

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1540

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Elder Abuse and Vulnerable Adult Abuse Fatality Review Teams

DATE: April 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Howard</u>	<u>Money</u>	<u>AHS</u>	Favorable
3.	<u>Delia</u>	<u>Yeatman</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1540 expands the scope of the existing Elder Abuse Fatality Review Teams to include vulnerable adults and changes their name to the “Elder and Vulnerable Adult Abuse Fatality Review Teams” (EV-FRTs), with the specified purpose of learning how to prevent certain abuse and abuse-related deaths and improve the system response of such instances. The bill also expands the scope of the teams to include “near fatal” incidents and incidents which are the result of exploitation and expands the membership. The bill provides a definition for the term “vulnerable adult” and allows the members of an EV-FRT to determine the number and types of incidents it chooses to review.

The bill allows the following persons or entities to initiate an EV-FRT:

- A state attorney, or his or her designee;
- A law enforcement agency;
- The Department of Children and Families (the DCF);
- The Office of the Attorney General; and
- The Agency for Persons with Disabilities (the APD);

The bill expands the records that may be reviewed by the team to include open and closed cases from entities other than a state attorney by removing the provision that restricted teams to review only closed cases referred and redacted by a state attorney.

The bill requires all members of an EV-FRT to sign a confidentiality agreement acknowledging the requirement to protect from unauthorized disclosure of any confidential and exempt oral or written communications, information, or records produced or acquired by the review team. The bill also provides a criminal penalty for the knowing and willful disclosure of certain information produced or acquired by an EV-FRT, and requires confidentiality agreements to reference such penalties.

The bill creates provisions to protect individuals interviewed and information collected by EV-FRTs from being used in a civil or criminal trial or administrative or disciplinary proceeding. However, the bill provides that information, documents, and records otherwise available from other sources are not immune from disclosure, discovery, or introduction into evidence solely because such information was presented to or reviewed by an EV-FRT.

The bill makes conforming changes in the remainder of section 415.1103, Florida Statutes, to align with the changes relating to the scope of the EV-FRTs, and limits the circumstances under which members of a team may directly contact members of a deceased elder's family.

The bill has no fiscal impact on state government.

The bill takes effect on July 1, 2023.

II. Present Situation:

Elder Population

As the country's "baby-boomer" population reaches retirement age and life expectancy increases, the nation's elder population, persons 65 years of age and older, is projected to increase from 54.1 million in 2019 to 80.8 million by 2040 and 94.7 million by 2060.¹ Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation. There are currently approximately 5.5 million residents age 60 or older in Florida, and the state ranks first in the nation for population size of individuals over 65 years old.²

Elder Abuse

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.³ In general, elder abuse is a

¹ The Administration for Community Living, *Projected Future Growth of Older Population*, available at <https://acl.gov/aging-and-disability-in-america/data-and-research/projected-future-growth-older-population> (last visited March 19, 2023).

² The Florida Department of Elder Affairs (the DOEA), *About Us*, available at <https://elderaffairs.org/about-us/#:~:text=Florida%20is%20home%20to%20nearly%205.5%20million%20residents,health%2C%20and%20physical%20security%20of%20our%20elder%20population>; see also Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (all sites last visited March 28, 2023).

³ National Center on Elder Abuse, *FAQs: What Causes Elder Abuse to Happen*, available at <https://ncea.acl.gov/FAQ.aspx> (last visited March 28, 2023).

term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to an older adult.⁴

In Florida, almost 1.5 million senior citizens live in medically underserved areas and over 1.5 million suffer from one or more disabilities.⁵ According to the Department of Justice, approximately 1 in 10 seniors is abused each year in the United States. The trauma of elder abuse can result in premature death, the deterioration of physical and psychological health, destruction of social and familial ties, devastating financial loss and more.⁶ Elder abuse can have significant physical and emotional effects on an older adult, and can lead to premature death.⁷ Victims of elder abuse are four times more likely to be admitted to a nursing home and three times more likely to be admitted to a hospital.⁸

Up to five million older Americans are abused annually, and the annual loss by victims of financial abuse is estimated to be at least \$36.5 billion.⁹ Abusers can be both women and men, and in almost 60% of elder abuse and neglect incidents, the perpetrator is a family member.¹⁰ Approximately two thirds of perpetrators are adult children or spouses.¹¹

Department of Elder Affairs

The Florida Department of Elder Affairs (the DOEA) provides most direct services through its Division of Statewide Community-Based Services, which works through the state's 11 Area Agencies on Aging and local service providers to deliver essential services to a vital segment of the population.¹²

The major focus of the DOEA is to provide home and community-based services to seniors who are at risk of being placed into a long-term care facility because of their degree of frailty.¹³ The goal of the DOEA is to use resources to ensure that the greatest number of elders possible get to choose where they live while living healthy, active, and fulfilling lives in their communities.¹⁴

Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program (the Program) to be eligible to receive funding associated with programs

⁴ *Id.* at *FAQs: What is Elder Abuse*

⁵ The DOEA, *2021 Profile of Older Floridians*, available at <https://elderaffairs.org/wp-content/uploads/Florida-Profile-2021.pdf> (last visited March 28, 2023).

⁶ The U.S. Department of Justice (DOJ), *About Elder Abuse*, available at <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited March 28, 2023).

⁷ *Id.*

⁸ The DOJ, *Elder Justice*, available at <https://www.justice.gov/usao-ndwv/programs/elder-justice> (last visited March 28, 2023).

⁹ The National Council on Aging, *Get the Facts on Elder Abuse*, available at <https://www.ncoa.org/article/get-the-facts-on-elder-abuse> (last visited March 28, 2023).

¹⁰ *Id.*

¹¹ *Id.*

¹² The Florida Department of Elder Affairs, *About Us*, available at <https://elderaffairs.org/about-us/> (last visited March 30, 2023).

¹³ *Id.*

¹⁴ *Id.*

under the OAA.¹⁵ The Program was founded in 1975 as a result of the OAA, which grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities (ALFs), and adult family care homes.¹⁶ Volunteer ombudsmen seek to ensure the health, safety, welfare and rights of these residents throughout Florida.

The Program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.¹⁷ The Program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes.¹⁸ Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.¹⁹ In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.²⁰

The State Ombudsman carries out his or her responsibilities under Florida and federal law through the training and certification of volunteers who operate through district and local councils, and through staff positions in the state and district offices established to coordinate and assist the local councils.²¹

Federal regulations provide that the State Ombudsman may designate employees or volunteers within the Program office to carry out the duties of the office as "representatives of the office," subject to the training and certification requirements for representatives of the office.²² However, Florida law specifies certain categories of individuals who may not be appointed as ombudsmen, including, in part, "An employee of the [DOEA], except for staff certified as ombudsmen in the district offices."²³ "Offices" in this context refers to the district offices of the State Long-Term Care Ombudsman Program.²⁴ Read together, these provisions exempt staff in the Program's district offices from the general prohibition against appointment of DOEA employees as ombudsmen, but they do not permit staff in the Program's state office to be appointed as ombudsmen.²⁵

¹⁵ See s. 400.0061(1), F.S.; see also the Office of Program Policy Analysis and Governmental Accountability, *Department of Elder Affairs, Older Americans Act Programs*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5026> (last visited March 16, 2023).

¹⁶ The Florida Ombudsman Program, *About Us*, available at <https://ombudsman.elderaffairs.org/about-us/> (last visited March 13, 2023).

¹⁷ Section 400.0063(2), F.S.

¹⁸ Section 400.0078(1), F.S.

¹⁹ Section 400.0078(2), F.S.

²⁰ See s. 400.0074, F.S.

²¹ The Department of Elder Affairs (the DOEA), *Agency Analysis of SB 1396*, p. 2, February 11, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOEA Analysis").

²² *Id.*

²³ See s. 400.0069(4)(b)4., F.S.

²⁴ The DOEA Analysis at p. 2; see also s. 400.0060(7), F.S.

²⁵ *Id.*

Aging and Disability Resource Centers

The DOEA administers programs and services for elders across the state of Florida through 11 Area Agencies on Aging, which operate as Aging and Disability Resource Centers (ADRCs).²⁶ These ADRCs function as a single, coordinated system for information and access to services for all Floridians seeking long-term care resources.²⁷ The ADRCs provide information and assistance about state and federal benefits, as well as available local programs and services.²⁸ The primary functions of the ADRCs include providing information and referral services, ensuring that eligibility determinations are done properly and efficiently, triaging clients who require assistance, and managing the availability of financial resources for certain key long-term care programs targeted for elders to ensure financial viability and stability.²⁹

Florida’s 11 ADRCs are distributed throughout the state as shown in the map below:³⁰



²⁶ The DOEA, *Aging and Disability Resource Centers (ADRCs)*, available at <https://elderaffairs.org/resource-directory/aging-and-disability-resource-centers-adrcs/> (last visited March 13, 2023).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Office of Public and Professional Guardians

In 1999, the Legislature created the “Public Guardianship Act” and established the Statewide Public Guardianship Office (SPGO) within the DOEA.³¹ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and investigators.³² The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.³³

There are 17 public guardian offices that serve all 67 counties.³⁴ Since 2016, approximately 550 professional guardians have registered with the OPPG.³⁵

Florida’s Adult Protective Services System

Chapter 415, F.S., creates Florida’s Adult Protective Services (APS)³⁶ under the Department of Children and Families (the DCF). The DCF protects vulnerable adults,³⁷ including elders, from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse.³⁸ This includes deaths allegedly due to abuse, neglect, and exploitation.³⁹ In 2022, the DCF received and investigated 30,581 reports of abuse, neglect, or exploitation of persons aged 60 years or older.⁴⁰

Central Abuse Hotline

The DCF maintains a statewide 24/7 toll-free central abuse hotline where anyone can report known or suspected abuse, neglect, or exploitation.⁴¹ This includes, but is not limited to, vulnerable adults. Any person that knows or has reasonable cause to suspect abuse, neglect, or exploitation of a vulnerable adult is required to immediately report this knowledge or suspicion to the central abuse hotline.⁴² The hotline number must be provided to clients in nursing homes⁴³

³¹ Chapter 99-277, L.O.F.

³² Chapter 2016-40, L.O.F.

³³ The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited February 7, 2023).

³⁴ The DOEA, *Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited February 7, 2023).

³⁵ *Id.*

³⁶ Section 415.101(1), F.S.

³⁷ A vulnerable adult is a person 18 years of age or older whose ability to perform normal activities of daily living or to provide for his or her own care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(28), F.S.

³⁸ Section 415.101(2), F.S.

³⁹ The Department of Children and Families (the DCF), *CF Operating Procedure No. 140-2: Adult Protective Services*, October 11, 2022, pp. 4-9 - 4-10, https://www.myflfamilies.com/sites/default/files/2022-12/cfop_140-02_adult_protective_services.pdf (last visited March 28, 2023) (hereinafter, cited as “DCF CFOP”).

⁴⁰ E-mail from Tarah Yeager, DCF Gubernatorial Fellow, March 22, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴¹ Section 415.103(1), F.S.

⁴² Section 415.1034(1), F.S.

⁴³ Section 408.810(5)(a)2., F.S.

and publicly displayed in every health facility licensed by the Agency for Health Care Administration (AHCA).⁴⁴ The number is also listed on the agency websites for the DCF, AHCA, and the DOEA.⁴⁵

Additionally, any person who is required to investigate allegations of abuse, neglect, or exploitation, and who has reasonable cause to suspect that a vulnerable adult died as result of such harm, must report that suspicion to the DCF, the appropriate medical examiner, and appropriate criminal justice agency.⁴⁶ Medical examiners in turn are required to consider this information in their cause of death determinations and report their findings to the DCF and the appropriate criminal justice agency and state attorney.⁴⁷

Protective Investigations

Once the DCF believes there is reasonable cause to suspect abuse or neglect of a vulnerable adult, an investigation must begin within 24 hours, to be conducted in cooperation with law enforcement and the state attorney.⁴⁸ The DCF investigators determine, among other things, whether the vulnerable adult is in need of services; whether there is evidence of abuse, neglect, or exploitation; the nature and extent of any harm; and what is necessary to ensure the victim's safety and well-being.⁴⁹ The DCF investigators must complete their investigations and submit their recommendations within 60 days of the initial report.⁵⁰ If the DCF determines that a victim is in need of protective services or supervision, it will provide or facilitate the provision of those services to the victim.⁵¹ If a victim dies during an open investigation, DCF investigators must verify the cause of death before closing the case to determine if the death was related to abuse or neglect.⁵²

If there is a report that a death occurred due to elder abuse, neglect, or exploitation, the DCF investigator notifies the DCF's registered nurse specialist (RNS) staffing his or her region within 24 hours. If the alleged victim resided with other vulnerable adults, the DCF conducts an on-site investigation to ensure the safety of these individuals as well.⁵³

The DCF investigator and RNS work together to gather all relevant medical investigative information, including but not limited to medical records, the death certificate, the autopsy report, and specific questions to be included in the investigative process.⁵⁴ The DCF

⁴⁴ Section 400.141(1)(m), F.S. The AHCA poster is available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/docs/Nursing_Homes/Posters/NURSING_HOME_POSTER_ENGLISH_LETTER.pdf (last visited March 28, 2023).

⁴⁵ The DCF, *Report Abuse Neglect or Exploitation*, available at <http://www.myflfamilies.com/service-programs/abuse-hotline/report-online>; the AHCA, *Complaint Administration Unit*, available at http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtml; the DOEA, *Elder Protection Programs*, available at <https://elderaffairs.org/programs-services/elder-protection-programs/> (all sites last visited March 28, 2023).

⁴⁶ Section 415.1034(2), F.S.

⁴⁷ *Id.*

⁴⁸ Section 415.104(1), F.S.

⁴⁹ Section 415.104(3), F.S.

⁵⁰ Section 415.104(4), F.S.

⁵¹ Section 415.105(1), F.S.

⁵² DCF CFOP at p. 15-2.

⁵³ *Id.* at p. 21-1.

⁵⁴ *Id.* at p. 21-2.

investigators also gather other relevant information such as copies of any related law enforcement investigations; criminal history and abuse reports relating to the alleged perpetrator; and prior adult protective services records relating to the victim or perpetrator, including the facilities where the death occurred.⁵⁵

The DCF investigators review all of this information before making their determinations as to the cause of death and will summarize their findings in a report.⁵⁶ In these cases involving an elder abuse death, the DCF designates a second party to review the DCF investigators' findings before closing the case.⁵⁷ The second party reviews the investigation process to ensure that it was thorough and that all issues were properly addressed, reviews the reports for completeness and accuracy, and documents its review for DCF's records.⁵⁸

Guardianship

A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.⁵⁹ The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.⁶⁰ Once a person has been adjudicated incapacitated (termed a "ward"), the court appoints a guardian, and the letters of guardianship are issued.⁶¹ The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.⁶²

Elder Abuse Fatality Review Teams

Beginning in 2020, Florida law has authorized the creation of elder abuse fatality review teams (EA-FRTs).⁶³

A state attorney, or his or her designee, may initiate an elder abuse fatality review team in his or her judicial circuit to review deaths of elderly persons caused by, or related to, abuse or neglect.⁶⁴ EA-FRTs may include, but need not be limited to, representatives from any of the following entities or persons located in the review team's judicial circuit:

- Law enforcement agencies.
- The state attorney.
- The medical examiner.
- A county court judge.

⁵⁵ *Id.*

⁵⁶ *Id.*, at pp. 21-2 - 21-3

⁵⁷ *Id.* at p. 21-3.

⁵⁸ *Id.*

⁵⁹ Section 744.102(9), F.S.

⁶⁰ Section 744.3201(2), F.S.

⁶¹ Sections 744.3371-744.345, F.S.

⁶² Section 744.2005, F.S.

⁶³ Chapter 2020-17, L.O.F.

⁶⁴ Section 415.1103(1)(a), F.S.

- Adult protective services.
- The area agency on aging.
- The State Long-Term Care Ombudsman Program.
- The Agency for Health Care Administration.
- The Office of the Attorney General.
- The Office of the State Courts Administrator.
- The clerk of the court.
- A victim services program.
- An elder law attorney.
- Emergency services personnel.
- A certified domestic violence center.⁶⁵
- An advocacy organization for victims of sexual violence.
- A funeral home director.
- A forensic pathologist.
- A geriatrician.
- A geriatric nurse.
- A geriatric psychiatrist or other individual licensed to offer behavioral health services.
- A hospital discharge planner.
- A public guardian.⁶⁶
- Any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team.⁶⁷

Participation in an EA-FRT is voluntary; members serve 2-year terms, to be staggered as determined by the co-chairs, without compensation.⁶⁸ The state attorney of the relevant circuit calls the first organizational meeting of the team, during which two members are chosen to serve as co-chairs.⁶⁹ Members also establish schedules for future meetings at the initial meeting.⁷⁰ Chairs may be reelected by a majority vote of an EA-FRT for no more than two consecutive terms, and each team must meet at least once each fiscal year.⁷¹

Each EA-FRT determines its local operations, including, but not limited to, the process for case selection.⁷² The state attorney refers cases to be reviewed by each EA-FRT, with reviews limited

⁶⁵ Section 39.905, F.S. outlines requirements of certified domestic violence centers.

⁶⁶ The Office of Public & Professional Guardians (OPPG), housed within the DOEA, appoints local public guardians to provide guardianship services to persons who do not have adequate income or assets to afford a private guardian and there are no willing family or friends to serve. The OPPG contracts with 16 local Offices of Public Guardianship throughout Florida. See *The Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/#:~:text=The%20Office%20of%20Public%20%26%20Professional,family%20or%20friends%20to%20serve> (last visited March 30, 2023).

⁶⁷ Section 415.1103(1)(b), F.S.

⁶⁸ Section 415.1103(1)(c), F.S.

⁶⁹ Section 415.1103(1)(d), F.S.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Section 415.1103(1)(e), F.S.

to closed cases⁷³ in which an elderly person's death was caused by, or related to, abuse or neglect.⁷⁴ All identifying information concerning the elderly person must be redacted by the state attorney in documents received for review.⁷⁵ Administrative costs of operating the EA-FRT must be borne by the team members or entities they represent.⁷⁶

EA-FRTs are required to do all of the following:

- Review deaths of elderly persons in the team's judicial circuit which are found to have been caused by, or related to, abuse or neglect;
- Take into consideration the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems or individuals related to the fatal incident;
- Identify potential gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the EA-FRT;
- Whenever possible, develop communitywide approaches to address the causes of, and contributing factors to, deaths reviewed by the EA-FRT; and
- Develop recommendations and potential changes in law, rules, and policies to support the care of elderly persons and to prevent elder abuse deaths.⁷⁷

An EA-FRT may share any relevant information that pertains to the review of the death of an elderly person with other review teams throughout Florida.⁷⁸ An EA-FRT member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review unless a team member is authorized to do so in the course of his or her employment duties.⁷⁹ A member of the deceased elder's family may voluntarily provide information or any record to an EA-FRT but must be informed that such information or any record is subject to public disclosure unless a public records exemption applies.⁸⁰

Annually by September 1, each EA-FRT is required to submit a summary report to the DOEA which includes, but is not limited to:

- Descriptive statistics regarding cases reviewed by the team, including demographic information on victims and the causes and nature of their deaths;
- Current policies, procedures, rules, or statutes the review team has identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system

⁷³ The term "closed case" means a case that does not involve information considered active as defined in s. 119.011(3)(d), F.S. Section 119.011(3)(d), F.S., defines "active" to mean criminal intelligence information which is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. In addition, criminal intelligence and criminal investigative information must be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Section 415.1103(1)(f), F.S.

⁷⁷ Section 415.1103(3), F.S.

⁷⁸ Section 415.1103(4)(a), F.S.

⁷⁹ Section 415.1103(4)(b), F.S.

⁸⁰ *Id.*

improvements and needed resources, training, or information dissemination to address such identified issues; and

- Any other recommendations to prevent deaths from elder abuse or neglect, based on an analysis of the data and information presented in the report.⁸¹

Annually by November 1, the DOEA is required to prepare a summary report of the EA-FRT information submitted.⁸² The DOEA must submit its summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DCF.⁸³

Members of EA-FRTs do not incur any monetary or civil liability as a result of the performance of their duties as a review team member in regard to any discussions by, or deliberations or recommendations of, the team or the member unless such member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.⁸⁴

Active EA-FRTs

There are currently two EA-FRTs in Florida: one in the 4th Judicial Circuit⁸⁵ and the other in the 5th Judicial Circuit.⁸⁶ The 4th Circuit team reviews cases in Clay, Duval, and Nassau counties and considers case facts that led to the fatal incident — this includes community resources, current laws and policies, and actions taken by systems or individuals.⁸⁷ The 5th Circuit team reviews cases in Citrus, Hernando, Lake, Marion, and Sumter Counties.⁸⁸

The 4th Circuit EA-FRT submitted their second annual report to the DOEA in September 2022. The 4th Circuit EA-FRT spent much of its inaugural year training members and implementing appropriate case selection and review procedures.⁸⁹ According to the team, when it came time for actual case selections and reviews the 4th Circuit EA-FRT encountered several unanticipated challenges, which ultimately prevented the team from effectively conducting any fatality case reviews in 2021.⁹⁰ The report detailed these challenges in the following reported findings:

- Finding # 1: The current language provided in s. 415.1103, F.S., inhibits effective case identification and significantly restricts the case selection process for elder abuse fatality review teams;
- Finding # 2: The current language provided in s. 415.1103, F.S., prevents the EA-FRT from locating, identifying, and requesting records from sources other than the SAO, and places an undue burden upon the SAO with respect to records productions;

⁸¹ Section 415.1103(5)(a), F.S.

⁸² *Id.*

⁸³ Section 415.1103(5)(b), F.S.

⁸⁴ Section 415.1103(6), F.S.

⁸⁵ Office of the State Attorney for the Fourth Judicial Circuit, *Elder Abuse Fatality Review Team (EA-FRT)*, available at <https://sao4th.com/resources/for-the-public/elder-abuse-fatality-review-team-eafirt/> (last visited March 28, 2023) (hereinafter cited as, “The 4th Circuit EA-FRT Page”).

⁸⁶ Office of the State Attorney for the Fifth Judicial Circuit, *State Attorney Creates Elder Abuse Fatality Review Team*, available at <https://www.sao5.org/State-Attorney-Creates-Elder-Abuse-Fatality-Review-Team-1-9147.html> (last visited March 28, 2023) (hereinafter cited as, “The 5th Circuit EA-FRT Page”).

⁸⁷ The 4th Circuit EA-FRT Page.

⁸⁸ The 5th Circuit EA-FRT Page.

⁸⁹ The 4th Judicial Circuit EAFRT, *Second Annual Report to the Department of Elder Affairs* at p. 6, available at [EAFRT-Second-Annual-Report-2022.pdf \(sao4th.com\)](https://sao4th.com/Second-Annual-Report-2022.pdf) (last visited March 28, 2023).

⁹⁰ *Id.*

- Finding # 3: The lack of public records exemptions limits what information may be reviewed and held by the EA-FRT for review;
- Finding # 4: The public meeting requirements under Sunshine Law prevents the EA-FRT from thoroughly discussing case information or conducting meaningful case reviews; and
- Finding # 5: As noted in the First Annual EA-FRT Report (2021), exploitation is a form of elder abuse, which may contribute to a vulnerable, older adult victim's death.⁹¹

In an attempt to address the issues identified above, the report included a number of legislative recommendations, including:

- Amending s. 415.1103, F.S., to allow all members of the team to identify and refer cases for fatality review by the EA-FRT;
- Amending s. 415.1103, F.S., to allow any member of the EA-FRT to contribute relevant case-related records accessible to him or her through the agency or organization the member represents on the team (so long as permitted by Florida law and agency rules or standards), as well as to allow the EA-FRT to request any additional records necessary to conducting a fatality case review;
- The adoption of new or amended legislation to add all public records law exemptions necessary to protecting the confidentiality and integrity of case-related information and victim information;
- The adoption of new or amended legislation exempting all EA-FRT's from Sunshine Law public meeting requirements for any meeting at which specific case review information is anticipated to be discussed; and
- Amending s. 415.1103, F.S., to add exploitation to the listed maltreatments-related to a victim's death, which would authorize a fatality case review by the EA-FRT.⁹²

Florida's Domestic Violence Fatality Review Teams

Florida law also authorizes Domestic Violence Fatality Review Teams (DV-FRT), which are multidisciplinary teams that review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides.⁹³ DV-FRTs can be established at the local, regional, or state level.⁹⁴ The DV-FRTs are assigned to the DCF for administrative purposes only, so the structure and activities of a team are determined at the local level.⁹⁵

The DV-FRTs have a similar membership to the EA-FRTs and include, but are not limited to, representatives from the following agencies or organizations:

- Law enforcement agencies;
- The state attorney's office;
- The medical examiner's office;
- Certified domestic violence centers;
- Child protection service providers;
- The office of the court administration;

⁹¹ *Id.* at p. 17-18.

⁹² *Id.* at p. 19.

⁹³ Section 741.316(1), F.S.

⁹⁴ Section 741.316(2), F.S.

⁹⁵ Sections 741.316(5) and 741.316(2), F.S.

- The clerk of the court;
- Victim services programs;
- Child death review teams;
- Members of the business community;
- County probation or corrections agencies; and
- Any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence or suicide, including research, policy, law or other related matters.⁹⁶

The DV-FRTs review events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and parties, and any information or action deemed relevant by the team.⁹⁷ The teams' purpose is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence.⁹⁸ Each team determines the number and type of incidents it will review and makes policy and other recommendations as to how incidents of domestic violence may be prevented.⁹⁹

Active DV-FRTs

As of 2019, there were 25 local DV-FRTs and one statewide team.¹⁰⁰ In the past, reviews have revealed that 26% percent of those committing the homicides in domestic violence cases were known to have exhibited alleged stalking behavior.¹⁰¹ There were known allegations of death threats made by the perpetrator toward the decedent in more than 50% of the reviewed fatalities, and 17% were known to have made previous attempts to kill the decedent.¹⁰² Reviewers identified that nearly 70% of perpetrators had a known prior history of committing acts of domestic violence against the decedent, and that 77% of perpetrators had a known history of substance abuse.¹⁰³

III. Effect of Proposed Changes:

The bill changes the name of s. 415.1103, F.S., from “Elder abuse fatality review teams” to “Elder abuse and vulnerable adult abuse fatality review teams” (EV-FRTs). The bill provides that the purpose of the EV-FRTs is to learn how to prevent abuse and abuse-related deaths of elderly persons and otherwise vulnerable adults by intervening early and to improve the system response to instances of such abuse, exploitation, or neglect.

⁹⁶ Section 741.316(1), F.S.

⁹⁷ Section 741.316(2), F.S.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Report of the Attorney General’s Statewide Domestic Violence Fatality Review Team, *Faces of Fatality, Vol. IX*, June 2019, at p. 4, available at <https://www2.myflfamilies.com/service-programs/domestic-violence/docs/FACES%20OF%20FATALITY%20IX.pdf> (last visited March 28, 2023).

¹⁰¹ *Id.* at p. 5.

¹⁰² *Id.*

¹⁰³ *Id.* at p. 4.

The bill provides a definition for the term “vulnerable adult” applicable to ss. 415.1103 and 415.104, F.S. The term includes a disabled adult and elderly person as those terms are defined in ss. 825.101(3)¹⁰⁴ and (4),¹⁰⁵ F.S.

Establishment and Membership of the EV-FRT

The bill allows EV-FRTs to be established at the local, regional, or state level to review fatal and near-fatal incidents of abuse, exploitation, or neglect of elderly persons and vulnerable adults. In this regard, the bill expands the scope of the types of incidents that can be reviewed by authorizing EV-FRTs to review “near fatal” as well as fatal incidents, and incidents which are the result of exploitation in addition to abuse and neglect.

The bill allows the following persons or entities to initiate an EV-FRT:

- A state attorney, or his or her designee;
- A law enforcement agency;
- The Department of Children and Families (the DCF);
- The Office of the Attorney General; and
- The Agency for Persons with Disabilities (the APD).

The bill requires the person or entity who initiates an EV-FRT to specify the geographic area in which the team will serve. The bill also removes the requirement that teams be initiated by the state attorney or their designee in the state attorney’s judicial circuit.

The bill modifies the above-described list of enumerated entities that are currently authorized to serve on the EV-FRT. Specifically, the bill adds a disability rights attorney to the list of entities and persons who may be included on an EV-FRT, removes a representative of adult protective services, and modifies one of the authorized enumerated representatives from “any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team” to “any other persons who are identified and invited by the team, and who have knowledge regarding fatal or near-fatal incidents of elder abuse, vulnerable adult abuse, domestic violence, sexual violence, or suicide, including knowledge of research, policy, law, and other matters connected with such incidents involving elderly persons and vulnerable adults.”

The bill no longer requires team members to serve staggered, 2-year terms, and removes the requirement for members to choose chairs and establish a schedule for future meetings. Additionally, the state attorney is no longer required to call the first organizational meeting of the team and does not substitute any other government or other specified entity as an authorized

¹⁰⁴ Section 825.101(3), F.S., defines a “disabled adult” to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

¹⁰⁵ Section 825.101(4), F.S., defines an “elderly person” to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

team initiator. The bill also removes the requirement that teams meet at least once each fiscal year.

Purview of Review for the EV-FRT

With limited exception, the bill tasks the members of the EV-FRT with determining the structure, local operations, and activities of the team, including the number and type of incidents it chooses to review.

The bill requires EV-FRTs to review cases within the team's jurisdiction, rather than in its judicial circuit as under current law. It also specifically adds exploitation to the list of causes of death which can merit review. The bill specifies that EV-FRTs may review any information the team deems relevant, including a review of public records and records for which a public records exemption is granted, if available to the team. The tied bill, SB 1542, allows EV-FRTs to access public records. The bill deletes the provision that restricted teams to reviewing only closed cases that have been referred and redacted by the state attorney.

Confidentiality of Records Reviewed by EV-FRT

The bill mirrors provisions of the law governing domestic violence fatality review teams (s. 741.316, F.S.), specifically that all oral or written communications, information or records produced or acquired by an EV-FRT are not subject to disclosure, discovery, or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any department or employing agency if the information or records arose out of matters that are the subject of evaluation and review by the EV-FRT.

The bill requires each member of an EV-FRT to sign a confidentiality agreement acknowledging the requirement to protect from unauthorized disclosure any confidential and exempt oral or written communications, information, or records produced or acquired by the review team. Any EV-FRT member who knowingly and willfully discloses such communications, information, or records commits a second degree misdemeanor punishable as provided in ss. 775.082 and 775.083, F.S. The bill requires confidentiality agreements to reference these criminal penalties.

The bill clarifies that oral or written communications, information, documents, and records otherwise available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by a team.

A person who has attended a meeting or other authorized activity of a review team may not testify in any civil, criminal, administrative, or disciplinary proceedings as to any oral or written communications, records or information produced or presented to the team during meetings or other activities authorized for the EV-FRT. The bill also clarifies that any person who testifies before an EV-FRT or who is a member of an EV-FRT is still permitted to testify as to matters otherwise within his or her knowledge. The bill also clarifies that there is no monetary liability on the part of any person acting as a witness to, incident reporter to, or investigator for an EV-FRT, for any act or proceeding taken or performed within the scope and functions of the team,

unless such person acted in bad faith, with wanton and willful disregard of human rights, safety, or property.

Miscellaneous Provisions

The bill clarifies that elder abuse fatality review teams in existence on the bill's effective date may continue to exist and must comply with the provisions of the bill.

The bill makes conforming changes in the remainder of s. 415.1103, F.S., to align with the changes relating to the scope of the review teams, and limits the circumstances under which members of a team may directly contact members of a deceased elder's family. Specifically, a member of an EV-FRT may not contact, interview, or obtain information by request directly from a team member as part of the review unless:

- A team member is authorized to do so in the course of his or her employment duties; or
- Such contact, interview, or request is necessary for the EV-FRT to complete its review and determine findings and such information is not obtainable through any other means.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Elder Affairs (DOEA) anticipates that the bill will not have an impact on the agency.¹⁰⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1103 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs Committee on April 4, 2023

The Committee Substitute:

- Clarifies that review teams may be established at the local, regional, or state level to review incidents of abuse, exploitation, or neglect of elderly persons and vulnerable adults believed to have caused or contributed to a fatal or near-fatal incident.
- Restricts the entities capable of initiating a review team to specified governmental entities.
- Requires review teams to include a representative from the person or entity initiating the team, who must be an active participant on the team.
- Specifies that a review team may include persons or entities who may initiate a team and a number of specified persons or entities. The amendment specifically removes adult protective services and adds a disability rights attorney to the list, and clarifies that outside of the enumerated list, only other persons who are both identified and invited by the team and have the requisite knowledge of fatal or near-fatal incidents, may be a part of the team.
- Clarifies that the structure, local operations, and activities of a review team, including the number and type of incidents it chooses to review, are determined by the team members.

¹⁰⁶ The DOEA, *Statement on SB 1540*, March 9, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Requires each member of a review team to sign a confidentiality agreement acknowledging the requirement to protect from unauthorized disclosure any confidential and exempt oral or written communications, information, or records produced or acquired by the review team.
- Any review team member who knowingly and willfully discloses such communications, information, or records commits a second degree misdemeanor. The amendment requires confidentiality agreements to reference the criminal penalties.
- Restores from current law a prohibition on review teams contacting family members as part of the review. The amendment specifies that review team members may only contact, interview, or obtain information from members of the family of the individual in specified instances.
- Clarifies that there is no monetary liability on the part of any person acting as a witness to, incident reporter to, or investigator for an EV-FRT, for any act or proceeding taken or performed within the scope and functions of the team, unless such person acted in bad faith, with wanton and willful disregard of human rights, safety, or property.
- Specifies that oral or written communications, information, and records produced or acquired by the review team and are not subject to disclosure, discovery, or introduction into evidence in any civil, criminal, administrative, or disciplinary proceeding, if the communications, information, or records arose out of matters that are the subject of an evaluation and review by the team.

B. Amendments:

None.