

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 CS Adult Protective Services
SPONSOR(S): Culp; Gibson, H.; Sobel
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder & Long-Term Care Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>DePalma</u>	<u>Walsh</u>
2) <u>Civil Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Blalock</u>	<u>Bond</u>
3) <u>Health Care Appropriations Committee</u>	<u>15 Y, 0 N</u>	<u>Ekholm</u>	<u>Massengale</u>
4) <u>Health & Families Council</u>	<u>10 Y, 0 N</u>	<u>DePalma</u>	<u>Moore</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 415, F.S., establishes a program of protective services for all disabled adults or elderly persons in need of such services. This bill amends the Adult Protective Services Act to allow the Department of Children and Family Services explicit authority to protect individuals from the effects of self-neglect by redefining the term "neglect", and by redefining the term "abuse" to include abuse by a relative or household member.

This bill further amends Chapter 415, F.S., by including the Agency for Persons with Disabilities among the departmental agencies, employees, and agents with access to all records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including all reports made to the central abuse hotline, and all records generated as a result of such reports.

The bill appears to have a minimal fiscal impact on state government, and does not appear to have a fiscal impact on local governments.

The bill will be effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill increases the Department of Children and Family Services' (DCF) responsibility in carrying out the provisions of the Adult Protective Services Act by giving the department explicit authority to protect individuals from the effects of self-neglect and to investigate alleged abuse of vulnerable adults by relatives and household members who do not serve as a caregiver to such individuals.

Safeguard individual liberty—This bill authorizes protective services where there are reports of alleged self-neglect by a vulnerable adult.

Empower families—This bill grants DCF the ability to provide protective services where a relative has abused or neglected a vulnerable adult, even in the absence of a caregiver relationship.

B. EFFECT OF PROPOSED CHANGES:

Background—Abuse and Neglect of Vulnerable Adults

The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services.¹ Chapter 415, F.S., the "Adult Protective Services Act", provides statutory authority for the Department of Children and Family Services (DCF or "the department") to investigate reports of abuse, neglect, or exploitation of a vulnerable adult.²

The Adult Protective Services program is a system of specialized social services directed toward protecting vulnerable adults who are unable to prevent further instances of abuse, neglect or exploitation. The department sends staff to make an assessment of an individual's need for protective services after a reported allegation of abuse, neglect or exploitation is received by the Abuse Hotline. Adult Protective Services includes the following four basic elements:

1. the on-site investigation of all reports of alleged abuse, neglect, or exploitation;
2. a determination of immediate risk to the vulnerable adult and the provision of necessary emergency services;
3. an evaluation of the need for ongoing protective supervision; and
4. provision or arrangement of ongoing protective services.

Effect of the Bill -- Abuse and Neglect of Vulnerable Adults

Besides the potential for being neglected by a caregiver, the potential exists for a vulnerable adult to neglect themselves because of either their age or disability. In Fiscal Year 2003-2004, DCF investigated 6,394 cases reported to the Florida Abuse Hotline that were verified or contained some indications of self-neglect (other than medical neglect).³ Of these self-neglect cases, more than 40 percent involved persons 80 years of age and older. However, the current statutory definition of

¹ Section 415.101(2), F.S.

² Per s. 415.102(26), F.S., a "vulnerable adult" is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

³ *Adult Protective Services Annual Report Fiscal Year 2003-2004*, Table F-6, Demographic Characteristics of Victims by Verified and Some Indication Maltreatments, Self-Neglect In Need of Services, Department of Children and Family Services, March 2005.

"neglect"⁴ does not include neglect caused by a vulnerable adult, and the department's authority to provide services upon occurrence of self-neglect has been questioned by the courts.⁵

This bill adds "vulnerable adult" to the definition of "neglect" found in s. 415.102(15), F.S., and adds "vulnerable adult in need of services"⁶ to s. 415.1051(1), F.S., relating to non-emergency protective services. These changes give DCF explicit authority to provide voluntary services or petition the court for involuntary non-emergency services and protective supervision when an investigation determines that a vulnerable adult is neglecting himself or herself.

The Adult Protective Services Act defines "abuse"⁷ in terms of willful acts committed or threatened by a "caregiver" that causes or is likely to cause impairment to a vulnerable adult's well-being. The statutory definition of "caregiver" found in chapter 415, F.S., includes as a caregiver a person entrusted with the responsibility for the frequent and regular care of a vulnerable adult, and who has an agreement or understanding with that person or that person's guardian that a caregiver role exists.⁸ Although the definition notes that a caregiver may include "relatives, household members, guardians, neighbors, and employees and volunteers of facilities ..." either an explicit or implicit caregiver relationship must be present for DCF to accept and investigate a report of abuse.⁹

During the 2000 Legislative session, s. 415.102(1), F.S., was amended to omit the requirement that a relationship exist between a vulnerable adult and the individual alleged to have committed acts or omissions evidencing abuse. Subsequently, in 2003, the Legislature again amended the Adult Protective Services Act to require the presence of a caregiver relationship before DCF could accept and investigate alleged abuse maltreatments.

This bill amends the definition of "abuse" in s. 415.102(1), F.S., to include willful or threatened acts committed by a relative or household member which cause, or are likely to cause, significant impairment to a vulnerable adult's health. This change allows DCF to accept and investigate the alleged abuse of vulnerable adults by relatives and household members who are neither explicit nor implicit caregivers of such vulnerable adult.

Background—Access to Reports and Records of Abuse, Neglect, or Exploitation of Vulnerable Adults

Pursuant to s. 415.103, F.S., DCF maintains a central abuse hotline, enabling the department to perform the following:

- accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited;

⁴ Per s. 415.102(15), F.S., "neglect" is defined as "the failure or omission on the part of the caregiver to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "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."

⁵ *Florida Department of Children and Family Services v. McKim*, 869 So.2d 760, (Fla. 1st DCA 2004) (fact that allegedly vulnerable adult was suffering from results of self-neglect did not support order under Adult Protective Services Act of protective services, where definition of "neglect" required that neglect have occurred at hand of caregiver and statutory definition of "vulnerable adult" did not include concept of self-neglect.)

⁶ Per s. 415.102(27), F.S., a "vulnerable adult in need of services" means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm. S. 415.102(27), F.S.

⁷ S. 415.102(1), F.S.

⁸ S. 415.102(4), F.S.

⁹ *Ibid.*

- determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority;
- when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns;
- immediately identify and locate prior reports of abuse, neglect, or exploitation;
- track critical steps in the investigative process to ensure compliance with all requirements for all reports;
- maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation; and
- serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

The Adult Protective Services Act imposes a mandatory reporting requirement on any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected or exploited.¹⁰ In addition, the Act imposes a reporting requirement on any person who is required to investigate such reports, where there is a reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect or exploitation. In such instances, these individuals are required to immediately report their suspicion to the appropriate medical examiner, criminal justice agency, and to DCF.¹¹

Current law provides that all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, are confidential and exempt from the public records statutes, unless release of the record is specifically authorized in chapter 415, F.S.¹² Section 415.107(3)(a), F.S., provides that access to all records, except the name of the individual filing a report, shall be granted to employees or agents of DCF, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for:

- protective investigations;
- ongoing protective services; and
- licensure approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, or other facilities used for the placement of vulnerable adults.

In October 2004, the Agency for Persons with Disabilities (APD) became an agency separate from the Department of Children and Family Services, specifically tasked with serving the needs of persons with developmental disabilities¹³ and licensing facilities that provide care and services to the disabled. Prior to that time, it existed as the Developmental Disabilities Program within DCF. The Agency for Persons with Disabilities works in partnership with local communities to ensure the safety, well-being and self-sufficiency of more than 32,000 persons with developmental disabilities throughout Florida. The agency provides assistance to identify the needs of people with developmental disabilities, as well as the necessary funding to purchase supports and services. Since APD is now its own agency and no longer a part of DCF, APD does not have access to abuse reports and records as it did when it was under DCF.

Effect of Bill—Access to Reports and Records of Abuse, Neglect, or Exploitation of Vulnerable Adults

¹⁰ Section 415.1034(1)(a), F.S.

¹¹ Section 415.1034(2), F.S.

¹² Section 415.107, F.S.

¹³ Per s. 393.063(10), F.S., a "developmental disability" is a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

This bill inserts APD into the list of agencies, departments, employees, and agents contained in s. 415.107(3)(a), F.S., with access to records and reports of the Adult Protective Services. Therefore, under this bill, employees and agents of APD who are responsible for carrying out protective investigations, ongoing protective services, or licensure of facilities used for the placement of vulnerable adults would have access to all records and reports of abuse, neglect, or exploitation of a vulnerable adult.

This bill also amends section 415.107(3)(h), Florida Statutes, to provide access to abuse records for APD officials responsible for the following:

- administration or supervision of programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults; and
- taking administrative action concerning an employee alleged to have abused, neglected, or exploited a vulnerable adult in an institution.

C. SECTION DIRECTORY:

Section 1. Amends s. 415.102, F.S., adding abuse committed by a relative or household member to the definition of “abuse” and modifying the definition of “neglect” to include the concept of self-neglect.

Section 2. Amends s. 415.1051(1), F. S., authorizing the department to petition the court for non-emergency protective services interventions where the department has reasonable cause to believe that a vulnerable adult in need of services is being abused, neglected, or exploited, and is in need of protective services but lacks the capacity to consent to protective services.

Section 3. Amends s. 415.107(3)(a) and (h), F.S., including the APD among the list of agencies, departments, employees, and agents able to access Adult Protective Services records and reports.

Section 4. Provides that the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF anticipates that this bill will have a minimal fiscal impact on the department, which it states can be absorbed within existing departmental resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

For Fiscal Year 2006-2007, DCF has requested, and the Governor has recommended, \$10.5 million and 87 positions for an adult protective investigations workload increase.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its January 11, 2006 meeting, the Committee on Elder & Long-Term Care adopted an amendment to House Bill 329 CS. The amendment does the following:

- adds APD to the list of agencies, departments, employees and agents bestowed with access to all Adult Protective Services records for the purpose of carrying out protective investigations, ongoing protective services, or licensure and approval of certain nursing facilities;
- enables information collected from the central abuse hotline to be used for employment screening in the instances contemplated pursuant to subsections 415.107(3)(a) and (h), F.S.; and
- allows such information, and information collected from the automated abuse information system, to be used by the Department of Children and Family Services and its agents and contract providers, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health and county agencies for licensure and approval of certain nursing facilities.

The Committee favorably reported a Committee Substitute.

On February 22, 2006, the Civil Justice Committee adopted one amendment to this bill.

- The amendment removes language that would have enabled unfounded allegations of abuse, neglect, and exploitation contained in the central abuse hotline to be used for employment screening or in the licensure or approval process for facilities that care for the elderly or disabled, which was inconsistent with chapter 2005-173 Laws of Florida. (That law amended section 39.301, Florida Statutes, and provides that when an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, then information contained in a report of abuse, neglect, or exploitation cannot be used for the purpose of employment screening or licensing).
- The amendment grants access to abuse records for APD officials responsible for administration of abuse prevention, investigation, or treatment programs, or handling employees alleged to have abused, neglected, or exploited a vulnerable adult at an institution.

- The amendment also makes grammatical changes in the bill that conform to the wording found in the companion bill, CS/SB 1182.

The bill was then reported favorably with a committee substitute.