

CHAPTER 825

ABUSE, NEGLECT, AND EXPLOITATION OF ELDERLY PERSONS AND DISABLED ADULTS

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825.101 Definitions.—As used in this chapter:

(1) "Abuse" means the nonaccidental infliction of physical or psychological injury to an elderly person or disabled adult by a relative, caregiver, or adult household member, or the failure of a caregiver to take reasonable measures to prevent the occurrence of physical or psychological injury to an elderly person or disabled adult.

(2) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written contract or agreement for goods or services.

(3) "Caregiver" means a person or persons who have assumed or have been entrusted with the care of an elderly person or disabled adult or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, day care personnel, health care providers, adult family-care home sponsors, and personnel of public and private institutions and facilities, nursing homes, assisted living facilities, and state institutions.

(4) "Deception" means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or use of property, intended to benefit the elderly person or disabled adult, or the terms of a contract or agreement entered into with the elderly person or disabled adult or relating to the existing or pre-existing condition of any of the property involved in such contract or agreement; or the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit the elderly person or disabled adult to enter into a contract or agreement.

(5) "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or 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) "Elderly person" means 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 dysfunctioning, to the extent that the ability of the person to provide adequately for his own care or protection is impaired.

(7) "Endeavor" means to attempt or try.

(8) "Intimidation" means the communication by word or act to an elderly person or disabled adult that the per-

son will be deprived of money, food, clothing, medicine, shelter, supervision, or medical services or will suffer physical violence.

(9) "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, to the extent that an elderly person or disabled adult lacks sufficient understanding of the nature or consequences of his decisions concerning his person or property.

(10) "Neglect" means the failure or omission on the part of the caregiver of an elderly person or disabled adult to provide the care and services necessary to maintain the physical and mental health of the elderly person or disabled adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would deem essential for the well-being of the elderly person or disabled adult. Neglect is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

(11) "Obtains or uses" means any manner of:

- (a) Taking or exercising control over property; or
- (b) Making any use, disposition, or transfer of property.

(12) "Position of trust and confidence" with respect to an elderly person or a disabled adult means the position of a person who:

- (a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;
- (b) Is a joint tenant or tenant in common with the elderly person or disabled adult;
- (c) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
- (d) Is a caregiver of the elderly person or disabled adult.

(13) "Property" means anything of value and includes:

- (a) Real property, including things growing on, affixed to, and found in land.
- (b) Tangible or intangible personal property, including rights, privileges, interests, and claims.
- (c) Services.

(14) "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:

- (a) Repairs or improvements to property.
- (b) Professional services.
- (c) Private, public, or governmental communication, transportation, power, water, or sanitation services.
- (d) Lodging accommodations.
- (e) Admissions to places of exhibition or entertainment.

(15) "Value" means value determined according to any of the following:

(a)1. The market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

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

(b) 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.

(c) Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct may be aggregated in determining the grade of the offense.

History.—s. 2, ch. 95-158.

Note.—Section 3, ch. 95-209, provides that "[t]he term 'Adult Congregate Living Facility' shall be changed to 'Assisted Living Facility.'"

825.102 Abuse and neglect of an elderly person or disabled adult; penalties.—

(1) A person who knowingly, willfully, or by culpable negligence abuses or neglects an elderly person or disabled adult and, in so doing, causes great bodily harm, permanent disfigurement, or permanent disability to the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who knowingly, willfully, or by culpable negligence abuses or neglects an elderly person or disabled adult commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 3, ch. 95-158.

825.103 Exploitation of an elderly person or disabled adult; penalties.—

(1) A person commits the offense of exploitation of an elderly person or disabled adult when the person:

(a) Stands in a position of trust and confidence, or has a business relationship, with the elderly person or disabled adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the 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 his property, for the benefit of

someone other than the elderly person or disabled adult; or

(b) Knows or should know that the elderly person or disabled adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the 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 his property for the benefit of someone other than the elderly person or disabled adult.

(2)(a) If the funds, assets, or property is of the value of \$100,000 or more, the offender commits exploitation in the first degree, punishable as a felony of the first degree as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the property is of the value of \$20,000 or more, but less than \$100,000, the offender commits exploitation in the second degree, punishable as a felony of the second degree as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the property is of the value of less than \$20,000, the offender commits exploitation in the third degree, punishable as a felony of the third degree as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 4, ch. 95-158.

825.104 Knowledge of victim's age.—It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim.

History.—s. 5, ch. 95-158.

825.105 Good faith assistance.—Nothing in this chapter may be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly person or disabled adult in the management of his property, but through no fault of his own has been unable to provide such assistance.

History.—s. 6, ch. 95-158.

825.106 Criminal actions involving elderly persons or disabled adults; speedy trial.—In a criminal action in which an elderly person or disabled adult is a victim, 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 or at any time thereafter.

History.—s. 7, ch. 95-158.