

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: CS/SB 1182

INTRODUCER: Children and Families Committee and Senator Rich

SUBJECT: Adult Protective Services

DATE: February 14, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanderlin	Whiddon	CF	Fav/CS
2.	_____	_____	HA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1182 amends s. 415.102(1), F.S., the definition of “abuse” to incorporate abuse by certain individuals not in a caregiver role.¹ Also, the bill amends s. 415.102(15), F.S., in order to redefine the term “neglect” to incorporate neglect by a vulnerable adult of himself or herself.² This bill also amends s. 415.1051, F.S., to enable the Department of Children and Families (DCF) to petition the court for an order authorizing the provision of protective services if a “vulnerable adult in need of services” is being abused, neglected, or exploited and needs protective services but lacks the capacity to consent to the protection.³ The bill amends s. 415.107, F.S., to allow the Agency for Persons with Disabilities (APD) to gain access to information in the central abuse hotline.

This bill substantially amends the following sections of the Florida Statutes:
s. 415.102, s. 415.1051, and s. 415.107, F.S.

¹ “Abuse” means the willful act or threatened act by a caregiver that causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions. (s. 415.102(1), F.S.)

² “Neglect” defined by s. 415.102(15), F.S., means “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.”

³ “Vulnerable adult in need of services” defined by s. 415.102(27), F.S., 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.”

II. Present Situation:

The intent of Chapter 415, F.S., is to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all disabled adults or elderly persons in need of them.⁴

The term “abuse” defined by current law only describes abuse in the context of a caregiver relationship. As it stands, unless the person is a caregiver, abuse by a household member or a relative is not covered under the law. Prior to 2003, the law did not rely on the caregiver relationship to define abuse. The law was changed in 2003 to define abuse solely through the caregiver relationship.⁵ As the statute currently stands, DCF is unable to take action in cases of abuse outside of the caregiver relationship.

In October of 2004, the Agency for Persons with Disabilities (APD) became a separate agency from the Department of Children and Families. Prior to its removal from DCF, this program had access to information contained in the central abuse hotline as part of the department. Current law, however, does not allow APD to access the information in the central abuse hotline.

Chapter 415, F.S., does not provide DCF with the ability to respond to situations where self-neglect is established. In Fiscal Year 2003-2004, DCF conducted 41,099 adult protection investigations. Of the 41,099 investigations, 6,394 cases reported to the Florida Abuse Hotline were identified as cases of self-neglect or provided some indication that self-neglect was present.⁶

Currently, Chapter 415, F.S., gives the department the ability to petition the court for nonemergency involuntary services for vulnerable adults. In the case of *Florida Department of Children and Families v. McKim*, DCF petitioned the court for an involuntary nonemergency protective services intervention for an individual the petition alleged was “a vulnerable adult in need of services.” The original court of jurisdiction denied DCF’s petition on the grounds that DCF had no statutory authority to order protective services under current law even though the court found by clear and convincing evidence that the appellee lacked capacity to consent to protective services and was a vulnerable adult in need of services. This ruling was affirmed on appeal. The First District Court of Appeals found that, “s. 415. 1051, F.S., which is at issue in this case, does not employ the phrase ‘vulnerable adult in need of services.’ Rather, it uses the phrase ‘vulnerable adult,’ which is defined separately in the statute.”⁷

III. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 1182 adds “or vulnerable adult” to s. 415.102(15), F.S., the definition of “neglect.” When applied to the current statute, the addition gives DCF the

⁴ See s. 415.101(2), F.S.

⁵ See s. 4, ch. 2003-57, L.O.F.

⁶ *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.

⁷ *Florida Department of Children and Family Services v. McKim*, 869 So.1d 03-2092 (Fla. 1st DCA 2004).

ability to act in the interest of vulnerable adults in cases where the investigation includes self-neglect.⁸ The definition of “abuse” is also amended to incorporate abuse by certain individuals outside of the caregiver relationship. The new language extends “abuse” to actions by relatives and household members. Changing these two definitions gives the department the ability to protect a larger number of vulnerable adults who are being abused or neglected and are not currently covered under law.

The bill also amends s. 415.1051(1), F.S., to give DCF the authority to petition the court for an order authorizing the provision of protective services in a case where the department has reasonable cause to believe that a “vulnerable adult in need of services” is being abused, neglected, or exploited but lacks the capacity to consent to protective services. This change will give DCF explicit authority to provide voluntary services or petition the court for the authority to provide involuntary non-emergency services and protective supervision when an investigation determines that the vulnerable adult is neglecting himself or herself.

Further, CS/SB 1182 amends s. 415.107, F.S., to restore to APD the ability to access the information in the central abuse hotline which was lost in 2004 when the program was removed from DCF.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

⁸ “Vulnerable adult” means “a person of 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 dysfunctioning, or brain damage, or the infirmities of aging.” (s 415.102(26), F.S.)

C. Government Sector Impact:

The Department of Children and Families has reported no economic impact caused by the changes to Chapter 415, F.S. According to DCF, the department has investigated and supplied assistance in the past to those individuals that the new language now includes. Without new responsibilities, the department does not foresee any fiscal impact from this legislation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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