

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141

Adult Protective Services

SPONSOR(S): Wood

TIED BILLS:

IDEN./SIM. BILLS: SB 2404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Family Services Policy Committee		Schoonover	Ciccone
2) Public Safety & Domestic Security Policy Committee			
3) Health & Family Services Policy Council			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

House Bill 1141 amends several provisions in Chapter 415, F.S., relating to adult protected services. The bill deletes terms "disabled adults" and "elderly persons" and replaces with the term "vulnerable adult." The bill also amends the definition of "vulnerable adult" by deleting "long term physical" and replacing with "sensory."

The bill also creates a definition for "activities of daily living" to align with the definition for "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 clarifies that the Department of Children and Family Services ("the DCF" or "department") may file a petition to determine incapacity in adult protection 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 (DHSMV) for use in conducting protective investigations.

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

This bill provides an effective date of July 1, 2009.

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, F.S., 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 Program¹

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

The program consists of four components:

- The on-site investigation of reports of alleged abuse, neglect, exploitation;
- Determination of immediate risk to the disabled or elderly adult and the provision of necessary emergency services;
- Evaluation of the need for and provision of on-going protective supervision;
- Provision or arrangement of on-going protective services.

Central Abuse Hotline

When the Florida Abuse Hotline began in the early 1970s, abuse reports were received in 181 locations throughout the state. In 1983, the Legislature enacted the Protection from Abuse, Neglect, and Exploitation Act to provide for comprehensive protective services for Florida's elderly and abused adults, abused children, and domestic violence victims. Then in 1986, under the management of the Department of Health and Rehabilitative Services, the Hotline increased to 15 positions.

The Adult Protective Services Act in 1988, centralized the abuse hotline at the DCF. DCF operates and maintains the central abuse hotline to receive all reports of abuse, neglect, or exploitation, either in writing or through a single statewide toll-free telephone number.²

¹ Department of Children and Families, see <http://www.dcf.state.fl.us/as/services.shtml> (last visited March 17, 2009).

² s. 415.103(1), F.S.

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 office³--there is no such requirement for reports of adult abuse, neglect, or exploitation.

Currently, the Florida Abuse Hotline accepts reports related to vulnerable adults who are residents of Florida or currently located in Florida, and are:⁴

- 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.

Upon receiving a report requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the DCF's designated district staff responsible for protective investigations to ensure prompt onsite investigation. Upon receiving a report not requiring an immediate onsite protective investigation, the central abuse hotline must notify the district staff in sufficient time so that an investigation occurs within 24 hours.⁵

The hotline 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 hotline has 162 staff members, including 4 managers, 17 supervisors and 141 counselors. The intake counselors receive calls dealing with abused, neglected or abandoned children, and vulnerable adults. From 2007-2008, Florida's Abuse Hotline received approximately 370,000 calls, which resulted in approximately 282,000 filed reports. Specifically relating to adult abuse, the hotline received 78,613 calls, which resulted in 54,496 filed reports.⁶

Protective Service Interventions

A protective investigation is initiated, when an abuse, neglect or exploitation report is received. The investigation includes observation, evidence gathering and collateral contacts.⁷ During an investigation, vulnerable adults being abused, neglected, or exploited are identified, but lack 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.⁸

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.⁹

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 whether¹⁰:

- 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;
- A petition for guardianship should be filed pursuant to ch. 744, F.S., regarding Florida guardianship.

³ s. 39.201(2)(b), F.S.

⁴ Department of Children and Families, *Reporting Abuse of Children and Vulnerable Adults*, see www.dcf.state.fl.us/abuse/publications/mandatedreporters.pdf (2007) (last visited March 18, 2009).

⁵ s. 415.103(2), F.S.

⁶ Department of Children and Families, Hotline Report for 2007-2008.

⁷ Department of Children and Families, see <http://www.dcf.state.fl.us/as/services.shtml> (last visited March 17, 2009).

⁸ s. 415.1051(1), F.S.

⁹ s. 415.1051(2), F.S.

¹⁰ Id.

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 422.142(4), F.S., currently permits the Department of Highway Safety and Motor Vehicles, pursuant to interagency agreements, to share information from its database, including digital images and signatures, in the following circumstances:

- In response to law enforcement agency requests;
- With the Department of State to determine voter registration eligibility;
- With the Department of Revenue for use in establishing paternity and establishing, modifying, or enforcing support obligations;
- With the Department of Financial Services relating to unclaimed property; and
- With the Department of Children and Families relating to protective investigations regarding children.¹¹

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

Effects of Bill

House Bill 1141 amends several provisions in Chapter 415, F.S., relating to adult protected services. The bill provides several changes in definitions used in this chapter. Specifically, the bill deletes terms "disabled adults" and "elderly persons" provided in s. 415.101(2), F.S., and replaces with the term "vulnerable adult." The bill also amends the definition of "vulnerable adult" by deleting "long term physical" and replacing with "sensory," and creates a definition for "activities of daily living." The effect of these changes provides more uniform definitions to commonly used terms and aligns these terms with the legislative intent to the body of chapter 415.

The bill amends s. 415.103(2), F.S., and requires the central abuse hotline to transfer a report 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 requirement should ensure increased law enforcement notification.

The bill also amends s. 415.1051, F.S., 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 protection proceedings, under Ch. 744, F.S. 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. Having a guardian in place will allow for ongoing protection once the DCF's involvement has ended. Further the effect of prohibiting the DCF from being named as guardian to the vulnerable adult will avoid conflicts of interest for the department.

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

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

This bill provides an effective date of July 1, 2009.

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¹¹ s. 322.142(4), F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 415.101, F.S.; relating to the Adult Protective Services Act; 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.
- Section 5: Amends s. 322.142, F.S.; relating to color photographic or digital imaged licenses.
- Section 6: Amends s. 943.0585, F.S.; relating to court-ordered expunction of criminal history records.
- Section 7: Amends s. 943.059, F.S.; relating to court-ordered sealing of criminal history records.
- Section 8: Provides an effective date of July 1, 2009.

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:

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 s. 28.345, F.S.

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:

Line 73 on page 3 includes a strikethrough of "long term physical," which was not the intention of the sponsor of the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES