

STORAGE NAME: h0835.cja.doc
DATE: February 7, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 835
RELATING TO: Theft
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
 - (3) HEALTHY COMMUNITIES
 - (4)
 - (5)
-

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.¹ 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. The statute also provides for enhanced penalties for numerous types of theft

Restitution

Section 775.089 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 such restitution.

C. EFFECT OF PROPOSED CHANGES:

The bill reclassifies penalties for theft when the victim is over the age of 65, regardless of whether the offender knew or had reason to know the age of the victim, 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 less than \$10,000, the offense is a third degree felony.

¹ 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 minimum sentence would depend on the value of the property.

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 community service work². The bill provides that restitution and community service work shall be in addition to any fine or sentence which may be imposed.

D. SECTION-BY-SECTION ANALYSIS:

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

Section 2: Providing 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.

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.

² 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.

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:

The following issues have been addressed in amendments which are traveling with the bill:

The bill does not rank the newly created offenses within the offense severity ranking of the Criminal Punishment Code. Thus, the offenses will default as provided in statute. The first degree felony offense will be scored as a Level 7 offense. The second degree felony offense will be scored as a Level 4 offense and the third degree felony offense will be scored as a Level 1 offense. s. 921.0023, F.S. In some instances, this will result in the ranking for the newly created offense being lower than the ranking would be if the offense were charged under the theft statute. For example, if the amount of property stolen is \$8,000, this offense would default to Level 1 in the bill but would be ranked in Level 3 if the offender was convicted under the theft statute.

Further, under the theft statute, the theft of less than \$300 is a misdemeanor. Under the bill, theft of any amount less than \$10,000 is a third degree felony.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted two amendments offered by the sponsor which are traveling with the bill. The first amendment provides 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 rather than theft of any amount less than \$10,000. The second amendment ranks the newly created offenses in the offense severity ranking chart of the Criminal Punishment Code.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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STORAGE NAME: h0835.cja.doc

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PAGE: 6

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

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