

1989

## Session Law 89-322

Florida Senate & House of Representatives

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**H 954 GENERAL BILL by Gordon (Similar S 881)**

**Adult Abuse/Offenses & Penalties**; adds offenses which are classified as abuse or exploitation of aged persons or disabled adults & provides penalties re adult abuse; provides technical amendments. Amends 415.111. Effective Date: 10/01/89.

03/17/89 HOUSE Prefiled  
03/23/89 HOUSE Referred to Health & Rehabilitative Services; Appropriations  
04/04/89 HOUSE Introduced, referred to Health & Rehabilitative Services; Appropriations -HJ 91  
04/07/89 HOUSE On Committee agenda—Health & Rehabilitative Services, 04/11/89, 3:30 pm, 314-HOB—For ratification to subcommittee  
04/11/89 HOUSE Subreferred to Subcommittee on Long-Term Care; On subcommittee agenda—Health & Rehabilitative Services, 04/13/89, 8:00 am, 314-HOB  
04/13/89 HOUSE Subcommittee Recommendation: Favorable  
04/21/89 HOUSE On Committee agenda—Health & Rehabilitative Services, 04/25/89, 8:30 am, 314-HOB—Not considered  
04/25/89 HOUSE On Committee agenda—Health & Rehabilitative Services, 04/27/89, 2:30 pm, 21-HOB  
04/27/89 HOUSE Preliminary Committee Action by Health & Rehabilitative Services: Favorable  
05/02/89 HOUSE Comm. Report: Favorable by Health & Rehabilitative Services -HJ 338; Now in Appropriations -HJ 338  
05/10/89 HOUSE Withdrawn from Appropriations -HJ 449; Placed on Calendar  
05/16/89 HOUSE Placed on Special Order Calendar  
05/18/89 HOUSE Read second time -HJ 531  
05/19/89 HOUSE Read third time; Passed; YEAS 115 NAYS 0 -HJ 544  
05/22/89 SENATE In Messages  
05/29/89 SENATE Received, referred to Judiciary-Criminal; Appropriations -SJ 496  
06/02/89 SENATE Withdrawn from Judiciary-Criminal; Appropriations; Substituted for SB 881; Passed; YEAS 37 NAYS 0 -SJ 894  
06/02/89 Ordered enrolled  
06/20/89 Signed by Officers and presented to Governor  
07/05/89 Approved by Governor; Chapter No. 89-322

**NOTES:** Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h954f.hrs/en/sg  
DATE: June 7, 1989

HOUSE OF REPRESENTATIVES  
COMMITTEE ON HEALTH & REHABILITATIVE SERVICES  
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 954  
RELATING TO: Adult Abuse  
SPONSOR(S): Representative Gordon  
EFFECTIVE DATE: October 1, 1989  
DATE BECAME LAW: July 5, 1989  
CHAPTER #: 89-322, Laws of Florida  
COMPANION BILL(S): Similar to SB 881  
OTHER COMMITTEES OF REFERENCE: (1) Appropriations  
(2)

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I. SUMMARY:

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House Bill 954 makes torture or willful and unlawful caging of aged persons or disabled adults a second degree felony if the victim suffers great bodily harm, permanent disfigurement or permanent disability. Even if the victim does not suffer this type of damage, torture or willful and unlawful caging of these persons is a first degree misdemeanor. Also, exploitation of an aged person or disabled adult through the improper use of their funds, assets, or property, or a power of attorney or guardianship is made a third degree felony.

A. PRESENT SITUATION:

Currently s. 415.111, F.S., does not specifically prohibit torturing or caging of aged persons or disabled adults. The offense of exploitation of aged persons or disabled adults is a third degree felony if the exploitation results in great bodily harm, permanent disfigurement or permanent disability. If the exploitation does not result in this type of damage, it is a first degree misdemeanor. The acts that constitute exploitation are not enumerated.

B. EFFECT OF PROPOSED CHANGES:

Torture or willful and unlawful caging of aged persons or disabled adults is made a criminal offense. Exploitation of aged persons or disabled adults is clearly defined and is made a third degree felony.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 415.111, F.S., to first, clarify language in the catchline.

Section 415.111(3), F.S., is amended to add the offense of torture or willful and unlawful caging of aged persons or disabled adults to those offenses that are a second degree felony when the actions result in great bodily harm, permanent disfigurement, or permanent disability to the victim. Exploitation is deleted from this subsection as a criminal offense.

Section 415.111(4), F.S., is amended to add the offense of torture or willful and unlawful caging of aged persons or disabled adults to those offenses that are a first degree misdemeanor. Exploitation is deleted from this subsection as a criminal offense.

Section 415.111(5), F.S., is added to specify that exploitation of an aged person or disabled adult through the improper or illegal use or management of that person's funds, assets, property, power of attorney or guardianship is a third degree felony.

Section 415.111(6), F.S., is amended to clarify terminology and a cross reference.

Section 2. Provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

Any impact upon the criminal justice system through these additional offenses should be minimal.

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

Persons who cage, torture or exploit aged persons or disabled adults will be subject to criminal sanctions.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

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House Bill 954 is generally consistent with the State Comprehensive Plan, s. 187.201((6)(b)(11)(w), F.S., by discouraging abuse or neglect of aged persons or disabled adults.

IV. COMMENTS:

House Bill 954 is generally consistent with the Mission Statement for the HRS Committee and with the Policy Statement, Human Resource Development, III. C. 4, by helping to provide protection from abuse, neglect or exploitation for aged persons and disabled adults.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Elaine New/sg

Staff Director:

Judy C. Justice

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

**STORAGE NAME:** h954f.hrs/en/sg

**DATE:** June 7, 1989

**PAGE:** 4

**APPROPRIATIONS:**

**Prepared by:**

**Staff Director:**

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

| <u>ANALYST</u>               | <u>STAFF DIRECTOR</u>       | <u>REFERENCE</u> | <u>ACTION</u>    |
|------------------------------|-----------------------------|------------------|------------------|
| 1. <u>Dugger</u> <i>D.W.</i> | <u>Liepshutz</u> <i>lan</i> | 1. <u>JCR</u>    | <u>Favorable</u> |
| 2. _____                     | _____                       | 2. <u>AP</u>     | _____            |
| 3. _____                     | _____                       | 3. _____         | _____            |
| 4. _____                     | _____                       | 4. _____         | _____            |

SUBJECT: Exploitation of Aged Persons and Disabled Adults

BILL NO. AND SPONSOR: SB 881 by Senator Johnson

I. SUMMARY:

A. Present Situation:

Florida law currently provides aged persons and disabled adults with protection from abuse, neglect, and exploitation in sections 415.101-415.113, F.S. Aged persons are defined as persons who are at least 60 years old and who suffer from the infirmities of aging such that they can not adequately provide for themselves. Disabled adults are persons over 18 years of age who suffer from incapacitation due to developmental disability or mental illness such that they are unable to protect themselves from abuse. Under the law, it is a first degree misdemeanor to knowingly or willfully abuse, neglect, or exploit an aged person or disabled adult; if great bodily harm is caused, it is a second degree felony.

However, it seems very unlikely that a person who exploits an aged person could be successfully prosecuted for a second degree felony offense under the definition of exploitation in s. 415.102, F.S. (improper or illegal use of funds, assets, or property, or misuse of a power of attorney or guardianship). This is the case because great bodily harm does not typically result from such economic or fiduciary exploitation.

The definition of aggravated child abuse under s. 827.03, F.S., includes willful torture and unlawful and willful caging of a child. Those are not specifically covered under s. 415.111, F.S., when committed against an aged person or disabled adult.

B. Effect of Proposed Changes:

SB 881 would make it illegal to knowingly or willfully torture or cage an aged person or disabled adult. The same penalties that apply to a person who abused or neglected an aged person or disabled adult would apply to torturing or caging such person (first degree misdemeanor, or second degree felony if great bodily harm resulted).

Willfully and knowingly exploiting an aged person or disabled adult would no longer be punishable as a first degree misdemeanor or second degree felony under the general penalty provisions which would prohibit abuse, neglect, torture, and caging. Instead, it would be punished as a third degree felony under a newly created provision dealing solely with exploiting aged persons or disabled adults, without regard to whether great bodily harm resulted from the exploitation. Exploitation under the bill would mean fiduciary or economic exploitation, as it does under current law.

REVISED: May 1, 1989

BILL NO. SB 881

DATE: April 24, 1989

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II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, the fiscal impact of this bill would be minimal.

III. COMMENTS:

This bill is the result of a recommendation by the Attorney General's Task Force on Crimes and the Elderly.

IV. AMENDMENTS:

None.