

**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 Governmental Oversight and Accountability Committee

**BILL:** CS/CS/SB 2404

**INTRODUCER:** Governmental Oversight and Accountability Committee, Children, Families, and Elder Affairs Committee and Senator Storms

**SUBJECT:** Adult Protective Services

**DATE:** April 7, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Walsh	CF	Fav/CS
2.	Wilson	Wilson	GO	Fav/CS
3.			HA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

Senate Bill 2404 amends the legislative intent of the Adult Protective Services Act by replacing the terms “disabled adults” and “elderly persons” with the term “vulnerable adult.”

The bill aligns the definition of “Activities of daily living” with the definition provided in s. 429.65(1), F.S., and amends the definition of the term “Vulnerable adult.”

The bill provides that the central abuse hotline must immediately transfer reports of abuse involving possible responsible parties other than a caregiver to the appropriate law enforcement office.

The bill clarifies that the Department of Children and Families (DCF or the department) may file a petition to determine incapacity in adult protection proceedings.

The bill provides DCF with access to records of the Department of Highway Safety and Motor Vehicles (DHSMV) to be used in the conduct of protective investigations.

The bill conforms a cross reference in ss. 943.0585 and 943.059, F.S.

This bill substantially amends ss. 322.142, 415.101, 415.102, 415.103, and 415.1051, F.S.

## II. Present Situation:

### Adult Protective Services

Adult protective services are intended to protect vulnerable adults from being harmed. The term “Vulnerable adult” means:<sup>1</sup>

...a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.

These adults may experience abuse, neglect, or exploitation by second parties or may fail to take care of themselves adequately. Florida law requires any person who knows or who has reasonable cause to suspect any abuse of vulnerable adults to report that information to the Florida Abuse Hotline. The hotline screens these allegations to determine whether the information meets the criteria of an abuse report.<sup>2</sup>

Reports alleging child abuse, abandonment, or neglect by a person who is not a family member, household member, or caregiver are required to be immediately transferred to the appropriate County Sheriff’s office.<sup>3</sup> There is no such requirement for reports of adult abuse, neglect, or exploitation.

*Protective Investigations* - Chapter 415, F.S., establishes a program designed to protect vulnerable adults from abuse, neglect, and exploitation. The components of the Adult Protective Services program can be designated as either protective investigations or protective supervision. Adult protective investigations (API) are conducted for all abuse reports to determine:<sup>4</sup>

- Whether there is evidence that abuse, neglect, or exploitation occurred;
- Whether there is an immediate or long-term risk to the victim; and
- Whether the victim needs additional services to safeguard his or her well-being.

The department reports that during some API the subject of the investigation denies his or her identity, eluding the investigators. Access to the DHSMV Driver and Vehicle Information Database (DAVID) system would provide a photograph of the subject of the investigation, assisting in the positive identification of the subject. Section 322.142(4), F.S., currently provides for access to this information by the Department of State, Department of Revenue, and the Department of Financial Services, and DCF when conducting child abuse investigations.

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<sup>1</sup> Section 415.02(26), F.S.

<sup>2</sup> *Protective Investigations*, available at <http://www.dcf.state.fl.us/as/protection.shtml> (last visited March 10, 2009).

<sup>3</sup> Section 39.201(2)(b), F.S.

<sup>4</sup> *Protective Investigations*, available at <http://www.dcf.state.fl.us/as/protection.shtml> (last visited March 10, 2009).

*Protective Supervision* - Adult protective supervision provides case management to clients who need additional services in order to be protected from further harm. Case management may be intensive, involving frequent contact with the victim (such as two or three visits a week), and typically lasts for three to six months. It may involve removing victims from an unsafe environment and relocating them to a setting where their needs can be safely and suitably met, such as a nursing home or an assisted living facility. In addition, the program may refer some clients for additional services to help ensure that they are not subject to further abuse.<sup>5</sup>

### **Emergency Protective Services**

The department notes that in the course of an API, vulnerable adults may be identified who lack capacity to consent to emergency protective services.<sup>6</sup> Section 415.1051(2), F.S., gives DCF the ability to petition the court to provide protective services when a vulnerable adult lacks capacity to consent to those services. After 60 days, DCF must petition the court to determine whether:<sup>7</sup>

- Emergency protective services will be continued with the consent of the vulnerable adult;
- Emergency protective services will be continued for the vulnerable adult who lacks capacity;
- Emergency protective services will be discontinued; or
- A petition for guardianship should be filed under ch. 744, F.S.

### **III. Effect of Proposed Changes:**

The bill amends s. 415.101, F.S., by replacing the terms “disabled adult” and “elderly persons” with the term “vulnerable adult” to align the legislative intent language with the statutory definition.

The bill amends s. 415.102, F.S. by defining the term “Activities of daily living” as functions and tasks for self-care, including eating, bathing, grooming, dressing, ambulating, and other similar tasks. The bill amends the definition of the term “Vulnerable adult” to include those impaired due to sensory<sup>8</sup> dysfunction.

The bill amends s. 415.103(2), F.S., requiring that a report to the state’s central abuse hotline of the known or suspected abuse of a vulnerable adult by someone other than a caregiver must be immediately transferred to the appropriate law enforcement office. This provision is similar to the provision relating to reports of child abuse, abandonment, and neglect found in s. 39.201(2)(b), F.S.

The bill amends s. 415.1051, F.S., to allow DCF to file a petition to determine incapacity in emergency and nonemergency cases, if DCF believes, in good faith, that the vulnerable adult lacks capacity to consent to protective services. The bill prohibits DCF from being appointed guardian or providing legal counsel for the guardian once the petition to determine incapacity is

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<sup>5</sup> *Id.*

<sup>6</sup> Department of Children and Families 2009 Bill Analysis, SB 2404 (on file with the committee).

<sup>7</sup> Section 415.1051(2)(g), F.S.

<sup>8</sup> Sensory dysfunction includes blindness and visual impairment whether congenital or acquired, and deafness and hearing impairments that are prelingual, prevocational, or adult onset. *Florida Division of Vocational Rehabilitation 2006-07 Annual Report*, available at: <http://www.rehabworks.org/Files/DocumentsLinks/2007%20Annual%20Report.pdf> (last visited March 20, 2009).

filed. According to DCF the authority to file a petition will enhance its ability to protect vulnerable adults from abuse, neglect, and exploitation until a guardian can be appointed.<sup>9</sup>

The bill amends s. 322.142(4), F.S., to authorize DCF to obtain copies of driver's license files<sup>10</sup> from DHSMV for use in adult protective investigations. According to DCF, this investigative tool will allow the adult protective investigator quick access to the location of individuals, to the investigation and verification of the identity of the individual, and will facilitate the ultimate goal of assuring safety for vulnerable adults.<sup>11</sup>

The bill conforms a cross reference in ss. 943.0585 and 943.059, F.S.

The bill has an effective date of July 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

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<sup>9</sup> Department of Children and Families 2009 Bill Analysis, SB 2404 (on file with the committee).

<sup>10</sup> The file includes a photo, signature, and address of the driver.

<sup>11</sup> *Id.*

**VII. Related Issues:**

None.

**VIII. 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 on March 25, 2009:**

- Makes a technical change relating to the use of term “caregiver” in Section 3 of the bill.
- Conforms a cross reference in ss. 943.0585 and 943.059, F.S.

**CS by Governmental Oversight and Accountability Committee on April 7, 2009:**

Corrects a transposition of two words in the definitions section to conform it to a similar definition in ss. 429.021(1), F.S.

**B. Amendments:**

None.