

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 603 Exploitation of Vulnerable Persons

SPONSOR(S): LaMarca

TIED BILLS: **IDEN./SIM. BILLS:** SB 232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N	Leshko	Hall
2) Justice Appropriations Subcommittee	15 Y, 0 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 825.103, F.S., prohibits exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. An elderly person is defined as a person 60 years of age or older who is suffering from specified infirmities related to aging, to the extent that the person's ability to provide adequately for his or her own care or protection is impaired. A person is prohibited from exploiting an elderly person or disabled adult (EPDA) by:

- Knowingly obtaining or using an EPDA's funds, assets, or property with the intent to deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA when the person has a specified relationship with the EPDA or knows the EPDA lacks the capacity to consent;
- Breaching a specified fiduciary duty to an EPDA which results in an unauthorized appropriation, sale, property transfer, kickback, or receipt of an improper benefit;
- Misappropriating, misusing, or transferring money without authorization from a specified account belonging to an EPDA;
- Intentionally or negligently failing to effectively use an EPDA's income and assets for the necessities required for their support and maintenance when the person has a specified relationship with the EPDA; or
- Knowingly obtaining or using an EPDA's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust, or other testamentary device.

HB 603 creates s. 817.5695, F.S., to prohibit specified exploitation of a person 65 years of age or older and creates criminal penalties for a violation. The bill prohibits the exploitation of a person 65 years of age or older by:

- Obtaining or using, through deception or intimidation, the property of a person 65 years of age or older:
 - With the intent to deprive that person of the use, benefit, or possession of the property or to benefit someone other than the property owner; or
 - By violating his or her intent as expressed in a will, trust instrument, or other testamentary device by a person with a fiduciary duty to the person 65 years of age or older; or
- Depriving, with the intent to defraud and by means of bribery or kickbacks, a person 65 years of age or older of his or her intangible right to honest services provided by a person with whom he or she has a legal or fiduciary relationship.

The bill provides if the funds, assets, or property involved in the exploitation are valued at:

- \$50,000 or more, the offender commits a first degree felony.
- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.
- Less than \$10,000, the offender commits a third degree felony.

The bill amends s. 775.15, F.S., to require a prosecution for a felony violation of exploitation of a person 65 years of age or older to be commenced within five years after the crime is committed, but specifies that if fraud or breach of fiduciary duty is a material element of the offense, the crime may be prosecuted within five years after discovery of the offense. In a prosecution for a violation of s. 817.5695, F.S., the bill authorizes the state to motion the court to advance a trial on the court's docket and requires the court to consider the victim's age and health in determining whether to advance the trial. The bill provides that a person 65 years of age or older who is in imminent danger of being exploited may petition for an injunction for protection under s. 825.1035, F.S., which provides protection to vulnerable adults under current law.

The bill may have a positive indeterminate impact on prison beds by creating new felony offenses for the exploitation of persons 65 years of age or older.

The bill provides an effective date of October 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0603c.JUA

DATE: 3/15/2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Aging Population

The baby boom refers to the huge number of births in the U.S. from the mid-1940's to the mid-1960's.¹ In Florida specifically, more than 1.7 million babies were born between 1945 and 1964. The number of baby boomers in Florida has only continued to increase in comparison to the rest of the nation due to in-migration. The number of baby boomers in Florida is estimated to remain above five million until at least 2030.² Based on Census population estimates; 21.1 percent of Florida's population is made up of individuals 65 years of age or older.³

Older boomers are wealthier than generations before them, with a median net worth of \$241,333.⁴ However, nationwide, people 65 years of age or older lose an aggregate of at least \$2.6 billion a year due to financial abuse, with possibly more due to unreported cases.⁵

Exploitation of an Elderly Person or Disabled Adult

Section 825.103, F.S., prohibits specified exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. Under s. 825.101(4), F.S., an elderly person is defined as 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 dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. A disabled adult is defined as 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.⁶

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult (EPDA) means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who:
 - Stands in a position of trust and confidence with the EPDA; or
 - Has a business relationship with the EPDA.⁷
- Obtaining or using, or endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone

¹ People born during this time period are commonly referred to as "baby boomers." A baby boomer's age range in 2023 is 58-78 years old.

² Stanley K. Smith, Bureau of Economic and Business Research, University of Florida, *The Baby Boom and the Aging of Florida's Population*, https://bebr.ufl.edu/articles_publication/the-baby-boom-and-the-aging-of-floridas-population/ (last visited Mar. 2, 2023).

³ U.S. Census Bureau, Florida Quick Facts, <https://www.census.gov/quickfacts/fact/table/FL/AGE775221#AGE775221> (last visited Mar. 2, 2023).

⁴ Olivia DaDalt, Forbes, *Why Older Adults are So Susceptible to Financial Fraud* (Dec. 18, 2016), <https://www.forbes.com/sites/nextavenue/2016/12/18/why-older-adults-are-so-susceptible-to-financial-fraud/?sh=197615512770> (last visited Mar. 2, 2023).

⁵ Nursing Home Abuse Center, *Elder Abuse Statistics*, <https://www.nursinghomeabusecenter.com/elder-abuse/statistics/#:-:text=Here%20are%20some%20important%20financial%20elder%20abuse%20statistics%3A,to%20the%20National%20Adult%20Protective%20Services%20Association%20%28NAPSA%29.> (last visited Mar. 2, 2023) (only about 1 in 44 cases of financial abuse are reported).

⁶ S. 825.101(3), F.S.

⁷ S. 825.103(1)(a), F.S.

other than the EPDA, by a person who knows or reasonably should know that the EPDA lacks the capacity⁸ to consent.⁹

- Breach of a fiduciary duty to an EPDA by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback,¹⁰ or receipt of an improper benefit.¹¹ An unauthorized appropriation occurs when the EPDA does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates a specified duty.¹²
- Misappropriating, misusing, or transferring without authorization money belonging to an EPDA from an account¹³ in which the EPDA placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.¹⁴
- Intentionally and negligently failing to effectively use an EPDA's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the EPDA.¹⁵
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the EPDA without:
 - A court order which authorizes the modification or alteration;
 - A written instrument executed by the EPDA, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
 - Action of an agent under a valid power of attorney which authorizes the modification or alteration.¹⁶

Under s. 825.103(3), F.S., if the funds, assets, or property involved in the exploitation of an EPDA is valued at:

- \$50,000 or more, the offender commits a first degree felony.¹⁷
- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.¹⁸
- Less than \$10,000, the offender commits a third degree felony.¹⁹

Time Limitations for Prosecution

The statute of limitations determines the timeframe in which a criminal prosecution must be initiated.²⁰ The statute of limitations in effect at the time a crime is committed controls.²¹ In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time

⁸ "Lacks capacity to consent" means 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. S. 825.101(10), F.S.

⁹ S. 825.103(1)(b), F.S.

¹⁰ "Kickback" means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense. S. 456.054(1), F.S.

¹¹ "Improper benefit" means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods. S. 825.101(8), F.S.

¹² S. 825.103(1)(c), F.S.

¹³ This type of exploitation only applies to the following types of accounts: personal accounts; joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to monies deposited into such account; or convenience accounts created in accordance with s. 655.80, F.S. S. 825.103(d)(1.-3.), F.S.

¹⁴ S. 825.103(1)(d), F.S.

¹⁵ S. 825.103(1)(e), F.S.

¹⁶ S. 825.103(1)(f), F.S.

¹⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. *Id.*

¹⁹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. *Id.*

²⁰ S. 775.15, F.S.

²¹ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

limitations.²² Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.²³

Capital felonies,²⁴ life felonies,²⁵ and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.²⁶ The standard time limitations for other crimes are:²⁷

- Four years for a first degree felony.
- Three years for a second or third degree felony.
- Two years for a first degree misdemeanor.
- One year for a second degree misdemeanor.

Currently, a felony prosecution for exploitation of an EDPA is not subject to standard time limitations, but must be commenced within five years after it is committed.²⁸

Injunction for Protection Against Exploitation of a Vulnerable Adult

Under s. 825.1035, F.S., a vulnerable adult²⁹ in imminent danger of being exploited may file a petition³⁰ for an injunction for protection against exploitation. There is no requirement for any exploitation to have already occurred before the vulnerable adult may petition for an injunction.³¹ A court may grant a temporary injunction ex parte, pending a full hearing on the petition,³² upon making specified findings including that an immediate and present danger of exploitation of the vulnerable adult exists.³³ A temporary injunction may provide the following relief:

- Prohibit the respondent from having any direct or indirect contact with the vulnerable adult;
- Restraining the respondent from committing any acts of exploitation against the vulnerable adult;³⁴
- Freeze the assets or credit lines of the vulnerable adult;
- Award the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share to the vulnerable adult, or bar the respondent from the vulnerable adult's residence; or
- Any other terms the court deems necessary to protect the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.³⁵

In determining whether reasonable cause exists to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider the following factors:

- The existence of a verifiable order of protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.

²² S. 775.15(3)–(4), F.S.

²³ S. 775.15(5), F.S.

²⁴ S. 775.082, F.S.

²⁵ *Id.*

²⁶ S. 775.15(1), F.S.

²⁷ S. 775.15(2), F.S.

²⁸ S. 775.15(10), F.S.

²⁹ "Vulnerable adult" means 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. S. 415.102(28), F.S.

³⁰ Additionally, the guardian of a vulnerable adult, a person or organization acting on behalf of and with the consent of the vulnerable adult or his or her guardian, an agent acting under power of attorney, or a person simultaneously filing a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult may file a petition for injunction for protection from exploitation. S. 825.1035(2)(a)2-5, F.S.

³¹ S. 825.1035(2)(e), F.S.

³² An ex parte temporary injunction may be effective for up to 15 days, unless good cause is shown to extend the injunction, in which case, the temporary injunction may be extended one time for up to an additional 30 days. S. 825.1035(5)(d), F.S.

³³ S. 825.1035(5)(a)1, F.S.

³⁴ The terms of an injunction restraining the respondent remain in effect until the injunction is modified or dissolved. S. 825.1035(8)(c), F.S.

³⁵ Ss. 825.1035(3)(a)22, (5)(a)2, and (8)(a)2, F.S.

- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.
- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.³⁶

A court may grant relief if it finds that:³⁷

- An immediate and present danger of exploitation of the vulnerable adult exists.
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law.
- There is a substantial likelihood of success on the merits.
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent.
- Granting the injunction will not disserve the public interest.
- Such injunction provides for the vulnerable adult's physical or financial safety.³⁸

After a final hearing, a court may grant any additional relief the court deems appropriate, including:

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing the vulnerable adult's frozen assets or credit lines to be returned to the vulnerable adult; or
- Entering a final cost judgment against the respondent and in favor of the petitioner for all taxable costs and entering a final cost judgment against the respondent and in favor of the clerk of the circuit court for all the clerk's filing fees and service charges that were waived.

A court may enforce a violation of an injunction for protection through a civil or criminal contempt proceeding. A state attorney may also prosecute the violation under s. 825.1036, F.S.³⁹ A person who willfully violates an injunction for protection against exploitation of a vulnerable adult commits a first-degree misdemeanor.⁴⁰ A vulnerable adult who suffers an injury or loss as a result of a violation of an injunction for protection may be awarded economic damages and attorney fees and costs for enforcement of such injunction.⁴¹ Alternatively, actual damages may be assessed against the petitioner if the court finds that the petition lacks substantial fact or legal support.⁴²

Speedy Trial

Section 960.0015, F.S., authorizes the state attorney to file a demand for speedy trial if the state has fulfilled its discovery obligations, the charge is a felony or misdemeanor, the court has granted at least three continuances at the defendant's request over the state attorney's objection, and:

- In a felony case, the case is not resolved within 125 days after the date formal charges are filed and the defendant is arrested; or
- In a misdemeanor case, the case is not resolved within 45 days after the date formal charges are filed and the defendant is arrested.

Upon the filing of a demand for speedy trial by the state, the court must schedule a calendar call within five days, at which time the court must schedule the trial to commence no sooner than five days or later than 45 days following the date of the calendar call.

³⁶ S. 825.1035(6), F.S.

³⁷ The findings required for a temporary injunction and continuing an injunction after a full hearing on the petition are the same with the exception of probable cause findings that exploitation occurred if the temporary injunction froze the vulnerable adult's assets. Ss. 825.1035(5)(a)1 and (8)(a)1, F.S.

³⁸ S. 825.1035(5)(a)1, F.S.

³⁹ S. 825.1035(11)(a), F.S.

⁴⁰ 825.1036(4)(a), F.S. A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

⁴¹ S. 825.1036(5), F.S.

⁴² S. 825.1035(12), F.S.

Specifically, under s. 825.106, F.S., the state may motion the court to advance the trial on the court's docket in any criminal action in which an EPDA is the victim. The court must consider the age and health of the victim in determining whether to advance the trial on the docket.⁴³

Effect of Proposed Changes

HB 603 creates s. 817.5695, F.S., to prohibit specified exploitation of a person 65 years of age or older and provide criminal penalties for a violation. The bill prohibits exploitation by:

- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use, through deception or intimidation, the property of a person 65 years of age or older, with the intent to temporarily or permanently:
 - Deprive that person of the use, benefit, or possession of the property; or
 - Benefit someone other than the property owner.
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use, through deception or intimidation, the property of a person 65 years of age or older by violating his or her intent as expressed in a will, trust instrument, or other testamentary device by a person with a fiduciary duty to the person 65 years of age or older.
- Depriving, endeavoring to deprive, or conspiring with another to deprive, with the intent to defraud and by means of bribery or kickbacks, a person 65 years of age or older of his or her intangible right to honest services provided by an individual who has a legal or fiduciary relationship with the person 65 years of age or older.

The bill provides definitions for terms related to the crime of exploitation of a person 65 years of age or older, including, but not limited to:

- “Deception” means:
 - 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 a person 65 years of age or older;
 - Terms of a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older; or
 - An existing or preexisting condition of any property involved in a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older; or
 - Using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a person 65 years of age or older to enter into a contract, agreement, trust, will, or testament.
- “Intimidation” means the communication by word or act to a person 65 years of age or older that the person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.
- “Bribe” means any money or anything of value which is provided, directly or indirectly, to a person who has a legal or fiduciary relationship with a person 65 years of age or older, for the purpose of improperly obtaining or rewarding favorable treatment from the person who has the legal or fiduciary relationship in connection with his or her work for the person 65 years of age or older.
- “Kickback” means money, credit, a fee, a commission, a gift, a gratuity or other compensation, or anything of value which is provided to a person in exchange for preferential treatment for the receipt of goods or services.

Under the bill, if the funds, assets, or property involved in the exploitation are valued at:

- \$50,000 or more, the offender commits a first degree felony.⁴⁴
- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.⁴⁵
- Less than \$10,000, the offender commits a third degree felony.⁴⁶

⁴³ S. 825.106, F.S.

⁴⁴ Ranked as a Level 7 offense on the Offense Severity Ranking Chart of the Criminal Punishment Code (CPC) in s. 921.0022, F.S.

⁴⁵ Ranked as a Level 5 offense on the Offense Severity Ranking Chart of the CPC.

⁴⁶ Ranked as a Level 3 offense on the Offense Severity Ranking Chart of the CPC.

The bill amends s. 775.15, F.S., to authorize a felony prosecution for exploitation of a person 65 years of age or older to be commenced within five years after the exploitation is committed. Further, the bill authorizes a prosecution for a violation of ss. 817.5695, 825.102, or 825.103, F.S., when a material element is fraud or breach of fiduciary obligation, to be commenced within five years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense.

The bill allows the state, when prosecuting a case of exploitation of a person 65 years of age or older, to motion the court, at the time the information is filed or anytime thereafter, to advance the trial on the docket. The court may, after consideration of the victim's age and health, advance the trial on the docket.

Additionally, the bill authorizes a person 65 years of age or older who is in imminent danger of being exploited to petition for an injunction for protection as provided under s. 825.1035, F.S., notwithstanding the limitations in s. 825.1035(2), F.S., regarding who may file a petition for protective injunction. The bill specifies that a violation of such injunction must be handled in the same manner, and subject to the same penalties, as a violation of injunction for protection against exploitation of a vulnerable adult.

The bill provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 817.5695, F.S., relating to exploitation of a person 65 years of age or older.
Section 2: Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.
Section 3: Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.
Section 4: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
The bill may have a positive indeterminate impact on prison beds by creating new felony offenses for the exploitation of persons 65 years of age or older.

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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES