

CS/SB 232 – Exploitation of Vulnerable Persons

This bill creates s. 817.5695, F.S., providing definitions for multiple terms and adding new felonies for the “exploitation of a person 65 years of age or older.” The offense is defined as follows: **“A person commits exploitation of a person 65 years of age or older if he or she...obtains or uses, endeavors to obtain or use, or conspires 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...obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use, through deception or intimidation, the property of a person 65 years of age or older through the intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary devise of the person 65 years of age or older...or...deprives, endeavors to deprive, or conspires 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 such person.”** Furthermore, it adds that “it does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.” Monetary thresholds are added that determine the felony level and degree for this newly created offense:

- \$50,000 or more – unranked, 1st degree felony (Level 7 by default)
- \$10,000 or more, less than \$50,000 – Level 6, 2nd degree felony
- less than \$10,000 – Level 4, 3rd degree felony

This could expand the offender pool that already exists under s. 825.103, F.S., for “exploitation of an elderly person or disabled adult,” which includes the following penalties:

- \$100,000 or more – Level 8, 1st degree felony
- \$20,000 or more, less than \$100,000 – Level 7, 2nd degree felony
- less than \$20,000 – Level 6, 3rd degree felony

This expanded group of offenders would also impact the Level 1, 3rd degree felony under s. 825.1036, F.S. for “a person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim.” New language is also added to this statute in the bill: “As used in this section, and in addition to the definitions provided in this chapter, exploitation of a vulnerable adult includes a person 65 years of age or older who is or may be subject to exploitation as described in s. 817.5695, F.S.”

Finally, this bill amends s. 775.15, F.S., adding s. 817.5695, F.S. to the list of statutes where a prosecution must be commenced within 5 years of it being committed.

However, the following language is also added: **“If the period prescribed...has expired, a prosecution may nevertheless be commenced for any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 5 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.”** This new language would impact s. 825.102, F.S., s. 825.103, F.S., and s. 817.5695, F.S. by expanding the time period for prosecution due to the time starting when the prior offense has been discovered.

In FY 18-19, the incarceration rate for a Level 4, 3rd degree felony was 21.9%, and in FY 19-20 the incarceration rate was 19.0%. In FY 20-21, the incarceration rate for a Level 4, 3rd degree felony was 18.4%, and in FY 21-22 the incarceration rate was 19.0%. In FY 18-19, the incarceration rate for a Level 6, 2nd degree felony was 44.6%, and in FY 19-20 the incarceration rate was 41.6%. In FY 20-21, the incarceration rate for a Level 6, 2nd degree felony was 40.6%, and in FY 21-22 the incarceration rate was 39.8%. In FY 18-19, the incarceration rate for a Level 7, 1st degree felony was 67.1%, and in FY 19-20 the incarceration rate was 66.5%. In FY 20-21, the incarceration rate for a Level 7, 1st degree felony was 65.5%, and in FY 21-22 the incarceration rate was 63.1%.

Per DOC, in FY 18-19, there were 21 new commitments to prison for felonies listed under s. 825.103, F.S., and 18 new commitments in FY 19-20. There were 12 in FY 20-21, and 14 in FY 21-22. It is not known how the newly created felonies under s. 817.5695, F.S. will impact prison beds, but commitments are low under the current language for exploitation of the elderly or disabled adults.

Per DOC, in FY 18-19, there were 14 new commitments to prison for felonies listed under s. 825.102, F.S., and 11 new commitments in FY 19-20. There were 9 in FY 20-21, and 20 in FY 21-22. It is not known how many additional commitments would be included with the expansion of the time period to prosecute for s. 825.102, F.S., s. 825.103, F.S., or the newly added s. 817.5695. FS.

Per DOC, there has been one new commitment for a violation of s. 825.1036, F.S. in the last four fiscal years.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: Senate