

14.9 EXPLOITATION OF [AN ELDERLY PERSON] [A DISABLED ADULT]
§ 825.103, Fla. Stat.

To prove the crime of Exploitation of [an Elderly Person] [Disabled Adult], the State must prove the following [three] [four] elements beyond a reasonable doubt:

Give if § 825.103(1)(a), Fla. Stat. is charged.

1. (Defendant) **knowingly [obtained or used] [endeavored to obtain or use]** (victim's) **[funds] [assets] [property]**.
2. (Defendant) **did so with the intent to**
 - a. **temporarily or permanently deprive** (victim) **of the use, benefit, or possession of [his] [her] [funds] [assets] [property];**
 - or**
 - b. **benefit someone other than** (victim).
3. **At the time,** (defendant) **[stood in a position of trust and confidence] [had a business relationship] with** (victim).
4. **At the time,** (victim) **was [an elderly person] [a disabled adult].**

Give if § 825.103(1)(b), Fla. Stat. is charged.

1. (Defendant) **[obtained or used] [endeavored to obtain or use] [conspired with another to obtain or use]** (victim's) **[funds] [assets] [property]**.
2. (Defendant) **did so with the intent to**
 - a. **temporarily or permanently deprive** (victim) **of the use, benefit, or possession of [his] [her] [funds] [assets] [property];**
 - or**
 - b. **benefit someone other than** (victim).
3. **At the time,** (defendant) **knew or reasonably should have known that** (victim) **lacked the capacity to consent.**
4. **At the time,** (victim) **was [an elderly person] [a disabled adult].**

Give if § 825.103(1)(c), Fla. Stat. is charged.

1. (Defendant) **was** (victim's) **[guardian] [trustee] [agent under a power of attorney]**.
2. (Defendant) **breached a fiduciary duty to** (victim).

3. As a result, there was an unauthorized [appropriation] [sale] [transfer] of (victim's) property.

4. At the time, (victim) was [an elderly person] [a disabled adult].

If § 825.103(1)(c), Fla. Stat. is charged, give as applicable.

A “trustee” must be an individual.

An “unauthorized appropriation” occurs when:

a. the [elderly person] [disabled adult] does not receive the reasonably equivalent financial value in goods or services;

or

b. the fiduciary, appointed as an agent under power of attorney to act on behalf of (victim),

i. commits fraud in obtaining [his] [her] appointment; or

ii. abuses [his] [her] powers; or

iii. [wastes] [embezzles] [intentionally mismanages] the assets of the [principal] [beneficiary]; or

iv. acts contrary to the principal's sole [benefit] [best interest];

or

c. the fiduciary, appointed as a [guardian] [trustee] for (victim),

i. commits fraud in obtaining [his] [her] appointment; or

ii. abuses [his] [her] powers; or

iii. [wastes] [embezzles] [intentionally mismanages] the assets of the [ward] [beneficiary of the trust].

Give if § 825.103(1)(d), Fla. Stat. is charged.

1. (Defendant) [misappropriated] [misused] [transferred without authorization] money belonging to (victim) from a [personal account] [joint account created with the intent that only (victim) enjoyed all rights, interests, and claims to moneys deposited in such account] [convenience account].

2. (Victim) placed the funds, owned the funds, and was the sole [contributor] [payee] of the funds before the [misappropriation] [misuse] [unauthorized transfer].

3. At the time, (victim) was [an elderly person] [a disabled adult].

Give if § 825.103(1)(e), Fla. Stat. is charged.

1. (Defendant) [intentionally] [negligently] failed to effectively use (victim's) income and assets for the necessities required for (victim's) support and maintenance.

2. At the time, (defendant) was a [caregiver] [person who stood in a position of trust and confidence] with (victim).

3. At the time, (victim) was [an elderly person] [a disabled adult].

Give if applicable. Note: The statutory inference does not apply to persons in the business of making loans or to bona fide charitable donations to nonprofit organizations that qualify for tax exempt status under the Internal Revenue Code. § 825.103(2)(b), Fla. Stat.

You may, but are not required to, draw an inference of exploitation of (victim), if you find the State has proved beyond a reasonable doubt that:

- a. (Victim) was 65 years or older;**
- b. (Defendant) was a nonrelative of (victim);**
- c. (Victim), while still alive, transferred [money] [property] valued in excess of \$10,000 in [a single transaction] [multiple transactions] to (defendant);**
- d. (Victim) knew (defendant) for fewer than 2 years before the first transfer; and**
- e. (Victim) did not receive the reasonably equivalent financial value in [goods] [services].**

You may not draw an inference of exploitation of (victim) if the transfer involved a valid loan, in writing, with definite repayment dates. However, you may draw an inference of exploitation of (victim), even if the transfer involved a valid loan, in writing, with definite repayment dates, if the repayment of the loan was in default, in whole or in part, for more than 65 days.

If the transfer had no definite repayment dates in writing, you may draw an inference of exploitation of (victim) regardless of whether the transfer was denoted by the parties as a gift or a loan.

Give as applicable.

If you find (defendant) guilty of Exploitation of [an Elderly Person] [a Disabled Adult], you must then determine whether the State has proven beyond a reasonable doubt that:

- a. the [funds] [assets] [property] involved in the exploitation of the [elderly person] [disabled adult] [is] [are] valued at \$50,000 or more;**
- b. the [funds] [assets] [property] involved in the exploitation of the [elderly person] [disabled adult] [is] [are] valued at \$10,000 or more, but less than \$50,000;**
- c. the [funds] [assets] [property] involved in the exploitation of the [elderly person] [disabled adult] [is] [are] valued at less than \$10,000.**

Definitions. Give as applicable.

§ 825.101(1), Fla. Stat.

“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.

§ 825.101(43), Fla. Stat.

“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.

§ 825.101(4), Fla. Stat.

“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.

§ 825.101(5), Fla. Stat.

“Endeavor” means to attempt or try.

§ 825.101(7), Fla. Stat.

“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] [disabled adult] to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the [elderly person's] [disabled adult's] person or property.

§ 825.101(8), Fla. Stat.

“Obtains or uses” means any manner of:

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

§ 825.101(9), Fla. Stat.

“Position of trust and confidence” with respect to [an elderly person] [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] [disabled adult];**
- b. Is a joint tenant or tenant in common with the [elderly person] [disabled adult];**
- c. Has a legal or fiduciary relationship with the [elderly person] [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] [disabled adult];**

- e. Is any other person who has been entrusted with or has assumed responsibility for the use or management of the [elderly person's] [disabled adult's] [funds] [assets] [property].

§ 825.101(2), Fla. Stat.

“Caregiver” means a person who has been entrusted with or has assumed responsibility for the care or the property of [an elderly person] [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.

§ 825.101(6), Fla. Stat.

“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.

§ 825.101(10), Fla. Stat.

“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 claim;
- c. Services.

§ 825.101(11), Fla. Stat.

“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.

§ 825.101(12), Fla. Stat.

“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 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.**

§ 825.101(12)(b), Fla. Stat.

If the value of the property cannot be ascertained, the jury 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.

§ 825.101(12)(c), Fla. Stat.

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 total value of the [funds] [assets] [property] involved in the exploitation.

§ 655.80, Fla. Stat.

“Convenience Account” is a deposit account, other than a certificate of deposit, in the name of one individual (principal), in which one or more other individuals have been designated as agents with the right to make deposits to and to withdraw funds from or draw checks on such account. The designation of agents, the substitution or removal of agents, or any other change in the contractual terms or provisions governing a convenience account may be made only by the principal. All rights, interests, and claims in, to, and in respect of, such deposits and convenience account and the additions thereto shall be those of the principal only.

Lesser Included Offense

Theft (§ 812.014, Fla. Stat.) is a necessary lesser included offense. The degree of the Theft will depend on the value of the property.

Comment

This instruction was adopted in 2013 [131 So. 3d 755], amended in 2015 [176 So. 3d 938], and on March 8, 2024.