

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Health and Human Services Appropriations Committee

BILL: CS/SB 336

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Storms

SUBJECT: Adult Protective Services

DATE: April 12, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Walsh	CF	<b>Favorable</b>
2.	Naf	Wilson	GO	<b>Fav/CS</b>
3.	Hardy	Hansen	HA	<b>Favorable</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/Senate Bill 336 amends the legislative intent of the Adult Protective Services Act by replacing the terms “disabled adults” and “elderly persons” with the term “vulnerable adult.”

The bill creates a definition for “activities of daily living” in s. 415.102, F.S., that aligns with the definition provided in s. 429.65(1), F.S. The bill amends the definition of the term “vulnerable adult.”

The bill provides that the central abuse hotline operated by the Department of Children and Families (DCF or the department) must be operated in such a manner as to enable DCF to immediately transfer reports of abuse involving possible responsible parties other than the vulnerable adult’s relative, caregiver, or household member, to the appropriate county sheriff’s office.

The bill authorizes DCF to file a petition to determine incapacity in adult protection proceedings.

The bill authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue copies of certain records to DCF for use in adult protective investigations.

No fiscal impact is anticipated as a result of this legislation.

The bill conforms cross-references in ss. 435.04, 943.0585, and 943.059, F.S.

This bill substantially amends ss. 322.142, 415.101, 415.102, 415.103, and 415.1051, F.S.

## II. Present Situation:

### Adult Protective Services

Adult protective services are intended to protect vulnerable adults from being harmed. The term “vulnerable adult” means:<sup>1</sup>

...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 dysfunctioning, or brain damage, or the infirmities of aging.

These adults may experience abuse, neglect, or exploitation by second parties or may fail to adequately care for themselves. Florida law requires any person who knows or who has reasonable cause to suspect any abuse of vulnerable adults to report that information to the Florida Abuse Hotline.<sup>2</sup> The hotline screens these allegations to determine whether the information meets the criteria of an abuse report.<sup>3</sup>

Reports alleging child abuse, abandonment, or neglect by a person who is not a family member, household member, or caregiver are required to be immediately transferred to the appropriate county sheriff’s office.<sup>4</sup> There is no such requirement for reports of adult abuse, neglect, or exploitation.

*Protective Investigations* - Chapter 415, F.S., establishes a program designed to protect vulnerable adults from abuse, neglect, and exploitation. The components of the Adult Protective Services program can be designated as either protective investigations or protective supervision. Adult protective investigations (APIs) are conducted for all abuse reports to determine:<sup>5</sup>

- Whether there is evidence that abuse, neglect, or exploitation occurred;
- Whether there is an immediate or long-term risk to the victim; and
- Whether the victim needs additional services to safeguard his or her well-being.

The department reports that during some APIs the subject of the investigation denies his or her identity, eluding the investigators. Access to the DHSMV Driver and Vehicle Information Database (DAVID) system would provide a photograph of the subject of the investigation, assisting in the positive identification of the subject. Section 322.142(4), F.S., currently provides

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<sup>1</sup> Section 415.102(26), F.S.

<sup>2</sup> Section 415.1034, F.S.

<sup>3</sup> *Protective Investigations*, available at <http://www.dcf.state.fl.us/as/> (last visited January 4, 2010).

<sup>4</sup> Section 39.201(2)(b), F.S.

<sup>5</sup> *Protective Investigations*, available at <http://www.dcf.state.fl.us/as/> (last visited January 4, 2010).

for access to this information by the Department of State, Department of Revenue, and the Department of Financial Services, and to DCF for use in conducting child abuse investigations.

*Protective Supervision* - Adult protective supervision provides case management to clients who need additional services in order to be protected from further harm. Case management may be intensive, involving frequent contact with the victim (such as two or three visits a week), and typically lasts for three to six months. It may involve removing victims from an unsafe environment and relocating them to a setting where their needs can be safely and suitably met, such as a nursing home or an assisted living facility. In addition, the program may refer some clients for additional services to help ensure that they are not subject to further abuse.<sup>6</sup>

### **Emergency Protective Services**

The department notes that in the course of an API, vulnerable adults may be identified who lack capacity to consent to emergency protective services.<sup>7</sup> Section 415.1051(2), F.S., gives DCF the ability to petition the court to provide protective services when a vulnerable adult lacks capacity to consent to those services. After 60 days, DCF must petition the court to determine whether:<sup>8</sup>

- Emergency protective services will be continued with the consent of the vulnerable adult;
- Emergency protective services will be continued for the vulnerable adult who lacks capacity;
- Emergency protective services will be discontinued; or
- A petition for guardianship should be filed under ch. 744, F.S.

### **III. Effect of Proposed Changes:**

Section 1 amends s. 415.101, F.S., by replacing the terms “disabled adult” and “elderly persons” with the term “vulnerable adult” to align the legislative intent language with the statutory definition.

Section 2 amends s. 415.102, F.S., by defining the term “activities of daily living” as “functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.” The bill amends the definition of the term “vulnerable adult” to include those impaired due to sensory<sup>9</sup> dysfunction.

Section 3 amends s. 415.103(1), F.S., to require that DCF’s central abuse hotline be operated in such a manner as to enable DCF to immediately transfer the report to the appropriate county sheriff’s office if the report is of known or suspected abuse of a vulnerable adult by someone other than the vulnerable adult’s relative, caregiver, or household member.

<sup>6</sup> *Id.*

<sup>7</sup> Department of Children and Families 2010 Bill Analysis, SB 336 (on file with the committee).

<sup>8</sup> Section 415.1051(2)(g), F.S.

<sup>9</sup> Sensory dysfunction includes blindness and visual impairment whether congenital or acquired, and deafness and hearing impairments that are prelingual, prevocational, or adult onset. *Florida Division of Vocational Rehabilitation 2006-07 Annual Report*, available at: <http://www.rehabworks.org/Files/DocumentsLinks/2007%20Annual%20Report.pdf> (last visited January 4, 2010).

Section 4 amends s. 415.1051, F.S., to allow DCF to file a petition to determine incapacity in emergency and nonemergency cases, if DCF believes, in good faith, that the vulnerable adult lacks capacity to consent to protective services. The bill prohibits DCF from being appointed guardian or providing legal counsel for the guardian once the petition to determine incapacity is filed. According to DCF, the authority to file a petition will enhance its ability to protect vulnerable adults from abuse, neglect, and exploitation until a guardian can be appointed and also will also avoid conflicts of interest.<sup>10</sup>

Section 5 amends s. 322.142(4), F.S., to authorize DCF to obtain copies of driver's license files<sup>11</sup> from DHSMV for use in adult protective investigations. According to DCF, this investigative tool will allow the adult protective investigator to quickly access the location of participants in the investigation, verify the identity of participants, and facilitate the ultimate goal of assuring safety for vulnerable adults.<sup>12</sup>

Sections 6 through 8 conform cross references in ss. 435.04, 943.0585 and 943.059, F.S., respectively.

The bill has an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

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<sup>10</sup> Department of Children and Families 2010 Bill Analysis, SB 336 (on file with the committee).

<sup>11</sup> The file includes a photo, signature, and address of the driver.

<sup>12</sup> Department of Children and Families 2010 Bill Analysis, SB 336 (on file with the committee).

C. **Government Sector Impact:**

According to DCF, there is no fiscal impact anticipated as a result of this legislation.

**VI. Technical Deficiencies:**

Lines 54-56 – The definition of the term “activities of daily living” is slightly different grammatically from the definition of the same term found in s. 429.02(1), F.S., but the substance of the definitions is identical.

**VII. Related Issues:**

Lines 81-93 – If the legislative intent is to require DCF to transfer reports to the central abuse hotline of known or suspected abuse of a vulnerable adult by someone other than the vulnerable adult’s relative, caregiver, or household member to the appropriate county sheriff’s office, that provision should perhaps be clarified. The phrasing of this bill could be interpreted to merely enable DCF to transfer such reports, rather than to require DCF to do so.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on February 2, 2010:**

The committee substitute makes technical grammatical changes to lines 162-163.

- B. **Amendments:**

None.