

14.9(a) EXPLOITATION OF A PERSON 65 YEARS OF AGE OR OLDER
§ 817.5695, Fla. Stat.

To prove the crime of Exploitation of a Person 65 Years of Age or Older, the State must prove the following three elements beyond a reasonable doubt:

Give if § 817.5695(2)(a), Fla. Stat. is charged.

1. (Defendant) **[obtained or used] [endeavored to obtain or use] [conspired with another to obtain or use] the property of (victim) through deception or intimidation.**

Give 2a or 2b or both.

2. (Defendant) **did so with the intent to temporarily or permanently**
 - a. **deprive (victim) of the use, benefit, or possession of [his] [her] property**
 - or**
 - b. **benefit someone other than (victim).**
3. (Defendant) **did so when (victim) was 65 years of age or older.**

Give if § 817.5695(2)(b), Fla. Stat. is charged.

1. (Defendant) **[obtained or used] [endeavored to obtain or use] [conspired with another to obtain or use] the property of (victim) through deception or intimidation.**
2. (Defendant) **did so through an intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary devise.**
3. (Defendant) **did so when (victim) was 65 years of age or older.**

Give if § 817.5695(2)(c), Fla. Stat. is charged.

1. (Defendant) **[deprived] [endeavored to deprive] [conspired with another to deprive] (victim) of [his] [her] intangible right to honest services provided by someone who had a legal or fiduciary relationship with (victim).**
2. (Defendant) **[and the co-conspirator[s]] did so with the intent to defraud (victim) and by means of bribery or kickbacks.**
3. (Defendant) **did so when (victim) was 65 years of age or older.**

§ 817.5695, Fla. Stat.

The defendant's ignorance of (victim's) age is not a defense to the crime charged.

Give as applicable. § 817.5695(3), Fla. Stat.

If you find (Defendant) guilty of Exploitation of a Person 65 years of Age or Older, you must then determine whether the State proved beyond a reasonable doubt that at the time of the exploitation:

- a. the [funds] [assets] [property] were valued at \$50,000 or more.**
- b. the [funds] [assets] [property] were valued at \$10,000 or more, but less than \$50,000.**
- c. the [funds] [assets] [property] were valued at less than \$10,000.**

Definitions. § 817.5695, Fla. Stat. Give as applicable.

“Bribe” means any money or anything of value which is provided, directly or indirectly, to a person who has a legal or fiduciary relationship with a person 65 years of age or older, for the purpose of improperly obtaining or rewarding favorable treatment from the person who has the legal or fiduciary relationship in connection with his or her work for the person 65 years of age or older.

“Deception” means:

[misrepresenting or concealing a material fact relating to services rendered, disposition of property, or use of property, when such services or property are intended to benefit a person 65 years of age or older].

[misrepresenting or concealing a material fact relating to terms of a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older]

[misrepresenting or concealing a material fact relating to an existing or preexisting condition of any property involved in a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older].

[using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a person 65 years of age or older to enter into a contract, agreement, trust, will, or testament.

“Endeavor” means to attempt or to try.

“Fiduciary relationship” includes, but is not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator.

“Intimidation” means the communication by word or act to a person 65 years of age or older that the person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

“Kickback” means money, credit, a fee, a commission, a gift, a gratuity or other compensation, or anything of value which is provided to a person in exchange for preferential treatment for the receipt of goods or services.

“Obtains or uses” means any manner of:

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

“Property” means anything of value and includes, but is not limited to:

- 1. Real property, including things growing on, affixed to, or found in land.**
- 2. Tangible or intangible personal property, including intellectual property, rights, privileges, interests, and claims.**
- 3. Services.**

“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, but is not limited to:

- 1. Repairs or improvements to property;**
- 2. Professional services;**
- 3. Private, public, or governmental communication, transportation, power, water, or sanitation services;**
- 4. Lodging accommodations; or**
- 5. Admissions to places of exhibition or entertainment.**

“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 value is the cost of replacing the property within a reasonable time after the commission of 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 diminishment or 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; or
4. 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.

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.

Lesser Included Offenses

EXPLOITATION OF A PERSON 65 YEARS OF AGE OR OLDER — 825.5695

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Theft*		812.014	14.1
	Exploitation of an Elderly Person	825.103	14.9

Comments

*The courts are likely to determine that Theft is a necessary lesser included offense with the exception of an information that charges only a conspiracy. The degree of the Theft will depend on the value of the property stolen.

This instruction was adopted on May 21, 2024.