

By Senator Book

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1 A bill to be entitled
 2 An act relating to offenses against elderly persons or
 3 disabled adults; providing a short title; amending s.
 4 775.0863, F.S.; specifying that the reclassification
 5 of a specified crime occurs if the crime was based in
 6 whole or in part on a disability of any person;
 7 replacing the term "mental or physical disability"
 8 with the term "disability"; defining the term
 9 "disability"; amending s. 825.103, F.S.; providing
 10 enhanced criminal penalties for second or subsequent
 11 offenses of exploitation of an elderly person or a
 12 disabled adult if the funds, assets, or property
 13 involved has a specified valuation; amending s.
 14 877.19, F.S.; expanding the data the Governor is
 15 required to collect and disseminate to include
 16 incidents of criminal acts that evidence prejudice
 17 based on disability; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. This act may be cited as the "Don Bryant
 22 Protection Act."

23 Section 2. Section 775.0863, Florida Statutes, is amended
 24 to read:

25 775.0863 Evidencing prejudice while committing offense
 26 against person with ~~mental or physical~~ disability;
 27 reclassification.-

28 (2)(1)(a) The penalty for any felony or misdemeanor must
 29 ~~shall~~ be reclassified as provided in this subsection if the

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30 commission of such felony or misdemeanor evidences prejudice
31 based in whole or in part on a ~~mental or physical~~ disability of
32 any person the victim:

33 (a)1. A misdemeanor of the second degree is reclassified to
34 a misdemeanor of the first degree.

35 (b)2. A misdemeanor of the first degree is reclassified to
36 a felony of the third degree.

37 (c)3. A felony of the third degree is reclassified to a
38 felony of the second degree.

39 (d)4. A felony of the second degree is reclassified to a
40 felony of the first degree.

41 (e)5. A felony of the first degree is reclassified to a
42 life felony.

43 (1)(b) As used in this section ~~paragraph (a)~~, the term
44 "disability" ~~"mental or physical disability"~~ means a physical or
45 mental impairment that substantially limits one or more of a
46 person's major life activities. The term includes, but is not
47 limited to, Alzheimer's disease and dementia ~~condition of mental~~
48 ~~or physical incapacitation due to a developmental disability,~~
49 ~~organic brain damage, or mental illness, and one or more mental~~
50 ~~or physical limitations that restrict a person's ability to~~
51 ~~perform the normal activities of daily living.~~

52 (3)(2) A person or an organization that establishes by
53 clear and convincing evidence that it has been coerced,
54 intimidated, or threatened in violation of this section has a
55 civil cause of action for treble damages, an injunction, or any
56 other appropriate relief in law or in equity. Upon prevailing in
57 such civil action, the plaintiff may recover reasonable attorney
58 fees and costs.

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59 (4)~~(3)~~ It is an essential element of this section that the
60 record reflect that the defendant perceived, knew, or had
61 reasonable grounds to know or perceive that the person ~~victim~~
62 was within the class delineated in this section.

63 Section 3. Subsection (3) of section 825.103, Florida
64 Statutes, is amended, and subsection (1) of that section is
65 republished, to read:

66 825.103 Exploitation of an elderly person or disabled
67 adult; penalties.—

68 (1) "Exploitation of an elderly person or disabled adult"
69 means:

70 (a) Knowingly obtaining or using, or endeavoring to obtain
71 or use, an elderly person's or disabled adult's funds, assets,
72 or property with the intent to temporarily or permanently
73 deprive the elderly person or disabled adult of the use,
74 benefit, or possession of the funds, assets, or property, or to
75 benefit someone other than the elderly person or disabled adult,
76 by a person who:

77 1. Stands in a position of trust and confidence with the
78 elderly person or disabled adult; or

79 2. Has a business relationship with the elderly person or
80 disabled adult;

81 (b) Obtaining or using, endeavoring to obtain or use, or
82 conspiring with another to obtain or use an elderly person's or
83 disabled adult's funds, assets, or property with the intent to
84 temporarily or permanently deprive the elderly person or
85 disabled adult of the use, benefit, or possession of the funds,
86 assets, or property, or to benefit someone other than the
87 elderly person or disabled adult, by a person who knows or

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88 reasonably should know that the elderly person or disabled adult
89 lacks the capacity to consent;

90 (c) Breach of a fiduciary duty to an elderly person or
91 disabled adult by the person's guardian, trustee who is an
92 individual, or agent under a power of attorney which results in
93 an unauthorized appropriation, sale, transfer of property,
94 kickback, or receipt of an improper benefit. An unauthorized
95 appropriation under this paragraph occurs when the elderly
96 person or disabled adult does not receive the reasonably
97 equivalent financial value in goods or services, or when the
98 fiduciary violates any of these duties:

99 1. For agents appointed under chapter 709:

- 100 a. Committing fraud in obtaining their appointments;
101 b. Obtaining appointments with the purpose and design of
102 benefiting someone other than the principal or beneficiary;
103 c. Abusing their powers;
104 d. Wasting, embezzling, or intentionally mismanaging the
105 assets of the principal or beneficiary; or
106 e. Acting contrary to the principal's sole benefit or best
107 interest; or

108 2. For guardians and trustees who are individuals and who
109 are appointed under chapter 736 or chapter 744:

- 110 a. Committing fraud in obtaining their appointments;
111 b. Obtaining appointments with the purpose and design of
112 benefiting someone other than the principal or beneficiary;
113 c. Abusing their powers; or
114 d. Wasting, embezzling, or intentionally mismanaging the
115 assets of the ward or beneficiary of the trust;

116 (d) Misappropriating, misusing, or transferring without

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117 authorization money belonging to an elderly person or disabled
118 adult from an account in which the elderly person or disabled
119 adult placed the funds, owned the funds, and was the sole
120 contributor or payee of the funds before the misappropriation,
121 misuse, or unauthorized transfer. This paragraph only applies to
122 the following types of accounts:

123 1. Personal accounts;

124 2. Joint accounts created with the intent that only the
125 elderly person or disabled adult enjoys all rights, interests,
126 and claims to moneys deposited into such account; or

127 3. Convenience accounts created in accordance with s.
128 655.80;

129 (e) Intentionally or negligently failing to effectively use
130 an elderly person's or disabled adult's income and assets for
131 the necessities required for that person's support and
132 maintenance, by a caregiver or a person who stands in a position
133 of trust and confidence with the elderly person or disabled
134 adult; or

135 (f) Knowingly obtaining or using, endeavoring to obtain or
136 use, or conspiring with another to obtain or use an elderly
137 person's or a disabled adult's funds, assets, property, or
138 estate through intentional modification, alteration, or
139 fraudulent creation of a plan of distribution or disbursement
140 expressed in a will, trust agreement, or other testamentary
141 devise of the elderly person or disabled adult without:

142 1. A court order, from a court having jurisdiction over the
143 elderly person or disabled adult, which authorizes the
144 modification or alteration;

145 2. A written instrument executed by the elderly person or

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146 disabled adult, sworn to and witnessed by two persons who would
147 be competent as witnesses to a will, which authorizes the
148 modification or alteration; or

149 3. Action of an agent under a valid power of attorney
150 executed by the elderly person or disabled adult which
151 authorizes the modification or alteration.

152 (3) (a) If the funds, assets, or property involved in the
153 exploitation of an ~~the~~ elderly person or a disabled adult is
154 valued at \$50,000 or more, the offender commits:

155 1. For a first offense, a felony of the first degree,
156 punishable as provided in s. 775.082, s. 775.083, or s. 775.084

157 2. For a second or subsequent offense, a felony of the
158 first degree, punishable as provided in s. 775.082, s. 775.083,
159 or s. 775.084, and must be sentenced to a mandatory minimum term
160 of imprisonment of 6 years.

161 (b) If the funds, assets, or property involved in the
162 exploitation of an ~~the~~ elderly person or a disabled adult is
163 valued at \$10,000 or more, but less than \$50,000, the offender
164 commits:

165 1. For a first or second offense, a felony of the second
166 degree, punishable as provided in s. 775.082, s. 775.083, or s.
167 775.084.

168 2. For a third or subsequent offense, a felony of the first
169 degree, punishable as provided in s. 775.082, s. 775.083, or s.
170 775.084.

171 (c) If the funds, assets, or property involved in the
172 exploitation of an elderly person or a disabled adult is valued
173 at less than \$10,000, the offender commits:

174 1. For a first or second offense, a felony of the third

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175 degree, punishable as provided in s. 775.082, s. 775.083, or s.
176 775.084.

177 2. For a third or subsequent offense, a felony of the
178 second degree, punishable as provided in s. 775.082, s. 775.083,
179 or s. 775.084.

180 Section 4. Subsection (2) of section 877.19, Florida
181 Statutes, is amended to read:

182 877.19 Hate Crimes Reporting Act.—

183 (2) ACQUISITION AND PUBLICATION OF DATA.—The Governor,
184 through the ~~Florida~~ Department of Law Enforcement, shall collect
185 and disseminate data on incidents of criminal acts that evidence
186 prejudice based on race, religion, ethnicity, color, ancestry,
187 sexual orientation, disability, or national origin. All law
188 enforcement agencies shall report monthly to the ~~Florida~~
189 Department of Law Enforcement concerning such offenses in such
190 form and in such manner as prescribed by rules adopted by the
191 department. Such information shall be compiled by the department
192 and disseminated upon request to any local law enforcement
193 agency, unit of local government, or state agency.

194 Section 5. This act shall take effect July 1, 2022.