

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1059 Exploitation of a Vulnerable Adult

SPONSOR(S): Judiciary Committee; Children, Families & Seniors Subcommittee; Civil Justice & Claims Subcommittee; Burton

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1562

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	Gilani	Brazzell
3) Judiciary Committee	15 Y, 1 N, As CS	MacNamara	Poche

SUMMARY ANALYSIS

A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, developmental disability or dysfunction, brain damage, or the infirmities of aging. Current law authorizes the Department of Children and Families to investigate reports of abuse, neglect, or exploitation of a vulnerable adult.

CS/CS/CS/HB 1059 creates a cause of action for an injunction prohibiting further exploitation of a vulnerable adult. Specifically, the bill:

- Provides definitions for the issuance of an injunction;
- Specifies who may file for an injunction, identifies proper venue, and details procedural framework for the parties and court;
- Requires the clerk of the circuit court to perform specific duties and limits the amount of the fee for filing a petition;
- Creates a sworn petition form for parties filing an injunction;
- Allows the court to grant a temporary injunction under certain circumstances;
- Provides direction for effecting service of process;
- Creates standards for the court to follow when issuing an injunction;
- Identifies forms of relief the court may grant to a vulnerable adult in issuing an injunction, including temporary and exclusive use of a shared residence and freezing the assets and credit lines of the vulnerable adult and those of an individual accused of exploiting the vulnerable adult;
- Permits the court to order payment of specified living expenses when the vulnerable adult's assets are frozen;
- Requires the sheriff or a law enforcement agency to assist the court and clerks of court with specific tasks in issuing and executing an injunction;
- Creates criminal penalties for violating an injunction and authorizes law enforcement to arrest an individual who has violated the terms of an injunction; and
- Limits the liability of financial institutions for freezing assets or credit lines.

The bill may have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1059e.JDC

DATE: 2/16/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Vulnerable Adults and Elderly Residents

Florida is home to more than 5.2 million residents age 60 or older, and has the most residents over the age of 65 in the nation.¹ In 2016, 35.2 percent of individuals nationwide 65 years of age or older were reported to have a disability.² Moreover, 19 percent of elders surveyed in a 2016 study conducted by the state's Department of Elder Affairs (DOEA) indicated that they required assistance with activities of daily living, such as walking, bathing, and dressing.³

True incidences of abuse, neglect, or exploitation of the elderly or disabled adults are often difficult to assess. While abuse, neglect, and exploitation of a vulnerable adult can take various forms, the DOEA has described the "financial or material exploitation" of a vulnerable adult to include improper use of an elder's funds, property, or assets; cashing checks without permission; forging signatures; forcing or deceiving an older person into signing a document; and using an ATM/debit card without permission.⁴

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly vulnerable to financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.⁵ Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed to pay a bill for care, after reasonable and appropriate notice for residence at the facility.⁶ Assisted living facilities and adult family care homes can relocate or terminate the residency of a vulnerable adult with 45 days notice or 30 days notice, respectively.⁷ Consequently, the responsibility of caring for exploited vulnerable adults at risk of discharge or eviction may fall on various state and federal programs.

In 2010, a review of 80 elder financial exploitation cases in Utah found the state's Medicaid program would potentially pay approximately \$900,000 to cover the cost of care for vulnerable adults who had suffered substantial losses due to financial exploitation.⁸

Adult Protective Services Act

In 1977, the Legislature enacted the "Adult Protective Services Act" (APSA), ch. 415, F.S., authorizing the Department of Children and Families (DCF) to investigate reports of abuse, neglect or exploitation of a vulnerable adult. An assessment of an individual's need for protective services is initiated upon a report of alleged abuse, neglect, or exploitation.

¹Florida Department of Elder Affairs, *2017 Summary of Programs and Services*, available at http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2017/2017_SOPS_web.pdf (last visited February 12, 2018).

²U.S. Department of Commerce, U.S. Census Bureau, *American FactFinder, Selected Social Characteristics in the U.S.-Florida-2014 American Community Survey 1 year estimates*, available at http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S0201&prodType=table (last visited February 12, 2018).

³Florida Department of Elder Affairs, *2016 Report Assessing the Needs of Elder Floridians*, available at http://elderaffairs.state.fl.us/doea/pubs/pubs/2016_Assessing_the_Needs_of_Elder_Floridians.pdf (last visited February 12, 2018).

⁴Florida Department of Elder Affairs, *The Power to Prevent Elder Abuse*, available at http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English_web.pdf (last visited February 12, 2018).

⁵Consumer Financial Protection Bureau, *We're helping long-term care facilities protect older Americans from financial exploitation*, available at, <http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/> (last visited February 12, 2018).

⁶S. 400.022(1)(p), F.S.; 42 U.S.C. § 1396r.

⁷SS. 429.28(1)(k) and 429.85(1)(l), F.S.

⁸Supra, FN 5.

The APSA defines a “vulnerable adult” as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, developmental disability or dysfunction, brain damage, or the infirmities of aging.⁹ Under the APSA, abuse, neglect, or exploitation constitutes the following conduct:

- Abuse:¹⁰ Any willful act or threatened act by a relative, caregiver,¹¹ or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health.
- Neglect:¹² The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. “Neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.
- Exploitation:¹³ Obtaining or using, or endeavoring to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult by a person who stands in a position of trust and confidence¹⁴ with a vulnerable adult or by a person who knows or should know that the vulnerable adult lacks the capacity to consent. Exploitation may include breaches of fiduciary relationships, unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.

In addition to DCF intervention and services, the APSA authorizes an abused, neglected, or exploited vulnerable to bring a civil action to recover actual and punitive damages against the perpetrator.¹⁵ An action under s. 415.1111, F.S., must be brought within 4 years¹⁶ of the injury in any court of competent jurisdiction by:

- The vulnerable adult;
- The vulnerable adult’s guardian;
- A person or organization acting on behalf of the vulnerable adult or the vulnerable adult’s guardian; or
- The personal representative of the estate of a deceased vulnerable adult.¹⁷

The prevailing party in an action under s. 415.1111, F.S., may also recover attorney fees and costs.¹⁸ The action is in an addition to, and cumulative with, other legal and administrative remedies available to the vulnerable adult.

⁹ S. 415.102(28), F.S.

¹⁰ S. 415.102(1), F.S.

¹¹ “Caregiver” means 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. S. 415.102(5), F.S.

¹² S. 415.102(16), F.S.

¹³ S. 415.102(8), F.S.

¹⁴ Must be done knowingly, by deception or intimidation. S. 415.102(8), F.S.

¹⁵ S. 415.1111, F.S.

¹⁶ S. 95.11(3)(f), F.S.

¹⁷ S. 415.1111, F.S.

¹⁸ Id.

Current law also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.¹⁹ Under s. 825.103, F.S., a person is guilty of the "exploitation of an elderly person or disabled adult" when he or she:

1. Stands in a position of trust and confidence, or has a business relationship, with an elderly person or a disabled adult and knowingly obtains or uses, or endeavors to obtain or use, the elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult;
2. Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, and he or she knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;
3. Breaches a fiduciary duty to the elderly person or disabled adult while acting as the person's guardian, trustee, or agent under a power of attorney, and such breach results in an unauthorized appropriation, sale, or transfer of property;
4. Misappropriates, misuses, or transfers without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer; or
5. Intentionally or negligently fails to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance while acting as a caregiver or standing in a position of trust and confidence with the elderly person or disabled adult.

The term "lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, causing an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.²⁰

An offender commits a first-degree felony, punishable by up to 30 years in prison and a \$10,000 fine, if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$50,000 or more. An offender commits a second-degree felony, punishable by up to 15 years in prison and a \$10,000 fine, if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued between \$10,000 and \$50,000. An offender commits a third-degree felony, punishable by up to 5 years in prison and a \$5,000 fine, if the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$10,000.²¹

The court is required to hold an evidentiary hearing when a person is charged with financial exploitation of an elderly person or disabled adult involving the taking of or loss of property valued at more than \$5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant. The court then determines, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property. The court may order it returned to the victim for restitution purposes before trial if the court finds that the property was unlawfully obtained.²²

¹⁹ SS. 825.101-106, F.S.

²⁰ S. 825.101(7), F.S.

²¹ S. 825.103(3), F.S.

²² S. 825.103(4), F.S.

Effect of Proposed Changes

Cause of Action for Injunction

CS/CS/CS/HB 1059 creates a cause of action for an injunction for protection against the exploitation of a vulnerable adult. The bill defines the term “vulnerable adult” to have the same meaning as provided in the APSA, and defines the term “exploitation” to have the same meaning as provided in s. 825.103, F.S. The cause of action does not require a party to be represented by an attorney, nor is a party prohibited from filing an action if another cause of action is pending between the parties. The bill permits any of the following individuals to file a petition:

- A vulnerable adult in imminent danger of being exploited or their guardian;
- A person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian.

A person's right to petition for an injunction is not affected by the fact that the person has left a residence or household to avoid exploitation of the vulnerable adult. The petition may be filed in the circuit court in which the vulnerable adult resides.

If a guardianship proceeding involving the vulnerable adult is pending at the time of filing, then the petition must be filed in that proceeding. There is no minimum requirement of residency to petition, nor is there a requirement for actual exploitation to have occurred for an injunction to be issued.

Sworn Petition

A sworn petition must allege the existence of exploitation and include the facts and circumstances for which relief is sought. The bill requires the sworn petition, or a petition in substantially the same form, to contain the following general information:

- The address of the vulnerable adult;
- The address, last known place of employment, physical description, and any known aliases of the respondent;
- A description of the association between the vulnerable adult and the respondent;
- Information from reports made to government agencies regarding alleged abuse, neglect, and exploitation of the vulnerable adult, and the results of those investigations;
- A description of other actions pending between the parties;
- A list of the incidents of undue influence or exploitation;
- Where a petition is filed on behalf of a vulnerable adult, a statement that the petitioner has reasonable cause to believe, and genuinely fears, imminent exploitation of the vulnerable adult by the respondent;
- A list of all financial accounts and an estimate of the value of the property to be frozen;
- The specific manner interim payments will be paid, in the event assets are frozen;
- A description whether and how the petitioner is dependent on the respondent for care, and to describe how the petitioner's care will be arranged should the injunction go into effect.
- The relief or protection the petitioner seeks in filing the injunction;
- A statement that petitioner has a duty to report the exploitation of the vulnerable adult to Adult Protective Services hotline; and
- A statement that the petitioner has read every statement in the petition, that each statement is true and correct, and that the petitioner understands the statements made in the petition are made under penalty of perjury.

Upon the filing of the petition, the court is required set a hearing at the earliest possible time. The clerk must furnish copies of the petition, financial affidavits, the notice of hearing, and any temporary injunction to the sheriff or a law enforcement agency in the county where the respondent resides or is

located, as well as where the alleged victim resides or is located. The sheriff or law enforcement agency is then required to serve the petition and notice of hearing upon the respondent and alleged victim as soon as possible on any day of the week and at any time, day or night. At the request of the sheriff, the clerk of the circuit court may transmit a facsimile copy of a certified injunction. The certified copy may be served in the same manner as the original.

The court can require a bond prior to the entry of an injunction.

Temporary Injunction

The bill permits a court to issue a temporary injunction prior to a full hearing on the petition. The temporary injunction cannot exceed 15 days, and if one is issued, a full hearing is required prior to the injunction's expiration. Before a court issues a temporary injunction, however, the court must find there is:

- An immediate and present danger of exploitation of the vulnerable adult;
- A likelihood of irreparable harm and no adequate remedy at law;
- A substantial likelihood of success on the merits;
- Threatened injury to the vulnerable adult that outweighs the possible harm to the respondent; and
- No disservice to the public interest by granting the temporary injunction.

In a hearing for a temporary injunction, the only evidence that may be used is the verified pleadings or affidavits. A denial of a temporary injunction must be by written order noting the legal grounds for denial. If the reason for denial is no immediate and present danger of exploitation, the court must set a full hearing at the earliest possible time.

The court may grant any relief determined to be proper and for the protection of the vulnerable adult. Relief may include any of the following:

- Restraining the respondent from committing any acts of exploitation or undue influence against the vulnerable adult;
- Awarding to the vulnerable adult the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share, or barring the respondent from the residence of the vulnerable adult;
- Freezing any assets of the vulnerable adult in any depository or financial institution, if titled in the vulnerable adult's name only, jointly with the respondent, in guardianship in a Totten trust, in trust, or in respondent's name only;
- Freezing any line of credit of the vulnerable adult at any depository or financial institution whether listed solely in the vulnerable adult's name or jointly with the respondent;
- Prohibiting the respondent from having any contact with the vulnerable adult; and
- Issuing injunctions for service or directives to law enforcement agencies the court determines to be for the protection of the vulnerable adult.

Assets held by a guardian for the vulnerable adult may only be frozen by an order entered by the court overseeing the guardianship proceeding. Moreover, assets solely in the name of the respondent may only be frozen on an ex parte basis if the court finds probable cause that the assets are traceable to the exploitation, likely to be returned to a vulnerable adult following an evidentiary hearing, and there is no other adequate remedy at law. A freeze to a credit line used by a trust can only occur after actual service on the trustees and a hearing.

Where the court orders the freezing of a vulnerable adult's assets, the court may order specified living expenses for the vulnerable adult notwithstanding the freeze. Assets held by a trust may only be frozen by an order of the court if the trustees of the trust are served with process and given reasonable notice before a hearing on the petition. A financial institution holding frozen assets or a frozen credit line is

immune from damages, and a cause of action cannot be filed against the institution, unless the institution knowingly and intentionally takes action in violation of the injunction.

The court is permitted to grant a continuance of the hearing for good cause shown by either party. A continuance must include an extension of time to obtain service of process.

Final Injunction

The bill allows for the issuance of an injunction, upon notice and hearing, when it appears to the court that:

- The vulnerable adult is a victim of exploitation or the court has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation;
- There is a likelihood of irreparable harm and no adequate remedy at law;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and
- Where the injunction freezes the respondent's assets, the court finds probable cause that exploitation has occurred, the freeze only affects the proceeds of such exploitation, and there is a substantial likelihood that such assets will be ordered returned to the vulnerable adult.

In determining whether a petitioner has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation, the court must consider and evaluate all relevant factors, including, but not limited to, the:

- Existence of a verifiable order of protection issued previously;
- History of undue influence or exploitation by the respondent upon the vulnerable adult or any other vulnerable adult;
- History of the vulnerable adult being previously exploited or unduly influenced;
- Capacity of the vulnerable adult to make decisions related to his or her finances and property;
- Susceptibility of the vulnerable adult to undue influence; and
- Criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.

The bill permits the court to grant any relief that it determines is proper for the protection and security of the vulnerable adult, including, but not limited to:

- Restraining the respondent from committing any acts of exploitation;
- Awarding the vulnerable adult the exclusive possession of the dwelling that the parties share or excluding the respondent from the residence of the vulnerable adult;
- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing assets remain frozen until ownership can be determined;
- Entering a final cost judgment against the respondent and in favor of the petitioner for all costs, and entering a final cost judgment against the respondent and in favor of the clerk of the circuit court for all the clerk's fees and charges that were waived; and
- Ordering such other relief as the court deems necessary for the protection of a vulnerable adult from exploitation, including injunctions or directives to law enforcement agencies.

A temporary or final judgment on an injunction must indicate that the injunction is valid and enforceable in all counties of the state, the court had jurisdiction over the parties and subject matter, and reasonable notice and opportunity to be heard was given to the person against whom the injunction was sought. The bill requires the final judgment to include the date the respondent and any financial institution was served with the temporary or final order, as well as a statement that law enforcement officers are allowed to use their arrest powers to enforce the injunction.

The bill requires the recording, by electronic means, of all proceedings conducted in connection with the issuance of an injunction. The court must also allow an advocate from a state attorney's office, law enforcement agency, or adult protective services to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made a request and the advocate is able to be present.

Service of Injunction

The bill authorizes the chief judge of each circuit, in consultation with the appropriate sheriff, to direct a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions must use service and verification procedures consistent with the sheriff's procedures. Service on a financial institution must be done in manner prescribed under s. 655.0201, F.S., relating to service of process for financial institutions.

When an injunction is issued, the court can order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in placing the vulnerable adult in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must accept a copy of an injunction for protection against exploitation of a vulnerable adult, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served. Law enforcement must also serve any injunction freezing assets on the financial institution where the assets are held, unless the court waives such requirement.

If the alleged victim is an alleged incapacitated person or incapacitated person in a guardianship matter, the sheriff is required to serve the guardian for the alleged victim with a copy of the petition, financial affidavit, notice of hearing, and temporary injunction. If there is no guardian appointed for the alleged incapacitated person or incapacitated person in a guardianship matter, or if the guardian is a respondent to the petition, the sheriff must serve the alleged incapacitated person.

All orders issued, changed, continued, extended, or vacated after service of the original documents, must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of the order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing is not possible, the clerk of the circuit court is required to mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served, the clerk of the circuit court must prepare a written certification to be placed in the court file specifying the time, date, and method of service.

Termination of Injunction

The terms of the injunction remain in effect until the injunction is modified or dissolved. The petitioner, vulnerable adult, or the respondent may move the court to modify or dissolve an injunction at any time and no specific allegations are required for modification or dissolution. The court may grant the modification or dissolution in addition to other civil or criminal penalties. Within 24 hours after an injunction is terminated, or otherwise rendered no longer effective, the clerk must notify the sheriff receiving original notification of the injunction. That agency must then notify the Department of Law Enforcement within 24 hours of receiving notice of such action from the clerk of the circuit court.

Clerk of Court Duties

The bill requires the clerk of court to perform duties and responsibilities in connection with assisting vulnerable adults and other parties seeking an injunction. Specifically, the bill requires the clerk of court in each county to:

- Assist petitioners in seeking injunctions and enforcing violations;
- Provide simplified petition forms for the injunction, any modifications, and the enforcement of an injunction or modification, including instructions for completion;
- Ensure the petitioner's privacy to the extent practical while completing the forms;
- Provide petitioners with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement;
- Participate in training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks;
- Make available informational brochures on exploitation of vulnerable adults to local senior centers, local aging and disability resource centers, or other state or federal agencies related to the exploitation or protection of elders or vulnerable adults;
- Distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction when such brochures become available. The brochure must include information about the effect of giving the court false information about exploitation; and
- Furnish information to the sheriff on the respondent's or alleged victim's physical description and location as required by the Department of Law Enforcement to comply with the verification procedures of the bill.

The clerk of the court is also required to provide a copy of all petitions filed and all orders entered to DCF's adult protective services program. DCF must then submit to the court overseeing the proceedings on the petition, within 72 hours, the results of any relevant investigations relating to the alleged victim. Such records are confidential and exempt under s. 415.107, F.S., requiring a subpoena for court access; however the bill grants the court access to these records without a subpoena in injunction proceedings under the bill.

The clerk of the court is prohibited from charging a fee for filing a petition where the assets are below \$1,500. However, the clerk of the circuit court may charge \$75 if assets are between \$1,500 and \$5,000, and a fee of \$200 where the assets of the vulnerable adult are above \$5,000.

Subject to legislative appropriation, the clerk of the circuit court may submit a certified request for reimbursement for the processing of petitions to the Office of the State Courts Administrator (OSCA), at the rate of \$40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by OSCA. From this reimbursement, the clerk of the circuit court must pay any law enforcement agency that served the injunction for protection against the exploitation of a vulnerable adult a fee of up to \$20.

Violation of an Injunction

The bill amends s. 741.31, F.S., and s. 901.15, F.S., making a violation of an injunction a first degree misdemeanor (or a third degree felony if the individual has two or more prior convictions for the violation of an injunction) and allows law enforcement to arrest an individual, without a warrant, when there is probable cause to believe the injunction has been violated. A first degree misdemeanor is punishable by up to a year in prison while a third degree felony is punishable by up to 5 years in prison and a \$5,000 fine.

The bill authorizes the court to enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 741.31, F.S. The court may enforce the respondent's compliance with the injunction through appropriate civil and criminal remedies, including, a monetary assessment or a fine. The clerk of the court is required to

collect and receive such assessment or fine. On a monthly basis, the clerk is directed to transfer the moneys collected to the Department of Revenue for deposit in the Domestic Violence Trust Fund.

If the respondent is arrested by a law enforcement officer under s. 901.15(6), F.S., or for a violation of s. 741.31, F.S., the respondent must be held in custody until brought before the court to enforce the injunction for protection against the exploitation of a vulnerable adult. Pending a hearing, the court may require respondent to post bail in accordance with ch. 903, F.S., and the applicable rules of criminal procedure.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 825.101, F.S., relating to definitions.

Section 2: Creates s. 825.1035, F.S., relating to injunction for protection against exploitation of a vulnerable adult.

Section 3: Creates s. 825.1036, F.S., relating to violation of an injunction for protection against the exploitation of a vulnerable adult.

Section 4: Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 5: Amends s. 415.107, F.S., relating to confidentiality of reports and records.

Section 6: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant impact on state government expenditures. The Department of Revenue anticipates a minimal operational impact for receiving and transferring funds under the bill.²³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate impact on local governments through the additional responsibilities imposed on the court, the clerk of court, and law enforcement agencies. The bill allows reimbursement of certain clerk and law enforcement expenses, subject to appropriation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²³ Department of Revenue, *2018 Agency Legislative Bill Analysis* (January 12, 2018).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires the local sheriff's departments to effect service in temporary injunction proceedings at no cost to the petitioner. However, it appears an exemption applies for insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23 2018, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. In addition to reorganizing portions of the bill, the amendment:

- Changed the short title of the bill to "exploitation of a vulnerable adult" to more accurately reflect the scope of the bill.
- Limited the allowable venue locations to the circuit where the vulnerable adult resides or where a guardianship case regarding the vulnerable adult is filed.
- Provided that assets solely in the name of the respondent may only be frozen on an ex parte basis if the court finds probable cause that the assets are traceable to the exploitation, likely to be returned to a vulnerable adult following an evidentiary hearing, and that there is no other adequate remedy at law.
- Added a credit line freeze.
- Allowed the court to order specified living expenses for the vulnerable adult to be paid notwithstanding freeze of assets or credit.
- Removed limitation that persons offering evidence must either present the evidence under oath at a noticed hearing or must solely rely on the sworn petition and affidavits attached to the petition.
- Removed language providing that the granting of separate orders of protection is not legally sufficient to deny any remedy and cannot act as evidence that the parties are equally at fault or equally in danger.
- Allowed the court to enter a final cost judgment against the respondent and in favor of the petitioner for all costs, and enter a final cost judgment against the respondent and in favor of the clerk of the circuit court for all the clerk's filing fees and service charges that were waived by operation of this section, where the court finds that the respondent has engaged in exploitation.

On January 30, 2018, the Children, Families, and Seniors Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed the requirement that notice of petition from the court regarding a protective injunction be treated the same as a report to the DCF abuse hotline.
- Increased the time DCF has to provide the court with relevant records from its Adult Protective Services Program from 24 hours to 72 hours.
- Narrowed the types of records the court receives from DCF to only those investigations relevant to the protective injunction.
- Permitted the court to remove a Respondent from the vulnerable adult's home regardless of whether the vulnerable adult is dependent on the Respondent.

- Permitted the court to obtain confidential and exempt records from DCF's Adult Protective Services Program without a subpoena.

On February 15, 2018, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Amended the petition for injunction against exploitation of a vulnerable adult to include information about the care of the vulnerable adult, a list of financial accounts to be frozen, specific and necessary short-term expenses to be paid, and a reminder of the requirement to call the abuse hotline.
- Required a clerk's fee for filing a petition paid from the assets of the vulnerable adult, based on the total value of assets.
- Removed placement of the vulnerable adult in the home of the exploiter as a term of the final injunction.
- Protected a financial institution from civilly liability related to any action or inaction regarding an injunction.
- Specified the method of service of an injunction on a financial institution.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.