

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 253 Protection of Vulnerable Adults

SPONSOR(S): Criminal Justice Subcommittee; Healthy Families Subcommittee; Passidomo and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N, As CS	Poche	Schoolfield
2) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Cunningham	Cunningham
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Section 812.0145, F.S., reclassifies theft offenses committed against persons who are 65 years of age or older. The statute provides, in part, that if the funds, assets, or property involved is valued at \$300 or more, but less than \$10,000, the theft is a third degree felony. The bill reduces the minimum threshold amount necessary to trigger the third degree felony penalty from \$300 to \$150.

Chapter 825, F.S., establishes a variety of offenses relating to the abuse, neglect, and exploitation of elderly persons and disabled adults. The chapter currently provides the following definitions, which apply to all of the criminal offenses contained therein:

- “Disabled adult” means a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.
- “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 to provide adequately for his or her own care is impaired.

The bill replaces the terms “elderly person” and “disabled adult” throughout all of ch. 825, F.S., with the term “vulnerable adult.” The bill defines the terms:

- “Vulnerable adult” as “a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired;” and
- “Impaired” as “having any loss or abnormality of a psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction; brain damage; or the infirmities of aging that results in a vulnerable adult’s decreased ability to perform mental tasks and physical activities of daily living as defined in s. 415.102, F.S.”

Because the definition of “vulnerable adult” includes more individuals than the definitions of “elderly person” and “disabled adult,” each of the offenses in ch. 825, F.S., will apply to a broader range of people.

The bill also replaces the terms “elderly person” and “disabled adult” with the term “vulnerable adult” in a multitude of other statutes that affect hearsay exceptions, manslaughter, level 2 background screenings, court-ordered HIV testing, and aggravated white collar crime offenses.

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill, as originally filed, will have an insignificant prison bed impact on the Department of Corrections. The amendments adopted by the Healthy Families Subcommittee and the Criminal Justice Subcommittee will likely not affect this determination.

The bill provides an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Elder Population in the U.S. and Florida

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the United States- 40,300,000, or 13% of the total population.¹ By 2050, people aged 65 and over are expected to comprise 20% of the total population of the U.S.²

Many counties in Florida have an elder population that is greater than 15% of total county population.³ In 2010, Florida had the highest proportion of people over the age of 65, making up 17% of the total state population.⁴ Sumter County had the highest proportion of people over the age of 65 in the nation, accounting for 43% of total county population.⁵ Several other counties had the population of individuals age 65 and over exceed 30% of total county population.⁶

Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. Individuals who survive to the age of 65 can be expected to live another 19.2 years.⁷ A larger and older population in Florida greatly increases the pool of potential victims of elder abuse, neglect, or exploitation.

Disabled Population in the U.S. and Florida

In 2011, there were 11,468,487 people aged 18 to 64 in Florida.⁸ Of that number of people, 1,131,661, or 9.9%, people had at least one disability.⁹ The number of individuals aged 65 and older in Florida in 2011 totaled 3,296,861.¹⁰ Of that number of people, 1,136,372, or 34.5%, had at least one disability.¹¹

According to the Alzheimer's Association (association), it is estimated that the number of people suffering from Alzheimer's disease in Florida in 2010 totaled 450,000.¹² The association estimates that 590,000 people in Florida will have Alzheimer's disease in 2025.¹³ A study in 2009 found that nearly 50% of people with dementia experience some form of abuse.¹⁴ Another study in 2010 found that 47% of participants with dementia had been mistreated by their caregivers.¹⁵

¹ Administration on Aging, National Center for Elder Abuse, *America's Growing Elderly Population*, available at www.ncea.aoa.gov/Library/Data/index.aspx (citing U.S. Department of Commerce, U.S. Census Bureau, *The older population: 2010*, 2011, Publication C2010BR-09) (last visited on March 21, 2013).

² *Id.*, (citing U.S. Department of Commerce, U.S. Census Bureau, *The next four decades: The older population in the United States: 2010 to 2050*, 2010, Publication P25-1138).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at page 24.

⁸ U.S. Department of Commerce, U.S. Census Bureau, American FactFinder, *Selected Social Characteristics in the U.S.-Florida-2011 American Community Survey 1 year estimates*, available at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP02&prodType=table (last visited on March 21, 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Alzheimer's Association, *2012 Alzheimer's disease facts and figures*, *Alzheimer's and Dementia: The Journal of the Alzheimer's Association*, March 2012; 8:131-168.

¹³ *Id.*

¹⁴ See supra, FN 1 (citing Cooper, C., Selwood, A., et al., *Abuse of people with dementia by family carers: Representative cross sectional survey*, *British Medical Journal*, 338, b155).

¹⁵ *Id.* (citing Wigglesworth, A., Mosqueda, L., et al., *Screening for abuse and neglect of people with dementia*, *Journal of the American Geriatrics Society*, 58(3), 493-500).

In 2011, there were an estimated 35,044,480 disabled persons in the United States who were victims of a crime.¹⁶ Of that number, an estimated 14,467,280, or 41.3%, were aged 65 and over. An estimated 19,000,000 were aged 18 to 64.

Abuse, Neglect, and Exploitation of the Elderly

The true incidence of elder abuse, neglect, or exploitation is difficult to assess. According to the Centers for Disease Control and Prevention, between 1,000,000 and 2,000,000 persons aged 65 and older have been abused, neglected, or exploited by a caregiver.¹⁷ The average annual rate of violent victimization against persons with disabilities aged 65 and older increased from 2010 (3 per 1,000) to 2011 (4.4 to 1,000), a nearly 50% increase.¹⁸

During fiscal year 2011-2012, the most prevalent relationships of an elder abuse perpetrator to the victim in verified reports of abuse, neglect, or exploitation were son or daughter (29% of total reports), institution employee (nearly 21% of total reports, and “other” (10.5% of total reports).¹⁹

According to the Florida Department of Elder Affairs, during fiscal year 2011-2012, the three most prevalent forms of maltreatment of elders were self-neglect, inadequate supervision, and exploitation.²⁰

Abuse, Neglect, and Exploitation of the Disabled

The vast majority of individuals who abuse, neglect, or exploit persons with disabilities are most often family members and caregivers. Thirty percent of adults with disabilities who used personal assistance services to support activities of daily living, reported one or more types of mistreatment, including physical abuse, verbal abuse, or financial abuse, by their primary care provider.²¹ Abuse, neglect, and exploitation most frequently occur in the home environment. However, such maltreatment also occurs in facilities. According to the National Ombudsman Reporting System statistics for 2011, there were a total of 7,550 complaints against facilities in Florida.²² Of those complaints, 189, or 2.5 percent, involved abuse, gross neglect, or exploitation.²³

In 2011, the statewide abuse hotline received a total of 15,238 reports involving the alleged abuse, neglect or exploitation of a person between the age of 18 and 59. 1,109 of those reports were substantiated and required additional investigation or action. The hotline received 38,394 reports involving someone aged 60 and over. 3,654 of those reports were substantiated and required additional investigation or action. The following chart²⁴ illustrates the number of reports received, broken down by type of abuse, total reports, substantiated reports, and age:

	Age 60+	Substantiated (60+)	Age 18-59	Substantiated (18-59)
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¹⁶ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Harrell, Erika, *Crime Against Persons with Disabilities 2009-2011, Statistical Tables*, December 19, 2012, page 18; available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd0911st.pdf> (last visited on March 21, 2013).

¹⁷ Centers for Disease Control and Prevention, *Elder Maltreatment: Consequences*, available at <http://www.cdc.gov/violenceprevention/eldermaltreatment/consequences.html> (citing National Research Council, *Elder mistreatment: abuse, neglect, and exploitation in an aging American*, 2003, In: Bonnie R.J., and Wallace R.B., editors, *Panel to Review Risk and Prevalence of Elder Abuse and Neglect*, Washington, D.C.: The National Academies Press) (last visited on March 21, 2013).

¹⁸ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Truman, J., and Planty, M., *Criminal Victimization, 2011*, October 2012, page 5; available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv11.pdf> (last visited on March 21, 2013).

¹⁹ See supra, FN 16 at slide 28.

²⁰ Florida Department of Elder Affairs, *Brochure: The Power to Prevent Elder Abuse Is In Your Hands*, available at http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder_Abuse_Brochure_English.pdf (last visited on March 21, 2013).

²¹ Oktay, J., and Tompkins, C., *Personal assistance providers' mistreatment of disabled adults*, *Health & Social Work*, 29(3), 177-188; available at http://pascenter.org/publications/publication_home.php?id=372 (last visited on March 21, 2013).

²² Administration on Aging, Aging Integrated Database (AGID), National Ombudsman Reporting System (NORS), *Complaints 2011*, available at www.agidnet.org/CustomTables/NORS/Complaints/Data/ (last visited on March 21, 2013).

²³ *Id.*

²⁴ The chart was created using information contained in Florida's 2012 State of Adult Protective Services Baseline Assessment. The assessment is available through the National Adult Protective Services Association at www.napsa-now.org/wp-content/uploads/2013/02/APS-Report-FL.pdf (last visited on March 21, 2013), also, during FY 2011-2012, the Department of Children and Families made three referrals to law enforcement involving false reports of adult abuse, neglect, or exploitation, as required by s. 415.111(5)(a), F.S. The department is also required to report the number of false reports of adult abuse, neglect, or exploitation to the Legislature. The report, entitled *2012 Number of False Reports of Abuse, Neglect or Exploitation of Disabled Adult or Elderly Person Referred to Law Enforcement*, is available at www.dcf.state.fl.us/programs/aps/docs/2012NumberFalseRptsANE.pdf (last visited on March 21, 2013).

Self-Neglect	11,533	1,991 (17%)	2,601	527 (2%)
Physical Abuse	4,638	270 (6%)	3,317	140 (4%)
Emotional Abuse	2,585	76 (3%)	1,351	21 (2%)
Sexual Abuse	296	4 (1%)	603	20 (3%)
Neglect by others	12,841	736 (6%)	5,796	310 (5%)
Financial abuse	6,320	569 (9%)	1,551	87 (6%)
Other abuse (death)	171	8 (5%)	49	4 (8%)
TOTAL	38,384	3,654 (9.5%)	15,238	1,109 (7%)

Financial Exploitation

According to the National Center on Elder Abuse, financial exploitation can include “the illegal or improper use of an elder’s funds, property, or assets.”²⁵ Examples of financial exploitation include, but are not limited to, forging an older person’s signature, misusing or stealing an older person’s money or possessions, coercing or deceiving an older person into signing a document, and the improper use of a conservatorship, guardianship, or power of attorney.²⁶

Financial exploitation is reported less than other forms of abuse. It is believed that only 1 in 14 cases of financial exploitation against disabled adults is reported and that the yearly number of cases nationwide could exceed 850,000. The “typical” victim of financial exploitation is between 70 and 89 years of age, Caucasian, female, frail, and cognitively impaired.²⁷

Impact of Elder and Disabled Abuse

Elders who experience abuse had a 300 percent higher risk of death when compared to elders who did not experience abuse.²⁸ Victims of elder abuse also experience significantly higher levels of psychological distress and lower perceived self-efficacy than elders who have not been abused.²⁹ Elders who have experienced abuse also have more health problems than their peers who have not been victims of abuse. A study has also shown that elder financial abuse has led to a decrease in quality of life for victims and an increase in unnecessary institutionalizations.³⁰

The direct medical costs associated with elder abuse are substantial. The costs of treatment following instances of violent abuse to elders add an estimated \$5.3 billion to annual health care expenditures in the U.S.³¹ The annual financial loss by elders as a result of financial exploitation were estimated to be \$2.9 billion, which is a 12% increase over the costs of financial exploitation in 2008..³²

²⁵ The National Center on Elder Abuse, *Types of Abuse- Financial or Material Exploitation*, available at http://www.ncea.aoa.gov/FAQ/Type_Abuse/index.aspx#financial (last visited on March 21, 2013).

²⁶ *Id.*

²⁷ MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, *Broken Trust: Elders, Family, and Finances, A Study on Elder Financial Abuse Prevention*, March 2009, page 8; see also The National Committee for the Prevention of Elder Abuse and The National Adult Protective Services Association, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*, February 2006, page 20.

²⁸ *Id.*; (citing Dong, X., Simon, M.A., et al., *Elder abuse and mortality: The role of psychological and social wellbeing*, *Gerontology*, 57(6), 549-558 (2011)).

²⁹ *Id.*; (citing Lachs, M.S., Williams, C.S., et al., *The mortality of elder mistreatment*, *Journal of the American Medical Association*, 280(5), 428-432 (1998); see also Comijis, H.C., Penninx, B.W.J.H., et al., *Psychological distress in victims of elder mistreatment: The effects of social support and coping*, *Journal of Gerontology*, 54B(4), 240-245 (1999)).

³⁰ Kemp, B.J., and Mosqueda, L.A., *Elder financial abuse: an evaluation framework and supporting evidence*, *Journal of the American Geriatrics Society*, 53(7), 1123-1127 (2005).

³¹ Mouton, C.P., Rodabough, R.J., et al., *Prevalence and 3-year incidence of abuse among postmenopausal women*, *American Journal of Public Health*, 94(4), 605-612 (2004).

³² National Committee for the Prevention of Elder Abuse, Virginia Tech, MetLife Mature Market Institute, *The MetLife study of elder financial abuse: Crimes of occasion, desperation and predation against America’s elders*, page 2 (2011)(available at [https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse\[1\].pdf](https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse[1].pdf)); see supra, FN 17 at page 5.

Florida Law - Theft from the Elderly

Section 812.0145, F.S., reclassifies theft³³ offenses committed against persons who are 65 years of age or older. The statute provides, in part, 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 offense for which the person is charged shall be reclassified as follows:

- If the funds, assets, or property involved is valued at \$300 or more, but less than \$10,000, it is a third degree felony.³⁴

Effect of the Bill

The bill amends s. 812.0145, F.S., to reduce the minimum threshold amount necessary to trigger the third degree felony penalty from \$300 to \$150.

Florida Law - Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults

Chapter 825, F.S., establishes the following offenses relating to the abuse, neglect, and exploitation of elderly persons and disabled adults.

1. Abuse, Aggravated Abuse, and Neglect of an Elderly Person or Disabled Adult

Section 825.102, F.S., defines “abuse of an elderly person or disabled adult” as:

- Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;
- An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a third degree felony.

“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.³⁵

A person who commits aggravated abuse of an elderly person or disabled adult commits a first degree felony.³⁶

“Neglect of an elderly person or disabled adult” means:

- A caregiver’s failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person’s or disabled adult’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult; or
- A caregiver’s failure to make a reasonable effort to protect an elderly person or disabled adult from abuse, neglect, or exploitation by another person.³⁷

³³ Section 812.014, F.S., the general theft statute, specifies that 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:

- Deprive the other person of a right to the property or a benefit from the property.
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

³⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³⁵ Section 825.102(2), F.S.

³⁶ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement commits a second degree felony.³⁸ Otherwise, the offense is a third degree felony.

2. *Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person*
Section 825.1025, F.S., specifies that “lewd or lascivious battery upon an elderly or disabled person,” a second degree felony, occurs when a person encourages, forces, or entices an elderly or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,³⁹ when the person knows or reasonably should know that the elderly or disabled person either lacks the capacity to consent or fails to give consent.

The statute also makes it a third degree felony for a person to commit lewd or lascivious molestation upon an elderly or disabled person.⁴⁰ “Lewd or lascivious molestation of an elderly person or disabled person” occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly or disabled person when the person knows or reasonably should know that the elderly or disabled person either lacks the capacity to consent or fails to give consent.⁴¹

“Lewd or lascivious exhibition in the presence of an elderly or disabled person,” a third degree felony, occurs when the person commits any of the following acts, and knows or reasonably should know that the elderly or disabled person either lacks the capacity to consent or fails to give consent to having such an act committed in his or her presence:

- Intentionally masturbates;
- Intentionally exposes his or her genitals in a lewd or lascivious manner; or
- Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.⁴²

3. *Exploitation of an Elderly Person or Disabled Adult*

Section 825.103, F.S., defines exploitation of an elderly person or disabled adult to mean:

- Knowingly, by deception⁴³ or intimidation⁴⁴, 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;

³⁷ Neglect of an elderly person or disabled adult may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death, to an elderly person or disabled adult. Section 825.102(3), F.S.

³⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³⁹ Section 825.1025(1), F.S., defines “sexual activity” as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

⁴⁰ Section 825.1025(3), F.S.

⁴¹ *Id.*

⁴² Section 825.1025(4), F.S.

⁴³ Section 825.101(3), F.S., defines “deception” as misrepresenting or concealing a material fact relating to: services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult; terms of a contract or agreement entered into with an elderly person or disabled adult; or an existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.

⁴⁴ Section 825.101(8), F.S., defines “intimidation” as the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

- 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;⁴⁵ or
- Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

If the funds, assets, or property involved in a violation of s. 825.103, F.S., are:

- Valued at \$100,000 or more, it is a first degree felony;
- Valued at \$20,000 or more but less than \$100,000, it is a second degree felony; and
- Valued at less than \$20,000, it is a third degree felony.

Definitions

Chapter 825, F.S., currently provides the following definitions, which apply to all of the criminal offenses described above:

- "Disabled adult" means a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.⁴⁶
- "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 to provide adequately for his or her own care is impaired.⁴⁷

In contrast, ch. 415, F.S., the "Adult Protective Services Act," which provides protective services for persons in need because of age or disability, does not use the terms "disabled adult" or "elderly person." Instead, ch. 415, F.S., uses the term "vulnerable adult." Section 415.102, F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

Effect of the Bill

The bill replaces the terms "elderly person" and "disabled adult" throughout all of ch. 825, F.S., with the term "vulnerable adult." The bill defines the terms:

- "Vulnerable adult" as "a person 18 years of age or older whose ability to perform the normal activities of daily living⁴⁸ or to provide for his or her own care or protection is impaired;" and
- "Impaired" as "having any loss or abnormality of a psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction; brain damage; or the infirmities of aging that results in a vulnerable adult's decreased ability to perform mental tasks and physical activities of daily living as defined in s. 415.102, F.S."

Because the definition of "vulnerable adult" includes more individuals than the definitions of "elderly person" and "disabled adult," each of the above-described offenses in ch. 825, F.S., will apply to a broader range of people.

⁴⁵ Section 825.101(9), F.S., defines "lacks capacity to consent" as an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.

⁴⁶ Section 825.101(4), F.S.

⁴⁷ Section 825.101(5), F.S.

⁴⁸ Section 415.102, F.S., defines "activities of daily living" as functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

The bill amends s. 825.1025, F.S., relating to lewd or lascivious offenses upon vulnerable adults, to apply the definitions of “lewd or lascivious battery upon a vulnerable adult,” “lewd or lascivious molestation of a vulnerable adult,” and “lewd or lascivious exhibition in the presence of a vulnerable adult” to a person who knows or reasonably should know that the vulnerable adult’s ability to consent is *impaired* (rather than knowing that the vulnerable adult lacks *the capacity to consent*).

The bill also amends the definition of “exploitation of a vulnerable adult” in s. 825.103(1), F.S., to:

- Delete the requirement that a person use *deception or intimidation* to obtain or use a vulnerable adult’s funds, assets, or property; and
- Apply to a person who knows or reasonably should know that the vulnerable adult’s ability to consent is *impaired* (rather than knowing that the vulnerable adult *lacks the capacity to consent*).

The removal of “deception” and “intimidation” as elements necessary to prove exploitation allows a prosecutor to pursue charges against an individual who exploits a vulnerable adult in a broader range of instances.

The bill also deletes definitions of the terms “deception,” “intimidation,” and “lacks capacity to consent,” as these terms are no longer applicable to ch. 825, F.S.

Hearsay in Criminal Cases

“Hearsay” is a statement,⁴⁹ other than one made by the declarant⁵⁰ while testifying at trial or a hearing,⁵¹ offered in evidence to prove the truth of the matter asserted.⁵² Currently, hearsay statements are not admissible at trial unless a statutory exception applies.⁵³

Currently, s. 90.803(24), F.S., creates a hearsay exception specifically relating to elderly persons and disabled adults. The statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by an elderly person or disabled adult, as defined in s. 825.101, F.S., describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant elderly person or disabled adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;⁵⁴ and
- The elderly person or disabled adult either:
 - Testifies; or
 - Is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability must include a finding by the court that the elderly person’s or disabled adult’s participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1), F.S.⁵⁵

⁴⁹ A “statement” is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion; see s. 90.801(1)(a), F.S.

⁵⁰ The “declarant” is the person who made the statement; see s. 90.801(1)(b), F.S.

⁵¹ Often referred to simply as an “out-of-court statement.”

⁵² Section 90.801(1)(c), F.S.

⁵³ Section 90.802, F.S.

⁵⁴ In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate.

⁵⁵ Section 90.804(1), F.S., specifies that “unavailability as a witness” means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement;
- Persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant’s effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or

The party seeking to introduce a hearsay statement under the exception at s. 90.804, F.S., bears the burden of establishing that the declarant is unavailable as a witness. The trial judge makes the determination of such unavailability at a pretrial hearing.⁵⁶

Effect of the Bill

The bill amends s. 90.803(24), F.S., to replace the terms “elderly person” and “disabled adult” with the term “vulnerable adult,” and defines this term in accordance with ch. 825, F.S. The bill also adds to the instances in which a court can find that a person is “unavailable as a witness” by specifying that such finding can be made if the vulnerable adult is impaired (as defined above).

Manslaughter

Section 782.07(2), F.S., specifies that a person commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree, if such person causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3), F.S.

Effect of the Bill

The bill broadens the application of s. 782.07(2), F.S., by replacing the terms “elderly person” and “disabled adult” with the term “vulnerable adult,” and defining this term in accordance with ch. 825, F.S.

Effect of the Bill - Conforming Changes

The bill makes numerous conforming changes to replace the terms “elderly person” and “disabled adult” with the term “vulnerable adult.” These include:

- Amending s. 435.04, F.S., to specify that a Level 2 background screening must ensure that persons subject to such screenings have not been arrested for or convicted of a violation of ss. 825.102, 825.1025, and 825.103, F.S., relating to vulnerable adults;
- Amending s. 775.084, F.S., to include persons with specified prior convictions, including aggravated abuse of a vulnerable adult, in the definition of a “violent career criminal;”
- Amending s. 775.0844, F.S., to specify that it is a first degree felony for a person to commit an aggravated white collar crime if, in doing so, he or she victimizes 10 or more vulnerable adults and thereby obtains or attempts to obtain \$50,000 or more;
- Amending s. 775.0877, F.S., to require the court to order persons convicted vulnerable person abuse or aggravated vulnerable person abuse (s. 825.102(1) and (2), F.S.) to undergo HIV testing;
- Amending s. 921.0022, F.S., to conform terminology in the offense severity ranking chart;
- Amending s. 948.06, F.S., to include “lewd or lascivious offenses upon or in the presence of a vulnerable person” in the definition of “qualifying offense” for purposes of determining who is a violent offender of special concern;
- Amends s. 960.003, F.S., to allow vulnerable adults who are the victim of a specified sexual offense to request the court to order hepatitis and HIV testing; and
- Amending s. 1012.315, F.S., to disqualify a person from employment as certain educational positions if the person has been convicted of any offense in ch. 825, F.S., relating to vulnerable adults.

B. SECTION DIRECTORY:

Section 1: Amends s. 812.0145, F.S., relating to theft from persons 65 years of age or older; reclassification of offenses.

Section 2: Renames ch. 825, F.S., to “Abuse, Neglect, and Exploitation of Vulnerable Adults.”

Section 3: Amends s. 825.101, F.S., relating to definitions.

Section 4: Amends s. 825.102, F.S., relating to abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.

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- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant’s attendance or testimony by process or other reasonable means.

⁵⁶ See *Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).

- Section 5:** Amends s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 6:** Amends s. 825.103, F.S., relating to exploitation of an elderly person or disabled adult; penalties.
- Section 7:** Amends s. 825.105, F.S., relating to good faith assistance.
- Section 8:** Amends s. 825.106, F.S., relating to criminal actions involving elderly persons or disabled adults; speedy trial.
- Section 9:** Amends s. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.
- Section 10:** Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 11:** Amends s. 775.084, F.S., relating to violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.
- Section 12:** Amends s. 775.0844, F.S., relating to White Collar Crime Victim Protection Act.
- Section 13:** Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.
- Section 14:** Amends s. 782.07, F.S., relating to manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 15:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 16:** Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.
- Section 17:** Amends s. 960.003, F.S., relating to hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.
- Section 18:** Amends s. 1012.315, F.S., relating to disqualification from employment.
- Section 19:** Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill, as originally filed, will have an insignificant prison bed impact on the Department of Corrections. The amendments adopted by the Healthy Families Subcommittee and the Criminal Justice Subcommittee will likely not affect this determination.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DCF has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Healthy Families Subcommittee adopted a strike-all amendment to the bill. The strike-all amendment made the following changes to the bill:

- Removed all proposed revisions to chapter 415, F.S., relating to adult protective services, which eliminated the fiscal impact.
- Renames chapter 825, F.S., to “Abuse, Neglect, and Exploitation of Vulnerable Adults.”
- Deletes the definitions of “deception” and “intimidation” from s. 825.101, F.S., and adds the definition of “impaired” to the same section.
- Clarifies the definition of “vulnerable adult” in s. 825.101, F.S.
- Deletes, from the definition of “exploitation of a vulnerable adult”, the requirement an individual use deception or intimidation to prove exploitation.
- Changes the title of s. 90.803(24), F.S., to read “HEARSAY EXCEPTION; STATEMENT OF VULNERABLE ADULT.”
- Allows a court, for purposes of determining admissibility of an out-of-court statement of a vulnerable adult under the hearsay exception, to determine that the vulnerable adult is unavailable because he or she is impaired, as defined in s. 825.101, F.S.

The bill was reported favorably as a committee substitute.

On March 27, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments increased the minimum threshold amount necessary to trigger the third degree felony penalty in s. 812.0145, F.S., from \$0 to \$150.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.