

CHAPTER 2023-133

Committee Substitute for Senate Bill No. 232

An act relating to the exploitation of vulnerable persons; creating s. 817.5695, F.S.; defining terms; specifying conditions under which a person commits exploitation of a person 65 years of age or older; providing criminal penalties for violations of the act; specifying that not knowing the age of a victim is not a defense to such crime; providing circumstances under which the trial for a criminal action arising from specified violations may be advanced on the docket; authorizing persons who are in imminent danger of exploitation to petition for an injunction for protection; specifying applicable penalties for violations of any such injunction; amending s. 775.15, F.S.; providing time limitations for commencing prosecution for violations of the act; providing an exception for the time limitations for commencing prosecution for certain felony violations involving elderly persons or disabled adults if certain conditions are met; amending ss. 825.1035 and 825.1036, F.S.; specifying that certain acts are included in exploitation of a vulnerable adult; amending s. 921.0022, F.S.; ranking certain offenses created by this act on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 817.5695, Florida Statutes, is created to read:

817.5695 Exploitation of a person 65 years of age or older.—

(1) As used in this section, the term:

(a) “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.

(b) “Deception” means:

1. Misrepresenting or concealing a material fact relating to:

a. 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;

b. Terms of a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older; or

c. 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

2. 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.

(c) “Endeavor” means to attempt or to try.

(d) “Fiduciary relationship” includes, but is not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator.

(e) “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.

(f) “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.

(g) “Obtains or uses” means any manner of:

1. Taking or exercising control over property; or

2. Making any use, disposition, or transfer of property.

(h) “Property” means anything of value and includes, but is not limited to:

1. Real property, including things growing on, affixed to, or found in land.

2. Tangible or intangible personal property, including intellectual property, rights, privileges, interests, and claims.

3. Services.

(i) “Services” means anything of value resulting from a person’s physical or mental labor or skill, or from the use, possession, or presence of property, and includes, but is not limited to:

1. Repairs or improvements to property;

2. Professional services;

3. Private, public, or governmental communication, transportation, power, water, or sanitation services;

4. Lodging accommodations; or

5. Admissions to places of exhibition or entertainment.

(j) “Value” means value determined according to any of the following:

1. The market value of the property at the time and place of the offense, or, if the market value cannot be satisfactorily ascertained, the value is the cost of replacing the property within a reasonable time after the commission of the offense;

2. In the case of a written instrument, such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the diminishment or loss of the instrument;

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret; or

4. If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than \$100.

Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

(2) A person commits exploitation of a person 65 years of age or older if he or she:

(a) 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:

1. Deprive that person of the use, benefit, or possession of the property;
or

2. Benefit someone other than the property owner;

(b) 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

(c) 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.

(3) A person who violates this section commits:

(a) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the funds, assets, or property involved in the exploitation of a person 65 years of age or older is valued at \$50,000 or more.

(b) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the funds, assets, or property involved in the exploitation of a person 65 years of age or older is valued at \$10,000 or more, but less than \$50,000.

(c) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the funds, assets, or property involved in the exploitation of a person 65 years of age or older is valued at less than \$10,000.

(4) 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.

(5) In a criminal action resulting from a violation of this section, the state may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the victim, may advance the trial on the docket. The motion may be filed and served with the information or charges at any time thereafter.

(6) Notwithstanding s. 825.1035(2), a person 65 years of age or older who is in imminent danger of being exploited may petition for an injunction for protection as provided under s. 825.1035. A violation of such injunction shall be handled in the same manner, and such violation shall have the same penalties, as provided in s. 825.1036.

Section 2. Subsection (10) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(10)(a) A prosecution for a felony violation of s. 817.5695, s. 825.102, or s. 825.103 must be commenced within 5 years after it is committed.

(b) If the period prescribed in paragraph (a) 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.

Section 3. Subsection (1) of section 825.1035, Florida Statutes, is amended to read:

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(1) INJUNCTION CREATED.—There is created a cause of action for an injunction for protection against exploitation of a vulnerable adult. 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.

Section 4. Subsection (1) of section 825.1036, Florida Statutes, is amended to read:

825.1036 Violation of an injunction for protection against exploitation of a vulnerable adult.—

(1) In the event of a violation of an injunction for protection against exploitation of a vulnerable adult when the person who violated such injunction has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk of the circuit court shall assist the petitioner in the preparation of an affidavit in support of the violation or direct the petitioner to the office operated by the court within the circuit which has been designated by the chief judge of the judicial circuit as the central intake point for injunction violations and where the petitioner can receive assistance in the preparation of the affidavit in support of the violation. 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.

Section 5. Paragraphs (d) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

Florida Statute	Felony Degree	Description
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.

Florida Statute	Felony Degree	Description
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
<u>817.5695(3)(c)</u>	<u>3rd</u>	<u>Exploitation of person 65 years of age or older, value less than \$10,000.</u>

Florida Statute	Felony Degree	Description
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.
836.14(3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreatment or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.

Florida Statute	Felony Degree	Description
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

Florida Statute	Felony Degree	Description
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.

Florida Statute	Felony Degree	Description
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
812.015(9)(d)	2nd	Retail theft; multiple thefts within specified period.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
<u>817.5695(3)(b)</u>	<u>2nd</u>	<u>Exploitation of person 65 years of age or older, value \$10,000 or more, but less than \$50,000.</u>
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

Florida Statute	Felony Degree	Description
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

Section 6. This act shall take effect October 1, 2023.

Approved by the Governor May 25, 2023.

Filed in Office Secretary of State May 25, 2023.