

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

(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;

(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; or

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

(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.

History.—s. 4, ch. 95-158; s. 5, ch. 96-322; s. 1, ch. 97-78; s. 29, ch. 2009-223.

825.101 Definitions.—As used in this chapter:

(1) **“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.

(2) **“Caregiver”** means a person who has been entrusted with or has assumed responsibility for the care 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, health care providers, and employees and volunteers of facilities as defined in subsection (7).

(3) **“Deception”** means:

(a) Misrepresenting or concealing a material fact relating to:

1. Services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult;
2. Terms of a contract or agreement entered into with an elderly person or disabled adult; or
3. An existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or

(b) Using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.

(4) **“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, 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.

(5) **“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 the person’s own care or protection is impaired.

(6) **“Endeavor”** means to attempt or try.

(7) **“Facility”** means any location providing day or residential care or treatment for elderly persons or disabled adults. The term “facility” may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.

(8) "Intimidation" means the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support 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, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.

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

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

(11) "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;
- (d) Is a caregiver of the elderly person or disabled adult; or
- (e) Is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

(12) "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.

(13) "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.

(14) "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 the market value cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after 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 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.

(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, whether the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

History.—s. 2, ch. 95-158; s. 1, ch. 96-322; s. 1, ch. 2002-195.

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

(1) "Abuse of an elderly person or disabled adult" means:

(a) Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses an elderly person or disabled