

**STORAGE NAME:** h0835z.cpcs.doc

**DATE:** June 13, 2002

**\*\*AS PASSED BY THE LEGISLATURE\*\***

**CHAPTER #:** 2002-162, Laws of Florida

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
FINAL ANALYSIS**

**BILL #:** HB 835

**RELATING TO:** Theft From Persons Age 65 or Older

**SPONSOR(S):** Representative Gardiner

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 10 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
- (4)
- (5)

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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 835 creates a new section of statute which provides penalties for theft from a person 65 years of age or older. The bill also requires the offender to make restitution to the victim and to perform up to 500 hours of community service work.

The Criminal Justice Estimating Conference determined this bill would have an indeterminate/minimal fiscal impact on the prison population system.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Exploitation of Elderly or Disabled Adult**

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, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(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, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(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,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

### **Theft**

The theft statute 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.
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.

s. 812.014, F.S.

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>1</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.

### **Restitution**

Section 775.089, F.S. requires a trial judge to order a defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode unless the judge finds a clear and compelling reason not to order such restitution.

### **C. EFFECT OF PROPOSED CHANGES:**

The bill reclassifies penalties for theft 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 is 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.

The bill also requires a person who is convicted of theft of more than \$1,000 from a person age 65 or older to make restitution to the victim of the offense and to perform up to 500 hours of

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<sup>1</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.

community service work<sup>2</sup>. The bill provides that restitution and community service work shall be in addition to any fine or sentence which may be imposed.

The bill also ranks the newly created theft offenses in the offense severity ranking chart of the Criminal Punishment Code. Theft of between \$300 and \$10,000 will be ranked in level 3, theft of between \$10,000 and \$50,000 will be ranked in level 5 and theft of more than \$100,000 will be ranked in level 7.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 812.0145 relating to theft from persons 65 years of age or older.

Section 2: Amends s. 921.0022, F.S.; amending offense severity ranking chart.

Section 3: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference met to determine the prison bed impact of this bill on January 28, 2002. The conference decided that the bill will have an indeterminate but likely minimal impact on the Department of Corrections. The Department does not keep information on the age of the victim in theft cases.

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<sup>2</sup> Section 784.08 which relates to assault or battery of an elderly person contains a requirement that the sentencing judge order the offender to make restitution to the victim and to perform up to 500 hours of community service work.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

*Committee Amendments:*

The Committee on Crime Prevention, Corrections & Safety adopted two amendments offered by the sponsor which were later incorporated into the bill. Under the original bill, theft of any amount less than \$10,000 would have been a third degree felony. By contrast, under the general theft statute, the theft of less than \$300 is a misdemeanor. The bill was amended to provide that theft of more than \$300 and less than \$10,000 from a person 65 years of age or older is a third degree felony. The second amendment ranked the newly created offenses in the offense severity ranking chart of the Criminal Punishment Code. As originally drafted, the bill did not rank the offenses within the offense severity ranking chart. As a result, the offenses would have defaulted as provided elsewhere in statute. In some instances, this would have resulted in the lowest permissible sentence for the newly created offense being lower than the lowest permissible sentence if the offense were charged under the existing theft statute.

*Floor Amendments:*

After passing out of the House, HB 835 was amended on the Senate floor to provide that the offender must know or have reason to believe that the victim was 65 years of age or older in order to be convicted of the newly created offense.

**STORAGE NAME:** h0835z.cpcs.doc

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**PAGE:** 6

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

Trina Kramer

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

Staff Director:

Gregory M. Davis

James P. DeBeaugrine

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

David De La Paz

Trina Kramer

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:**

Prepared by:

Staff Director:

Trina Kramer

Trina Kramer