

HouseAnalysis
HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Adult Protective Services
SPONSOR(S): Culp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma	Walsh
2) Civil Justice Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

The bill amends the Adult Protective Services Act to allow the Department of Children and Family Services explicit authority to protect persons from the effects of self-neglect, and redefines the term "abuse" to include abuse by a relative or household member.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government; promote personal responsibility—The bill amends the Adult Protective Services Act to allow DCF explicit authority to protect persons from the effects of self-neglect and investigate alleged abuse of vulnerable adults by relatives and household members who are not in a caregiver role.

B. EFFECT OF PROPOSED CHANGES:

Self-Neglect

Chapter 415, F.S., the Adult Protective Services Act, provides statutory authority to the Department of Children and Family Services (DCF) to investigate reports of alleged second party abuse, neglect and exploitation of vulnerable adults¹ caused by the vulnerable adult himself, that is, self-neglect.² In Fiscal Year 2003-2004, DCF investigated 6,394 cases reported to the Florida Abuse Hotline that were verified or contained some indications of self-neglect (other than medical neglect).³ More than 40 percent of these self-neglect cases occurred in persons 80 years of age and older.

The Adult Protective Services program is a system of specialized social services directed toward protecting vulnerable adults who are unable to manage their own affairs from further occurrences of abuse, neglect, or exploitation. The department sends staff to make an assessment of an individual's need for protective services after a reported allegation of abuse, neglect, or exploitation is received at the Hotline. Adult Protective Services includes four basic elements:

1. The on-site investigation of all reports of alleged abuse, neglect, or exploitation.
2. Determination of immediate risk to the vulnerable adult and the provision of necessary emergency services.
3. Evaluation of the need for and provision of on-going protective supervision.
4. Provision or arrangement of on-going protective services.

If a vulnerable adult is in danger of continued abuse, neglect or exploitation, staff from the Aging Services Program provides services through the authority of the Protective Supervision Program.

Presently, the current definition of "neglect" (s. 415.102(15), F.S.), does not include neglect caused by the vulnerable adult, and the department's authority to provide services in cases of self-neglect has been questioned by the courts.⁴

¹ "Vulnerable adult" means 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 dysfunction, or brain damage, or the infirmities of aging. S. 415.102(26), F.S.

² See, e.g., ss. 415.104, 415.105, F.S.

³ *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.

⁴ *Florida Department of Children and Family Services v. McKim*, 869 So.2d 760 (Fla. 1st DCA 2004) (fact that allegedly vulnerable adult was suffering from results of self-neglect did not support order under Adult Protective Services Act of protective services, where definition of "neglect" required that neglect have occurred at hand of caregiver and statutory definition of "vulnerable adult" did not include concept of self-neglect.)

Abuse

Moreover, the Adult Protective Services Act defines “abuse”⁵ in terms of willful acts committed or threatened by a “caregiver” that causes or is likely to cause impairment to a vulnerable adult’s well-being. The statutory definition of “caregiver” found in Chapter 415 includes as a caregiver a person entrusted with the responsibility for the frequent and regular care of a vulnerable adult, and who has an agreement or understanding with that person or that person’s guardian that a caregiver role exists.⁶ Although the definition notes that a caregiver may include “relatives, household members, guardians, neighbors, and employees and volunteers of facilities ...”, either an explicit or implicit caregiver relationship must be present for DCF to accept and investigate a report of abuse.⁷

During the 2000 Legislative session, s. 415.102(1) was amended to omit the requirement that a relationship exist between a vulnerable adult and the individual alleged to have committed acts or omissions evidencing abuse. Subsequently, in 2003 the Legislature again amended the Adult Protective Services Act to require the presence of a caregiver relationship before DCF could accept and investigate alleged abuse maltreatments.

Effect of Proposed Bill

HB 329 adds “vulnerable adult” to the definition of “neglect” in section 415.102(15), Florida Statutes, and adds “vulnerable adult in need of services”⁸ to section 415.1051(1), Florida Statutes, relating to non-emergency protective services. These changes will give DCF explicit authority to provide voluntary services or petition the court for involuntary non-emergency services and protective supervision when an investigation determines that the vulnerable adult is neglecting himself or herself.

Additionally, the bill amends the definition of “abuse” in section 415.102(1) to include willful or threatened acts committed by a relative or household member which cause, or are likely to cause, significant impairment to a vulnerable adult’s health. This change allows DCF to accept and investigate the alleged abuse of vulnerable adults by relatives and household members who are neither explicit nor implicit caregivers of such vulnerable adult.

C. SECTION DIRECTORY:

Section 1. Amends s. 415.102(1), F.S., adding abuse committed by a relative or household member to the definition of “abuse”; amends s. 415.102(15), F. S., adding “vulnerable adult” to the definition of “neglect” to include within the definition of neglect the concept of self-neglect.

Section 2. Amends s. 415.1051(1), F. S., adding “vulnerable adult in need of services” to include, within the department’s authority to seek an order authorizing the provision of protective services, those persons determined to have neglected themselves.

Section 3. Provides the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DCF has indicated that this bill has no fiscal impact.

⁵ S. 415.102(1), F.S.

⁶ S. 415.102(4), F.S.

⁷ Id.

⁸ “Vulnerable adult in need of services” 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. S. 415.102(27), F.S.

2. Expenditures:

DCF has indicated that this bill has no fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds; does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES