

By Senator Rossin

35-825A-98

1 A bill to be entitled
2 An act relating to investigation of cases
3 involving adult abuse, neglect, and
4 exploitation; amending s. 415.102, F.S.;
5 redefining the term "closed without
6 classification" and defining the term
7 "self-neglect"; amending s. 415.1045, F.S.;
8 providing duties when a case is determined to
9 be self-neglect; amending s. 415.1055, F.S.;
10 revising requirements for notification
11 regarding the classification of reports
12 alleging abuse, neglect, and exploitation;
13 amending s. 415.1065, F.S.; providing
14 guidelines for retaining records of reports of
15 self-neglect; amending s. 415.1102, F.S.;
16 deleting reference to self-neglect; amending s.
17 430.205, F.S.; revising circumstances under
18 which elderly persons must receive primary
19 consideration of community-care-for-the-elderly
20 services; providing an effective date.

21

22 Be It Enacted by the Legislature of the State of Florida:

23

24 Section 1. Subsection (5) of section 415.102, Florida
25 Statutes, is amended, present subsections (32), (33), (34),
26 and (35) of that section are renumbered as subsections (33),
27 (34), (35), and (36), respectively, and a new subsection (32)
28 is added to that section, to read:

29

30 415.102 Definitions of terms used in ss.
31 415.101-415.113.--As used in ss. 415.101-415.113, the term:

31

1 (5) "Closed without classification" means the closure
2 of a report in which an adult protective investigator
3 determines that:

4 (a) Some evidence exists that abuse, neglect, or
5 exploitation has occurred, but a preponderance of evidence
6 cannot be established; or

7 (b) A preponderance of the evidence exists that abuse,
8 neglect, or exploitation has occurred, but no perpetrator can
9 be identified. ~~or~~

10 ~~(c) Self-neglect is the sole cause of the neglect.~~

11 (32) "Self-neglect" means the failure of a disabled
12 adult or elderly person who is not under the care of a
13 caregiver to provide for that person's own basic needs. Such
14 needs include, but are not limited to, food, clothing,
15 shelter, medicine, and medical services that a prudent person
16 would consider essential for the well-being of the disabled
17 adult or elderly person.

18 Section 2. Subsections (2) and (7) of section
19 415.1045, Florida Statutes, are amended to read:

20 415.1045 Protective investigations; onsite
21 investigations; photographs, videotapes, and medical
22 examinations; abrogation of privileged communications;
23 confidential records and documents; classification or closure
24 of records.--

25 (2) ONSITE INVESTIGATIONS OR ASSESSMENTS.--For each
26 report it receives, the department shall perform an onsite
27 investigation to:

28 (a) Determine whether the person is a disabled adult
29 or an elderly person as defined in s. 415.102.

30 (b) Determine whether there is an indication that any
31 disabled adult or elderly person has been or is being abused,

1 neglected, or exploited, including a determination of the
2 immediate and long-term risk; the nature and extent of present
3 or prior injuries; and the nature and extent of any abuse,
4 neglect, or exploitation, and any evidence thereof.

5 (c) Determine whether protective and ameliorative
6 services are necessary to safeguard and ensure the disabled
7 adult's or elderly person's well-being and cause the delivery
8 of those services.

9 (d) Determine the person or persons apparently
10 responsible for the abuse, neglect, or exploitation or
11 determine whether the case is one of self-neglect. If the case
12 is one of self-neglect and referral is appropriate, the person
13 must be referred to the Department of Elderly Affairs for
14 services pursuant to s. 430.205(5).

15 (e) Determine the composition of the family or
16 household, including all disabled adults and elderly persons
17 named in the report, all persons in the care of the caregiver,
18 any other persons responsible for the disabled adult's or
19 elderly person's welfare, and any other adults or children in
20 the same household.

21 (f) Gather appropriate demographic data. Each person
22 must cooperate to the fullest extent possible by providing the
23 person's name, address, date of birth, social security number,
24 sex, and race to the department's representative.

25 (7) CLASSIFICATIONS AND CLOSURES.--No later than 45
26 days after receiving an initial report in which the department
27 has jurisdiction, the adult protective investigator shall
28 complete the investigation and classify the report as proposed
29 confirmed or unfounded, or close the report without
30 classification. No classification will be assigned to cases
31 determined to be self-neglect.The adult protective

1 investigator must document the details of the investigation,
2 close the report, and enter the data into the central abuse
3 registry and tracking system no later than 60 days after
4 receiving the initial report.

5 Section 3. Subsection (2) of section 415.1055, Florida
6 Statutes,, is amended to read:

7 415.1055 Notification to administrative entities,
8 subjects, and reporters; notification to law enforcement and
9 state attorneys.--

10 (2) NOTIFICATION TO OTHER PERSONS.--

11 (a) In the case of a report that has been classified
12 as unfounded, notice of the classification must be given to
13 the disabled adult or elderly person, the guardian of that
14 person, the caregiver of that person, and the person who had
15 been named as the alleged perpetrator. The notice must be
16 sent by regular mail and must advise the recipient that the
17 report will be expunged in 1 year.

18 (b) If a report in which an alleged perpetrator is
19 named has been classified as proposed confirmed, notice of the
20 classification must be given to the disabled adult or elderly
21 person, the guardian of that person, the caregiver of that
22 person, and the alleged perpetrator, and legal counsel, if
23 known, for those persons.

24 1. The notice must state the nature of the alleged
25 abuse, neglect, or exploitation and the facts that are alleged
26 to support the proposed confirmed classification.

27 2. The notice must advise the recipient of the
28 recipient's right to request a copy of the report within 60
29 days after receipt of the notice.

30 3. The notice must clearly advise the alleged
31 perpetrator that the alleged perpetrator has the right to

1 request amendment or expunction of the report within 60 days
2 after receipt of the notice, and that failure to request
3 amendment or expunction within 60 days means that the report
4 will be reclassified as confirmed at the expiration of the 60
5 days and that the alleged perpetrator agrees not to contest
6 the classification of the report. No further administrative or
7 judicial proceedings in the matter are allowed.

8 4. The notice must state that, if the report becomes
9 confirmed, the alleged perpetrator may be disqualified from
10 working with children, the developmentally disabled, disabled
11 adults, and elderly persons.

12 5. Notice of a proposed confirmed report must be
13 personally served upon the alleged perpetrator in this state
14 by an adult protective investigator, a sheriff, or a private
15 process server in the district in which the alleged
16 perpetrator resides, works, or can be found. Proof of service
17 of the notice must be by affidavit prepared by the individual
18 serving the notice upon the alleged perpetrator. The
19 affidavit must state the name of the person serving the
20 notice, the name of the alleged perpetrator served, the
21 location at which the alleged perpetrator was served, and the
22 time the notice was served. If the notice of a proposed
23 confirmed report cannot be personally served upon the alleged
24 perpetrator in this state or if the alleged perpetrator does
25 not reside in this state, the notice of the proposed confirmed
26 report must be sent by certified mail, return receipt
27 requested, forwarding and address correction requested, to the
28 last known address of the alleged perpetrator. If an alleged
29 perpetrator cannot be served either by personal service or by
30 certified mail, the record of the proposed confirmed report
31 must be maintained pursuant to s. 415.1065.

1 6. Notice to other named persons may be sent by
2 regular mail, with the department giving notice to the
3 caregiver, the guardian, legal counsel for all parties, and
4 the disabled adult or elderly person.

5 7. If a proposed confirmed report becomes confirmed
6 because the alleged perpetrator fails to make a timely request
7 to amend or expunge the proposed confirmed report, the
8 department must give notice of the confirmed classification to
9 the perpetrator and the perpetrator's legal counsel.

10 a. Notice of the confirmed classification must inform
11 the perpetrator that the perpetrator may be disqualified from
12 working with children, the developmentally disabled, disabled
13 adults, and elderly persons.

14 b. The notice must inform the perpetrator that further
15 departmental proceedings in the matter are not allowed.

16 c. The notice of the confirmed classification must be
17 sent by certified mail, return receipt requested.

18 (c) If a report in which an alleged perpetrator is
19 named or suspected is closed without classification, notice
20 must be given to the guardian of the disabled adult or elderly
21 person, the disabled adult or elderly person, the caregiver of
22 that person, any person or facility named in the report, and
23 the person who had been named as the alleged perpetrator. The
24 notice must be sent by regular mail and must advise the
25 recipient that:

26 1. The report will be retained for 7 years.

27 2. The recipient has a right to request a copy of this
28 report.

29 3. Any person or facility named in a report classified
30 as closed without classification has the right to request
31 amendment or expunction of the report within 60 days after the

1 receipt of the notice, and that failure to request amendment
2 or expunction within 60 days means that the report will remain
3 classified as closed without classification and that the
4 person agrees not to contest the classification of the report.
5 No further proceeding will be allowed in this matter.

6 (d) The department shall adopt rules prescribing the
7 content of the notices to be provided and requiring uniformity
8 of content and appearance of each notice of classification or
9 closure without classification.

10 Section 4. Present subsections (5), (6), (7), and (8)
11 of section 415.1065, Florida Statutes, are renumbered as
12 subsections (6), (7), (8), and (9), respectively, and a new
13 subsection (5) is added to that section, to read:

14 415.1065 Records management.--All records must be
15 maintained in their entirety for their full retention period,
16 except as otherwise provided in this section:

17 (5) RECORDS OF REPORTS OF SELF-NEGLECT.--The
18 department shall maintain the record of each report of
19 self-neglect until 5 years after the report is closed in the
20 central abuse hotline and tracking system.

21 (a) After 5 years, the department shall expunge the
22 hard copy file of the record in its entirety.

23 (b) During the 5-year retention, the department shall
24 index each report by the name of the disabled adult or elderly
25 person and by the report number.

26 Section 5. Subsection (2) of section 415.1102, Florida
27 Statutes, is amended to read:

28 415.1102 Adult protection teams; services; eligible
29 cases.--Subject to an appropriation, the department may
30 develop, maintain, and coordinate the services of one or more
31 multidisciplinary adult protection teams in each of the

1 districts of the department. Such teams may be composed of,
2 but need not be limited to, representatives of appropriate
3 health, mental health, social service, legal service, and law
4 enforcement agencies.

5 (2) The adult abuse, neglect, or exploitation cases
6 that are appropriate for referral by the adult protective
7 services program to adult protection teams for supportive
8 services include, but are not limited to, cases involving:

9 (a) Unexplained or implausibly explained bruises,
10 burns, fractures, or other injuries in a disabled adult or an
11 elderly person.

12 (b) Sexual abuse or molestation, or sexual
13 exploitation, of a disabled adult or elderly person.

14 (c) Reported medical, physical, or emotional neglect,
15 ~~either self or second party,~~ of a disabled adult or an elderly
16 person.

17 (d) Reported financial exploitation of a disabled
18 adult or elderly person.

19
20 In all instances in which an adult protection team is
21 providing certain services to abused, neglected, or exploited
22 disabled adults or elderly persons, other offices and units of
23 the department shall avoid duplicating the provisions of those
24 services.

25 Section 6. Subsection (5) of section 430.205, Florida
26 Statutes, is amended to read:

27 430.205 Community care service system.--

28 (5) Any person who has been classified as a
29 functionally impaired elderly person is eligible to receive
30 community-care-for-the-elderly core services. Those elderly
31 persons who are determined by the functional assessment to be

1 at risk of institutionalization, or to be ~~and~~ victims of
2 abuse, neglect, or exploitation who are in need of immediate
3 services to prevent further harm and are referred by adult
4 protective services, shall be given primary consideration for
5 receiving community-care-for-the-elderly services. As used in
6 this subsection, the term "primary consideration" means that
7 an assessment and services must commence within 72 hours after
8 referral to the Department of Elderly Affairs or as
9 established in accordance with department contracts by local
10 protocols developed between department service providers and
11 adult protective services.

12 Section 7. This act shall take effect July 1, 1998.

13

14 *****

15 SENATE SUMMARY

16 Provides requirements for reporting cases of self-neglect
17 by disabled adults or elderly persons, for retaining
18 records of cases of self-neglect, and for classification
19 of reports of self-neglect. Revises standards under
20 which persons will be considered for
21 community-care-for-the-elderly services.

22

23

24

25

26

27

28

29

30

31