against elderly persons.

sentence authorized by s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., or the Criminal Punishment Code (“Code”), the mandatory minimum term must be imposed. If the mandatory minimum term is less than the sentence authorized under any of the previously referenced sections or the Code, the sentence imposed must include the mandatory minimum term. Additionally, this section does not prevent a court from imposing a greater sentence of incarceration as authorized by law.

The bill amends s. 825.103, F.S., relating to exploitation of an elderly person or disabled adult, to create two new subsections that adopt identical mandatory minimum term language adopted in regard to the theft offenses committed against elderly persons under s. 812.0145, F.S. In other words, the court must impose a 3-year mandatory minimum term of imprisonment for exploitation if the funds, assets, or property are valued at \$10,000 or more. The amendment also includes language pertaining to the imposition or construction of the mandatory minimum term in relation to other laws that is similar to the language provided in the amendment of s. 812.0145, F.S., as previously described.

The bill amends s. 775.0877, F.S., relating to the mandatory order for HIV testing in cases involving certain offenses to conform the cross-reference to s. 784.08, F.S., as amended by the bill.

The bill amends s. 921.0022(3), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code (“Code”) to delete references to the ranking of offenses reclassified under provisions of ss. 784.08 and 812.0145, F.S., that are repealed by the bill. The bill amends a reference in the chart to battery offenses reclassified as third degree felonies under s. 784.08, F.S. This reclassification provision is retained by the bill but amendments to s. 784.08, F.S., made by the bill change subsection references. The bill also amends the ranking chart 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 Code, into the substantive part of the Code. The history note had indicated that the catch line for the offense under s. 590.28, F.S., had changed since 2000. This change does not affect the offense severity ranking level for this offense in any way.

The bill provides for an effective date of July 1, 2007.

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), which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet met to consider SB 292. However, SB 292 is substantively similar to HB 149. The CJIC estimates that the House Bill will have an indeterminate prison bed impact, but potentially could have a significant prison bed impact. It is not possible to determine precisely how many felonies are committed against a victim age 65 or older in Florida each year. However, the CJIC notes that approximately 16.9 percent of the state population of 18.3 million is age 65 or older.

VI. Technical Deficiencies:

On page 4, line 4, of the bill the reference to “subsection” should either be “section” or “subsection (3).”

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
