

By Senator Gibson

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1 A bill to be entitled
2 An act relating to elder protection; amending s.
3 415.101, F.S.; revising legislative intent; amending
4 s. 415.107, F.S.; requiring that elder abuse fatality
5 review teams be granted access to certain records;
6 creating s. 415.1103, F.S.; authorizing the
7 establishment of elder abuse fatality review teams in
8 each judicial circuit and housing the review teams,
9 for administrative purposes only, in the Department of
10 Elderly Affairs; providing conditions for review team
11 membership, establishment, and organization;
12 specifying requirements for the review team operations
13 and meeting schedules; assigning responsibility for
14 paying the administrative costs of review team
15 operations to the team members or the entities they
16 represent; authorizing elder abuse fatality review
17 teams in existence on a certain date to continue;
18 requiring such existing teams to comply with specified
19 requirements; specifying review team duties; allowing
20 review teams access to and use of certain information
21 and records; requiring each review team to submit an
22 annual report by a certain date to the Department of
23 Elderly Affairs containing specified information;
24 requiring the department to prepare annually a summary
25 report on the review teams' information and submit the
26 summary to the Governor, the Legislature, and the
27 Department of Children and Families; exempting certain
28 information and records from discovery; providing an
29 exception; restricting the testimony of certain

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30 persons about information or records presented during
31 meetings or activities of the review teams; providing
32 immunity from monetary liability for review team
33 members under certain conditions; prohibiting review
34 teams and review team members from disclosing
35 confidential information; providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
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39 Section 1. Section 415.101, Florida Statutes, is amended to
40 read:

41 415.101 Adult Protective Services Act; legislative intent.—

42 (1) Sections 415.101-415.113 may be cited as the "Adult
43 Protective Services Act."

44 (2) The Legislature recognizes that there are many persons
45 in this state who, because of age or disability, are in need of
46 protective services. Such services should allow such an
47 individual the same rights as other citizens and, at the same
48 time, protect the individual from abuse, neglect, and
49 exploitation. It is the intent of the Legislature to provide for
50 the detection and correction of abuse, neglect, and exploitation
51 through social services and criminal investigations and to
52 establish a program of protective services for all vulnerable
53 adults in need of them. It is intended that the mandatory
54 reporting of such cases will cause the protective services of
55 the state to be brought to bear in an effort to prevent further
56 abuse, neglect, and exploitation of vulnerable adults. In taking
57 this action, the Legislature intends to place the fewest
58 possible restrictions on personal liberty and the exercise of

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59 constitutional rights, consistent with due process and
60 protection from abuse, neglect, and exploitation. Further, the
61 Legislature intends to encourage the constructive involvement of
62 families in the care and protection of vulnerable adults or
63 elderly persons. The Legislature further intends that each
64 protective investigator, as defined in s. 415.102, earn and
65 maintain a valid certification as a protective investigator
66 through a third-party credentialing entity approved under s.
67 402.40(3).

68 Section 2. Paragraph (m) is added to subsection (3) of
69 section 415.107, Florida Statutes, to read:

70 415.107 Confidentiality of reports and records.—

71 (3) Access to all records, excluding the name of the
72 reporter which shall be released only as provided in subsection
73 (6), shall be granted only to the following persons, officials,
74 and agencies:

75 (m) An elder abuse fatality review team established under
76 s. 415.1103(1) which is reviewing the death of an elderly
77 person.

78 Section 3. Section 415.1103, Florida Statutes, is created
79 to read:

80 415.1103 Elder abuse fatality review teams.—

81 (1) (a) An elder abuse fatality review team may be
82 established in each judicial circuit to review deaths of elderly
83 persons alleged or found to have been caused by, or related to,
84 abuse or neglect. The review teams are housed, for
85 administrative purposes only, in the Department of Elderly
86 Affairs.

87 (b) An elder abuse fatality review team may include, but is

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88 not limited to, representatives from the following entities in
89 the review team's judicial circuit:

- 90 1. Law enforcement agencies;
- 91 2. The state attorney;
- 92 3. The medical examiner;
- 93 4. A county court judge;
- 94 5. Adult protective services;
- 95 6. The area agency on aging;
- 96 7. The State Long-Term Care Ombudsman Program;
- 97 8. The Agency for Health Care Administration;
- 98 9. The Office of the Attorney General;
- 99 10. The Office of the State Courts Administrator;
- 100 11. The clerk of the court;
- 101 12. A victim services program;
- 102 13. An elder law attorney;
- 103 14. Emergency services personnel;
- 104 15. A certified domestic violence center;
- 105 16. An advocacy organization for victims of sexual
106 violence;
- 107 17. A funeral home director;
- 108 18. A forensic pathologist;
- 109 19. A geriatrician;
- 110 20. A geriatric nurse;
- 111 21. A geriatric psychiatrist or other individual licensed
112 to offer behavioral health services;
- 113 22. A hospital discharge planner;
- 114 23. A public guardian; or
- 115 24. Any other persons who have knowledge regarding fatal
116 incidents of elder abuse, domestic violence, or sexual violence,

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117 including knowledge of research, policy, law, and other matters
118 connected with such incidents involving elders, or who are
119 recommended for inclusion by the review team.

120 (c) A state attorney, or his or her designee, may initiate
121 the establishment of a review team in his or her judicial
122 circuit and may call the first organizational meeting of the
123 team. At the initial meeting, members of the review team shall
124 choose two members to serve as co-chairs.

125 (d) Participation in a review team is voluntary. Members of
126 the review team shall serve without compensation and may not be
127 reimbursed for per diem or travel expenses.

128 (e) Members shall serve for terms of 2 years, to be
129 staggered as determined by the co-chairs. Chairs may be
130 reelected by a majority vote of the review team but not for more
131 than two consecutive terms.

132 (f) A review team shall determine the local operations of
133 the team, including, but not limited to, the process for case
134 selection, which must be limited to closed cases in which an
135 elderly person's death is verified to have been caused by abuse
136 or neglect, and the review team meeting schedule, which must
137 include at least one meeting in each fiscal year.

138 (g) Administrative costs of operating the review team must
139 be borne by the team members or entities that they represent.

140 (2) An elder abuse fatality review team in existence on
141 July 1, 2019, may continue to exist and shall comply with the
142 requirements created in this section.

143 (3) An elder abuse fatality review team shall do all of the
144 following:

145 (a) Review deaths of elderly persons in its judicial

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146 circuit alleged or found to have been caused by, or related to,
147 abuse or neglect.

148 (b) Consider the events leading up to a fatal incident,
149 available community resources, current law and policies, and the
150 actions taken by systems and individuals related to the fatal
151 incident.

152 (c) Identify gaps, deficiencies, or problems in the
153 delivery of services to elderly persons by public and private
154 agencies which may be related to deaths reviewed by the review
155 team.

156 (d) Whenever possible, develop communitywide approaches to
157 address causes of, and contributing factors to, deaths reviewed
158 by the review team.

159 (e) Develop practice standards and recommend changes in
160 law, rules, and policies to support the care of elderly persons
161 and to prevent elder abuse deaths.

162 (4) (a) Upon a written request from a co-chair of an elder
163 abuse fatality review team, the following information or records
164 pertaining to an elderly person whose death is being reviewed by
165 the team must be disclosed to the team:

166 1. Information and records held by a criminal justice
167 agency, as defined in s. 119.011(4), not including active
168 criminal intelligence information or criminal investigative
169 information, as defined in s. 119.011(3).

170 2. Information and records from Adult Protective Services,
171 pursuant to s. 415.107(3) (m).

172 3. An autopsy report from the medical examiner's office,
173 but not including materials protected under s. 406.135.

174 (b) Review teams may share with each other any relevant

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175 information that pertains to the review of the death of an
176 elderly person.

177 (c) A review team member may not contact, interview, or
178 obtain information by request directly from a member of the
179 deceased elder's family as part of the review unless a team
180 member is authorized to do so in the course of his or her
181 employment duties. A member of the deceased elder's family may
182 voluntarily provide information or records to a review team.

183 (5) (a) Annually by September 1, each elder abuse fatality
184 review team shall submit a report to the Department of Elderly
185 Affairs which includes, but is not limited to:

186 1. Descriptive statistics regarding cases reviewed by the
187 review team, including demographic information on victims and
188 caregivers and the causes and nature of deaths;

189 2. Current policies, procedures, rules, or statutes that
190 the review team identified as contributing to the incidence of
191 elder abuse and elder deaths, and recommendations for system
192 improvements and needed resources, training, or information
193 dissemination to address those identified issues;

194 3. Any other recommendations to prevent deaths from elder
195 abuse or neglect, based on an analysis of the data and
196 information presented in the report; and

197 4. Any steps taken by the review team and public and
198 private agencies to implement necessary changes and to improve
199 the coordination of services and review of cases.

200 (b) Annually by November 1, the Department of Elderly
201 Affairs shall prepare a summary report of the review team
202 information required under paragraph (a). The department shall
203 provide the summary report to the Governor, the President of the

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204 Senate, the Speaker of the House of Representatives, and the
205 Department of Children and Families.

206 (6) Information and records acquired by an elder abuse
207 fatality review team are not subject to discovery or
208 introduction into evidence in any civil or criminal action or
209 administrative or disciplinary proceeding by any state or local
210 government department or agency if the information or records
211 arose out of the matters that are the subject of review by a
212 review team, unless the information and records are not
213 discoverable from any other source. Information and records that
214 are available from other sources are not immune from discovery
215 or introduction into evidence solely because the information,
216 documents, or records were presented to or reviewed by a review
217 team.

218 (7) A person who has attended a meeting of an elder abuse
219 fatality review team or who has otherwise participated in the
220 activities authorized by this section may not be allowed or
221 required to testify in any civil, criminal, administrative, or
222 disciplinary proceeding as to any information or records
223 produced or presented to the review team during a meeting or
224 other activity authorized by this section, unless such testimony
225 is necessary to determine the information or records that were
226 available to the review team. However, this paragraph does not
227 prevent any person who testifies before the team or who is a
228 member of the team from testifying as to matters otherwise
229 within his or her knowledge.

230 (8) There is no monetary liability on the part of, and a
231 cause of action for damages may not arise against, any member of
232 an elder abuse fatality review team due to the performance of

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233 his or her duties as a review team member in regard to any
234 discussions by, or deliberations or recommendations of, the team
235 or the member, unless such member acted in bad faith, with
236 wanton and willful disregard of human rights, safety, or
237 property.

238 (9) Elder abuse fatality review teams and their members may
239 not disclose any information that is confidential pursuant to
240 law.

241 Section 4. This act shall take effect July 1, 2019.