

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.)

BILL: CS/SB 448

SPONSOR: Committee on Children and Families and Senator Margolis

SUBJECT: Elder Abuse and Neglect

DATE: February 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/2 amendments</u>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>AHS</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute for SB 448 amends s. 825.102, F.S., to increase the penalty for aggravated abuse of an elder person from a second degree felony to a first-degree felony and amends s. 921.0022, F.S., to conform language contained in the offense severity ranking chart of the Criminal Justice Code with the penalty increase.

The committee substitute creates s. 415.104(4), F.S., authorizing a protective investigator from the Department of Children and Families (DCF or department) to request an assessment of the victim if the protective investigator has reason to believe the victim lacks the capacity to consent for services.

This committee substitute directs the Department of Children and Family Services to establish a workgroup. The membership of the workgroup must consist of persons from the department, the Department of Elderly Affairs (DOEA) and the Florida Department of Law Enforcement (FDLE). The committee substitute directs the workgroup to evaluate the current law enforcement training curriculum related to the identification of adult abuse and neglect. The workgroup is directed to provide an evaluative report to the Legislature relating the group's findings and recommendations for improvements to the law enforcement training curriculum.

This committee substitute amends sections 825.102(2) and 921.0022, of the Florida Statutes, and creates section 415.104(4) of the Florida Statutes.

II. Present Situation:

Mental Health Evaluation

Chapter 415, F.S., provides direction pertaining to adult protective investigations and the requirements of protective investigators or case workers. The term “lacks capacity to consent” as it relates to vulnerable adults is defined in s. 415.102 (14), F.S., to mean “a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services.” Section 415.1051, F.S., directs the department to petition the court whenever there is reasonable cause to believe the vulnerable adult may lack the capacity to consent to protective services.

Protective services workers frequently make petitions to the court based only upon their investigative findings, a practice which is not always sufficient for the court to determine whether the individual in question actually “lacks capacity to consent” to protective services or not. In some districts, the Adult Services Program has worked cooperatively with the Mental Health Program, and local mental health funding has been set aside to provide “capacity to consent” evaluations. It is reported that this practice results in more timely services being provided to the vulnerable adult and a reduction in the number of times an adult protective services case must be brought before the court.

Criminal Penalties

Chapter 825, F.S., is the current criminal penalty statute for abuse, neglect, and exploitation of elderly persons and disabled adults. Section 825.102(2), F.S., specifies that a person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the second degree and directs provisions for punishment of these crimes. Chapter 921, F.S., addresses criminal sentencing guidelines with s. 921.0022, F.S., specifying severity ranking of crimes that is used to compute a sentence score for felony offenders. The current severity ranking for this crime is level eight.

Law Enforcement Training

The department reports having established good working relationships with both the Department of Elderly Affairs (DOEA) and the Florida Department of Law Enforcement (FDLE). The department reports working cooperatively with both agencies to develop modules to be used for training law enforcement officers to respond appropriately to adult abuse situations. The department currently provides assistance by providing specialized training to law enforcement officers upon request.

The training program provided by FDLE includes approximately six hours of new officer training related to abuse of the elderly. The FDLE reports that this topic is also “threaded” into other modules of law enforcement training. Law enforcement officers may also complete a more advanced module and in turn, subsequently receive pay increases. Specialized training relating to the abuse of the elderly is also provided at local levels on an as needed basis.

The current law enforcement training modules were developed with involvement of staff from DCF and DOEA. There are plans to evaluate implementation of these modules by July 2004. The

training modules provided for the identification of elderly abuse are comparable to training provided in the areas of domestic violence and child abuse.

III. Effect of Proposed Changes:

Section 1 creates s. 415.104(4), F.S. Subject to available resources, this section authorizes the protective investigator from the Department of Children and Family Services to refer vulnerable adults who are victims of abuse or neglect for an assessment if there is reason to believe the victim lacks capacity to consent for services. The assessment must be conducted by a mental health provider within 48 hours of the initial observation by the investigator.

The department estimates that approximately seven percent of the victims in reports of abuse, neglect, or exploitation may need an assessment to determine the individuals' capacity to consent for services. Although funding is not currently specified to pay for these assessments, some districts have allocated existing mental health resources to provide this service. Benefits of conducting needed mental status assessments include the timely provision of needed services to elderly or disabled persons, more successful court petitions, and a reduction in the number of times the same case is presented in court.

Sections 2 amends s. 825.102(2), F.S., to increase the penalty for aggravated abuse of an elderly person or disabled adult from a second degree felony to a first degree felony, and section 4 amends s. 921.0022, F.S., to conform language contained in the offense severity ranking chart of the Criminal Justice Code with the penalty increase. This proposed change will increase the maximum number of years that may be served in prison for committing this crime from 15 to 30 years. Aggravated child abuse is currently a first degree felony. This committee substitute will improve the consistency between the penalties for convictions on these similar charges.

Section 3 directs that a workgroup be established by the Department of Children and Families. The committee substitute directs that the Secretary of the Department of Children and Families, the Secretary of the Department of Elderly Affairs, and the Executive Director of the Department of Law Enforcement appoint at least one and no more than four members to the workgroup and that the Secretary of the Department of Children and Families designate its chairperson. The workgroup is directed to evaluate the current curriculum used to train law enforcement officers in identifying abuse and neglect of elderly persons and to submit an evaluative report to the Legislature by September 1, 2005. The report to the Legislature must contain an evaluation of the current curriculum and a list of recommendations for improving the curriculum used to train law enforcement officers. Based upon information obtained from the department and FDLE, it appears that much of the work directed by this committee substitute has already been accomplished outside of the workgroup and could be continued and finalized by the workgroup.

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:

C. Government Sector Impact:

There is no mental health funding specified by the department for the purposes described in this committee substitute. Based upon FY 2002-03 data, the department estimates that approximately 3,030 victims (7% of all reports) of abuse, neglect and exploitation may need a professional capacity to consent assessment. Any potential fiscal impacts of the committee substitute are contained as these assessments are authorized subject to available resources.

There could be a negligible increase in services provided by DOEA as a result of conducting these assessments to determine capacity to consent to services.

The departments may incur some expense for any travel necessary to participate on the workgroup.

The Criminal Justice Impact Conference has not yet considered the prison bed impact for the committee substitute's penalty increase for aggravated abuse of an elderly person or disabled adult. Consequently, the fiscal impact for this increase is not yet known.

VI. Technical Deficiencies:

The title of the committee substitute provides that it is an "act relating to elder abuse and neglect." The provisions of the bill, however, apply not only to elderly adults, but also to disabled and vulnerable adults. Accordingly, the title should be amended to accurately reflect the bill's contents.

In Section 1., the committee substitute provides that, "Subject to the availability of resources," a protective investigator may request that certain persons receive a mental health assessment. The term "resources" is not defined; thus, it is not clear precisely what must be available to permit the investigator to request such assessments.

In Section 3., the bill creates a "workgroup" to evaluate law enforcement training curriculum. Section 20.03, F.S., however, does not define a "workgroup" as an entity that more be formed

within the executive branch. Instead, the term “committee,” as defined in s. 20.03(8), F.S., should be utilized.

VII. Related Issues:

None.

VIII. Amendments:

Amendment #1 by Governmental Oversight and Productivity:

The amendment removes the bill’s creation of s. 415.104(4), F.S., in Section 1. that provided a process to be followed with regard to persons lacking the capacity to consent, as well as the bill’s creation in Section 3. of a workgroup. (WITH TITLE AMENDMENT)

Amendment #2 by Governmental Oversight and Productivity:

The amendment requires the Criminal Justice Standards and Training Commission to incorporate instruction on the identification of and appropriate responses for persons suffering from dementia, and on the identification and investigation of elder abuse and neglect into the curriculum required for continuous employment or appointment as a law enforcement officer. (WITH TITLE AMENDMENT)

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