

HB 1041 – Protection of Elderly Persons and Disabled Adults

This bill amends multiple statutes. It amends s. 825.102, F.S., adding the following to the definition of abuse of an elderly person or disabled adult: “Intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult. It is a defense to a violation of this paragraph that the defendant had reasonable cause to believe that his or her action was necessary to protect the elderly person or disabled adult from danger to his or her welfare.” This expansion of the definition would impact the multiple felonies listed under this statute. This bill also amends s. 825.101, F.S., defining “improper benefit” and “kickback,” and amends s. 825.103, F.S., adding the following (new language in bold): “Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, **kickback, or receipt of an improper benefit.**” It also adds “obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary” to the list of acts resulting in unauthorized appropriations. It also adds the act of “knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or a disabled adult’s funds, assets, property, or estate through intentional modification or alteration of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult.” This expands the definition for exploitation of an elderly person or disabled adult, impacting the multiple felonies listed under this statute. Finally, this bill amends s. 825.1035, F.S., adding “an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney” to those who may file an injunction for protection against exploitation of a vulnerable adult, and extends the time for a temporary injunction from 15 days to up to 45 days. This would 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.”

Per DOC, in FY 18-19, there were 35 new commitments to prison for felonies listed under these statutes (14 for abuse, 21 for exploitation), and 29 new commitments in FY 19-20 (11 for abuse, 18 for exploitation). It is not known how this new language will impact prison beds, but commitments are low under current language.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

Requested by: Senate