

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 366

INTRODUCER: Senator Margolis

SUBJECT: Elderly Persons & Disabled Adults/Abuse & Neglect

DATE: December 11, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill increases the felony degree of the offense of aggravated abuse of an elderly person or disabled adult from a second degree felony to a first degree felony. The increase in felony degree means an increase in the maximum penalty that may be imposed for the offense. A second degree felony has a maximum penalty of 15 years in state prison, while a first degree felony generally has a maximum penalty of 30 years in state prison.

The bill also requires that certified law enforcement personnel receive training in the identification and investigation of elder abuse and neglect.

This bill substantially amends sections 825.102 and 921.0022, and creates section 943.17296, Florida Statutes.

II. Present Situation:

Criminal Penalties

Chapter 825, F.S., is the current criminal penalty statute for abuse, neglect, and exploitation of an elderly person¹ or disabled adult.² Section 825.102(2), F.S., provides that it is a second degree

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.)

felony to commit aggravated abuse of an elderly person or disabled adult. Aggravated abuse of an elderly person or disabled adult occurs when a person:

- Commits aggravated battery on an elderly person or disabled adult;
- Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
- 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.

Chapter 921, F.S., addresses the Criminal Punishment Code, Florida's general sentencing law, and s. 921.0022, F.S., specifies the offense severity level ranking (from least severe to most severe) of felony offenses, excluding capital felonies. This ranking is used to assess sentencing points, which, in addition to sentencing points scored for other factors, are used to compute a lowest permissible sentence for the felony offender. Aggravated abuse of an elderly or disabled person is ranked in Level 8 of the Criminal Punishment Code's offense severity ranking chart (s. 921.0022(3)(h), F.S.). Under current law, the lowest permissible sentence for a first time offender who commits this offense and has no additional sentencing factors is 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. Special training relating to elder abuse is not specifically required by statute. According to information received from the Florida Department of Law Enforcement (FDLE) regarding a bill (SB 276) that is identical to SB 366 and that was introduced in the 2007 Legislative Session, the Criminal Justice Professionalism Program (CJPP) is responsible for developing and maintaining the Criminal Justice Standards and Training Commission-approved Basic Recruit Training Curriculum and for maintaining documentation on the required continuing education for criminal justice officers.³

The FDLE also reported that the Basic Recruit Training Curriculum includes a six-hour unit, "Responding to the Elderly," which addresses the aging process including age-related medical conditions such as dementia, crimes against the elderly, and response and resources. This training unit was developed with the assistance of the Department of Children and Families' Adult Protective Services and the Department of Elderly Affairs. The six-hour unit included in the Basic Recruit Training Curriculum can be extracted and delivered by law enforcement training schools as a separate specialized course to fulfill the continuing education requirement under s. 943.135, F.S. No additional effort on the part of the CJPP is necessary to develop new curriculum or repackage existing curriculum for continuing education training.

³ Therefore, the CJPP would be responsible for maintaining records of successful completion of the continuing education requirement provided for in the bill.

III. Effect of Proposed Changes:

The bill amends s. 825.102, F.S., to increase the felony degree of the offense of aggravated abuse of an elderly person or disabled adult from a second degree felony to a first degree felony. The increase in felony degree means an increase in the maximum penalty that may be imposed for the offense. A second degree felony has a maximum penalty of 15 years in state prison, while a first degree felony generally has a maximum penalty of 30 years in state prison. The court is not required to impose this maximum penalty (unless the lowest permissible sentence scored is the maximum penalty), but the maximum penalty remains a sentencing option for the court.

Section 921.0022, F.S., the offense severity level ranking chart of the Criminal Punishment Code, is amended to make conforming changes to the reference to the felony degree of the offense (the current Level 8 ranking is retained). Changing the felony degree for aggravated abuse of an elderly person or disabled adult to a first degree felony will result in this offense having the same felony degree as aggravated child abuse (s. 827.03(2), F.S.), though aggravated child abuse is a higher ranked crime (Level 9).

The bill also creates s. 943.17296, F.S., which requires certified law enforcement officers to successfully complete training on identifying and investigating elder abuse and neglect as a part of basic recruit training or continuing education before June 30, 2011. The training is to be developed in consultation with the Department of Elderly Affairs and the Department of Children and Family Services and must incorporate instruction on identification of and appropriate responses for persons suffering from dementia and on identifying and investigating elder abuse and neglect. If an officer fails to complete the required training, the officer's certification is inactive until the employing agency notifies the Criminal Justice Standards and Training Commission that the officer has completed the training.

The bill takes effect on July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not yet met to consider whether SB 366 may have a prison bed impact. However, the CJIC estimated that SB 276, a bill identical to SB 366 that was introduced in the 2007 Legislative Session, would have an insignificant prison bed impact. In regard to SB 276, the FDLE did not indicate that that bill would have any fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.