

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 992

SPONSOR: Criminal Justice Committee and Senator Futch

SUBJECT: Theft from Persons 65 Years of Age or Older

DATE: February 18, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The Committee Substitute for Senate Bill 992 would create a specialized statute for theft victims who are 65 years of age or older. It would reclassify penalties for theft when the offender knew or had reason to believe that the victim was 65 years of age or older, as follows:

- If the funds, assets, or property involved in the theft is valued at \$50,000 or more, the offense would be a first degree felony;
- If the funds, assets, or property involved in the theft is valued at \$10,000 or more but less than \$50,000, the offense would be a second degree felony; and
- If the funds, assets, or property involved in the theft is valued at \$300 or more, but less than \$10,000, the offense would be a third degree felony.

This CS would create section 812.0145 of the Florida Statutes.

## II. Present Situation:

### Exploitation:

Financial exploitation of an elderly person or disabled adult is criminalized under s. 825.103, F.S., depending on the value of the funds, assets, or property involved in the exploitation. When the value of the funds involved in the exploitation of an elderly person or disabled adult is over \$100,000, the offense is punishable as a first degree felony. When the value of the funds involved is between \$20,000 and \$100,000, the offense is punishable as a second degree felony. When the value of the funds involved is less than \$20,000, the offense is punishable as a third degree felony.

The statute defines “elderly person” as someone 60 years of age or older who suffers from the infirmities of aging, manifested by advanced age or other physical, mental, or emotional dysfunction, to the extent that such person’s ability to care for himself or herself is impaired. Exploitation requires a person who stands in a position of trust or who has a business relationship with the elderly person, to knowingly obtain or use, or attempt to obtain or use, the elderly person’s funds, assets, or property with the intent to deprive such person of those funds or to benefit someone else with those funds.

If a special trust or business relationship does not exist, the statute requires a person who knows or reasonably should know that the elderly person lacks the capacity to consent, to obtain or use, or attempt to obtain or use, the elderly person’s funds, assets, or property, intending to deprive such person of those funds or to benefit someone else with those funds.

**Theft:**

Section 812.014, F.S., provides penalties for theft, depending upon the amount of money, type of property, or the value of property taken. Theft of property worth more than \$100,000 is punishable as a first degree felony. Theft of property worth more than \$20,000 but less than \$100,000 is punishable as a second degree felony. Theft of property worth between \$300 and \$20,000 is punishable as a third degree felony. Theft of property valued between \$100 and \$300 is punishable as a first degree misdemeanor under the statute.

Theft occurs under s. 812.014, F.S., when a person knowingly obtains or uses, or endeavors to obtain or use, another person’s property, intending to deprive that person of a right to or benefit from that property or to appropriate it to his or her own use or to another unauthorized person’s use.

**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 it finds clear and compelling reasons not to order restitution.

**III. Effect of Proposed Changes:**

The Committee Substitute for Senate Bill 992 would create a specialized statute, s. 812.0145, F.S., for theft victims who are 65 years of age or older. It would reclassify penalties for theft when the offender knew or had reason to believe that the victim was 65 years of age or older, as follows:

- If the funds, assets, or property involved in the theft is valued at \$50,000 or more (general theft statute requires over \$100,000), the offense would be a first degree felony;
- If the funds, assets, or property involved in the theft is valued at \$10,000 or more but less than \$50,000 (general theft statute requires between \$20,000 and \$100,000), the offense would be a second degree felony; and

- If the funds, assets, or property involved in the theft is valued at \$300 or more, but less than \$10,000 (general theft statute requires between \$300 and \$20,000), the offense would be a third degree felony.

These new offenses would be ranked within the offense severity ranking chart of the Criminal Punishment Code in Levels 7, 5, and 3 respectively.

The CS would also require 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 and to perform up to 500 hours of community service work. Restitution and community service work would be in addition to any fine or sentence that could be imposed.

#### **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:

This CS would benefit theft victims 65 years of age or older to the extent that it results in more restitution being paid to such victims.

C. Government Sector Impact:

According to the Criminal Justice Impact Conference, this CS will have an indeterminate, but likely minimal bed impact on the Department of Corrections.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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