

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 91

Adult Protective Services

**SPONSOR(S):** Wood

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 336

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Elder &amp; Family Services Policy Committee</u>	<u>12 Y, 0 N, As CS</u>	<u>Guy</u>	<u>Shaw</u>
2)	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u>12 Y, 0 N</u>	<u>Krol</u>	<u>Cunningham</u>
3)	<u>Health Care Appropriations Committee</u>	<u>9 Y, 0 N</u>	<u>Massengale</u>	<u>Massengale</u>
4)	<u>Health &amp; Family Services Policy Council</u>	<u>15 Y, 0 N</u>	<u>Guy</u>	<u>Gormley</u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Committee Substitute for House Bill 91 amends several provisions in chapter 415, Florida Statutes, relating to adult protective services. The bill replaces the terms “disabled adults” and “elderly persons” with “vulnerable adult.” The bill also amends the definition of “vulnerable adult” by including the term “sensory.”

The bill creates a definition for “activities of daily living” that conforms the phrase to the definition of “activities of daily living,” relating to adult family-care homes.

The bill provides that the central abuse hotline must transfer to the appropriate county sheriff’s office reports of known or suspected abuse of a vulnerable adult involving a person other than a relative, caregiver, or household member.

The bill specifies that the Department of Children and Family (“the DCF” or “department”) may file a petition to determine incapacity in adult protective proceedings. Upon filing the petition, the department is prohibited from being appointed guardian or providing legal counsel to the guardian.

The bill provides the department with access to records of the Department of Highway Safety and Motor Vehicles for use in conducting protective investigations.

The bill does not appear to have a fiscal impact on state or local governments.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

Section 415.101, Florida Statutes, relating to the Adult Protective Services Act, provides legislative intent for comprehensive protective services for Florida's elderly and abused adults. The Department of Children and Families ("the DCF" or "the department") has identified several methods to improve these services.

##### *Adult Protective Services Program<sup>1</sup>*

The Adult Protective Services Program, authorized by chapter 415, Florida Statutes, and managed by the DCF, is a system of social services that protects disabled or elderly persons from occurrences of abuse, neglect or exploitation. Upon report of alleged abuse, neglect, or exploitation, an assessment of an individual's need for protective services is initiated.

The program consists of four components:

- The on-site investigation;
- Emergency services, if determined necessary;
- Referral to the local law enforcement, if appropriate; and
- Referral to local social service agencies for any identified needs.

##### *Central Abuse Hotline*

When the Florida Abuse Hotline began in the early 1970s, abuse reports were received in 181 state offices throughout Florida.<sup>2</sup> In 1988, the Legislature created the Adult Protective Services Act and centralized the abuse hotline at the DCF, where it currently operates and receives abuse, neglect, or exploitation reports—in writing or through a statewide toll-free telephone number.<sup>3 4</sup> Reports received by the hotline alleging child abuse, abandonment, or neglect by a person who is not a family member,

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<sup>1</sup> Department of Children and Families, CF Operating Procedure 140-2, see <http://www.dcf.state.fl.us/publications/policies.shtml#adult> (last visited March 4, 2010).

<sup>2</sup> Department of Children and Families, see <http://www.dcf.state.fl.us/dcf/flash/apr07/hotline.shtml> (last visited March 4, 2010).

<sup>3</sup> *Id.*

<sup>4</sup> Section 415.103(1), F.S.

household member, or caregiver<sup>5</sup> must be immediately transferred to the appropriate county Sheriff's office.<sup>6</sup> There is no such requirement for reports of adult abuse, neglect, or exploitation.

The hotline has 160 staff members, including 3 managers, 17 supervisors and 140 counselors.<sup>7</sup> From 2007-2008, Florida's Abuse Hotline received approximately 367,000 calls, which resulted in approximately 230,000 filed reports. Specifically relating to adult abuse, the hotline received 77,641 calls, which resulted in 42,919 filed reports.<sup>8</sup> The hotline also maintains a secure web-based reporting system that allows individuals to report suspicions of adult/child abuse, neglect and abandonment, or neglect and exploitation of vulnerable adults.

The Florida Abuse Hotline accepts reports related to vulnerable adults who are residents of Florida or currently located in Florida, and are:<sup>9</sup>

- Believed to have been neglected or abused by a caregiver in Florida;
- Suffering from the ill effects of neglect and in need of services; or
- Being exploited by any person who stands in a position of trust or confidence, or any person who knows or should know that a vulnerable adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use their funds, assets or property.

When a report is determined by a hotline counselor to require an immediate onsite protective investigation, the hotline counselor must immediately notify the DCF's designated district staff responsible for protective investigations. A non-emergency report that is received by the hotline counselor is forwarded to the appropriate district staff in sufficient time so that an investigation occurs within 24 hours.<sup>10</sup>

#### *Protective Service Interventions*

When a report is called into the Florida Abuse hotline, it is then referred to the Protective Investigations Unit closest to the victim's location. A protective investigation is initiated that includes observation, interviews with the victim and witnesses, evidence gathering and collateral contacts.<sup>11</sup> Sometimes during an investigation, abused, neglected, or exploited adults are identified, but lack the capacity to consent to protective services. Therefore, the DCF, under reasonable cause, is directed to petition the court for an order authorizing the provision of protective services.<sup>12</sup>

There are also instances when vulnerable adults are identified and lack capacity to consent to emergency protective services. Emergency protective services are warranted when a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury. The DCF, under reasonable cause, may petition the court for an emergency protective services order.<sup>13</sup>

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<sup>5</sup> Section 415.102(4), F.S., defines "caregiver" as "a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. 'Caregiver' includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (8). For the purpose of departmental investigative jurisdiction, the term 'caregiver' does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in any official capacity."

<sup>6</sup> Section 39.201(2)(b), F.S.

<sup>7</sup> Department of Children and Families, see <http://www.dcf.state.fl.us/dclash/apr07/hotline.shtml> (last visited March 4, 2010).

<sup>8</sup> Department of Children and Families, *Florida Abuse Hotline – Call Report Activity Fiscal Year 2008-2009* (on file with the Committee).

<sup>9</sup> Department of Children and Families, *Reporting Abuse of Children and Vulnerable Adults*, see [www.dcf.state.fl.us/abuse/publications/mandatedreporters.pdf](http://www.dcf.state.fl.us/abuse/publications/mandatedreporters.pdf) (2007) (last visited March 4, 2010).

<sup>10</sup> Section 415.103(2), F.S.

<sup>11</sup> Department of Children and Families, *Adult Abuse, Neglect, and Exploitation*, see <http://www.dcf.state.fl.us/as/> (last visited March 4, 2010).

<sup>12</sup> Section 415.1051(1), F.S.

<sup>13</sup> Section 415.1051(2), F.S.

Emergency and non-emergency protective service orders are restricted to 60 days. At the conclusion of 60 days, the department must petition the court to determine whether:<sup>14</sup>

- Protective services will be continued with the consent of the vulnerable adult;
- Protective services will be continued for the vulnerable adult who lacks capacity;
- Protective services will be discontinued; or
- A petition for guardianship should be filed pursuant to chapter 744, Florida Statutes, regarding Florida guardianship.

#### *Access to Driver's License Images and Signatures*

The DCF reports that during some adult services investigations, the subject of the investigation denies his or her identity, eluding the investigators. Section 322.142(4), Florida Statutes, authorizes the Department of Highway Safety and Motor Vehicles, pursuant to interagency agreements, to share its database information, including digital images and signatures, in response to:

- Law enforcement agency requests;
- The Department of State to determine voter registration eligibility;
- The Department of Revenue to establish paternity and establish, modify, or enforce support obligations;
- The Department of Financial Services relating to unclaimed property; and
- The Department of Children and Families relating to protective investigations regarding children.<sup>15</sup>

Current law does not allow the DCF to access the database system relating to protective investigations regarding vulnerable adults.

#### **Effects of Bill**

Committee Substitute for House Bill 91 amends several provisions in chapter 415, Florida Statutes, relating to adult protective services. The bill changes several definitions used in this chapter. Specifically, the bill deletes terms "disabled adults" and "elderly persons" provided in section 415.101(2), Florida Statutes, and replaces with the term "vulnerable adult." The bill amends the definition of "vulnerable adult" by adding the term "sensory," and creates a definition for "activities of daily living" that conforms the phrase to the definition of "activities of daily living," relating to adult family-care homes.<sup>16</sup> The effect of these changes provides more consistent use of commonly used terms.

The bill amends section 415.103(2), Florida Statutes, and requires the central abuse hotline to transfer reports of known or suspected abuse of a vulnerable adult, where the alleged responsible party is someone other than the caregiver, household member, or family member, to the appropriate county sheriff's office. This provision aligns abuse of vulnerable adult reporting requirements with those for abuse of children and should ensure increased law enforcement notification.

The bill amends section 415.1051, Florida Statutes, and authorizes the DCF, upon a good faith belief that a vulnerable adult lacks capacity, to file a petition to determine capacity in emergency and nonemergency adult protective proceedings, under section 744.3201, Florida Statutes. A copy of a petition for appointment of guardian or emergency temporary guardian can be filed along with a petition to determine capacity. The bill prohibits the DCF from serving as a guardian or providing legal counsel to the guardian once such petition has been filed. The effect of these changes will allow the DCF to initiate guardianship petitions to protect vulnerable adults and should allow for ongoing protection once the department's involvement has ended. Additionally, the effect of prohibiting the DCF from being named as guardian to the vulnerable adult will avoid conflicts of interest for the department.

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<sup>14</sup> *Id.*

<sup>15</sup> Section 322.142(4), F.S.

<sup>16</sup> Section 429.65(1), F.S.

The bill provides the department with access to records of the Department of Highway Safety and Motor Vehicles for use in conducting protective investigations. Access to this system should assist investigators in the positive identification of victims and responsible persons who are subjects in investigations of abuse, neglect, or exploitation and provide quick access to the location of such persons, including vulnerable adults.

Three sections of statute are amended to correct cross-references to section changes made by the bill.

The bill does not appear to have a fiscal impact on state or local governments.

This bill provides an effective date of July 1, 2010.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 415.101, F.S., relating to the Adult Protective Services Acts; legislative intent.

**Section 2.** Amends s. 415.102, F.S., relating to definitions.

**Section 3.** Amends s. 415.103, F.S., relating to the central abuse hotline.

**Section 4.** Amends s. 415.1051, F.S., relating to protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.

**Section 5.** Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

**Section 6.** Amends s. 435.04, F.S., relating to level 2 screening standards.

**Section 7.** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

**Section 8.** Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

**Section 9.** Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

According to the Department of Children and Families, section 4 of the bill, which authorizes the department to file a petition for guardianship, will have no fiscal impact on the department since the petition filing fees will be waived per section 28.345, Florida Statutes.

## **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 21, 2009, the Elder and Family Services Policy Committee adopted two amendments to House Bill 91. The first amendment provides a definition of "activities of daily living" that conforms the phrase to the same definition provided in chapter 429, Florida Statutes, for adult family-care homes. The second amendment is technical and corrects a cross-reference in the bill.

The bill was reported favorably as a Committee Substitute. This analysis reflects the committee substitute.