

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 329 CS Adult Protective Services  
**SPONSOR(S):** Culp; Gibson, H.; Sobel  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1182

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	7 Y, 0 N, w/CS	DePalma	Walsh
2) Civil Justice Committee		Blalock	Bond
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

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### SUMMARY ANALYSIS

Chapter 415, F.S., provides for adult protective services and establishes a program of protective services for all physically and mentally disabled adults or elderly persons in need of them.

This bill amends the Adult Protective Services Act to allow the Department of Children and Family Services explicit authority to protect persons from the effects of self-neglect by redefining the term "neglect", and redefines the term "abuse" to include abuse by a relative or household member.

This bill further amends the Act by including the Agency for Persons with Disabilities among the list of departmental agencies, employees and agents with access to all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports. This bill provides that DCF, AHCA, APD, and the Department of Elderly Affairs may use unfounded allegations of abuse, neglect, or exploitation collected through the central abuse hotline for employment screening purposes.

This bill also grants the Department of Children and Family Services, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Elder Affairs, and the Department of Health or county agencies explicit authority to access information in the central abuse hotline and automated abuse information system for purposes of licensure or approval of treatment facilities for the developmentally disabled, nursing homes and intermediate, special services, and transitional living facilities, and home care for aging and disabled adults. This provision will allow DCF, APD, AHCA, and the Department for Elder Affairs to use unfounded allegations of abuse, neglect, or exploitation when granting licenses and approval for these services and treatment facilities.

The bill appears to have a minimal fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the Department of Children and Families' (DCF) responsibility in carrying out the provisions in the Adult Protective Services Act by giving DCF explicit authority to protect persons from the effects of self-neglect and investigate alleged abuse of vulnerable adults by relatives and household members who are not in a caregiver role.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background -- Abuse and Neglect of Vulnerable Adults**

The Legislature has recognized that there are many persons in this state who, because of age or disability, are in need of protective services.<sup>1</sup> Chapter 415, F.S., the Adult Protective Services Act, provides statutory authority for the Department of Children and Families (DCF) to investigate reports of abuse, neglect, or exploitation of a vulnerable adult. "vulnerable adult" means 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.<sup>2</sup>

The Adult Protective Services program is a system of specialized social services directed toward protecting vulnerable adults who are unable to prevent further instances of abuse, neglect or exploitation. The department sends staff to make an assessment of an individual's need for protective services after a reported allegation of abuse, neglect or exploitation is received by the central abuse hotline. Adult Protective Services includes four basic elements:

1. The on-site investigation of all reports of alleged abuse, neglect, or exploitation.
2. Determination of immediate risk to the vulnerable adult and the provision of necessary emergency services.
3. Evaluation of the need for and provision of ongoing protective supervision.
4. Provision or arrangement of ongoing protective services.

If a vulnerable adult is in danger of continued abuse, neglect or exploitation, staff from the Aging Services Program provides services through the authority of the Protective Supervision Program.

##### **Effect of the Bill -- Abuse and Neglect of Vulnerable Adults**

Besides the potential for being neglected or abused by a caregiver, there is also the potential for a vulnerable adult to neglect themselves due to their age or disability, or be abused by a relative or household member other than a caregiver. In Fiscal Year 2003-2004, DCF investigated 6,394 cases reported to the central abuse hotline that were verified or contained some indications of self-neglect (other than medical neglect).<sup>3</sup> Of these self-neglect cases, more than 40 percent involved persons 80 years of age and older. However, the current statutory definition of "neglect"<sup>4</sup> does not include neglect

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<sup>1</sup> Section 415.101(2), F.S.

<sup>2</sup> Section 415.102(26), F.S.

<sup>3</sup> *Adult Protective Services Annual Report Fiscal Year 2003-2004*, Table F-6, Demographic Characteristics of Victims by Verified and Some Indication Maltreatments, Self-Neglect In Need of Services, Department of Children and Family Services, March 2005.

<sup>4</sup> Section 415.102(15), F.S. -- "neglect:" means the failure or omission on the part of the caregiver to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not

caused by the vulnerable adult, and the department's authority to provide services upon occurrence of self-neglect has been questioned by the courts.<sup>5</sup> In addition, the current definition of "abuse" only relates to caregivers and not to relatives or other household members.

This bill adds "vulnerable adult" to the definition of "neglect" in section 415.102(15), F.S., and adds "vulnerable adult in need of services"<sup>6</sup> to section 415.1051(1), F.S., relating to non-emergency protective services. These changes will give DCF explicit authority to provide voluntary services or petition the court for involuntary non-emergency services and protective supervision when an investigation determines that the vulnerable adult is neglecting himself or herself.

The Adult Protective Services Act defines "abuse"<sup>7</sup> in terms of willful acts committed or threatened by a "caregiver" that causes or is likely to cause impairment to a vulnerable adult's well-being. The statutory definition of "caregiver" found in Chapter 415 includes as a caregiver a person entrusted with the responsibility for the frequent and regular care of a vulnerable adult, and who has an agreement or understanding with that person or that person's guardian that a caregiver role exists.<sup>8</sup> Although the definition notes that a caregiver may include "relatives, household members, guardians, neighbors, and employees and volunteers of facilities ..." either an explicit or implicit caregiver relationship must be present for DCF to accept and investigate a report of abuse.<sup>9</sup>

During the 2000 Legislative session, s. 415.102(1) was amended to omit the requirement that a relationship exist between a vulnerable adult and the individual alleged to have committed acts or omissions evidencing abuse. Subsequently, in 2003 the Legislature again amended the Adult Protective Services Act to require the presence of a caregiver relationship before DCF could accept and investigate alleged abuse maltreatments.

This bill amends the definition of "abuse" in section 415.102(1), F.S. to include willful or threatened acts committed by a relative or household member which cause, or are likely to cause, significant impairment to a vulnerable adult's health. This change allows DCF to accept and investigate the alleged abuse of vulnerable adults by relatives and household members who are neither explicit nor implicit caregivers of such vulnerable adult.

### **Background -- Access to Reports and Records of Abuse, Neglect, or Exploitation of Vulnerable Adults**

Pursuant to s. 415.103, F.S., DCF maintains a central abuse hotline, which enables DCF to:

- Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited;
- Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority;

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limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

<sup>5</sup> *Florida Department of Children and Family Services v. McKim*, 869 So.2d 760 (Fla. 1<sup>st</sup> DCA 2004) (fact that allegedly vulnerable adult was suffering from results of self-neglect did not support order under Adult Protective Services Act of protective services, where definition of "neglect" required that neglect have occurred at hand of caregiver and statutory definition of "vulnerable adult" did not include concept of self-neglect.)

<sup>6</sup> "Vulnerable adult in need of services" means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm. S. 415.102(27), F.S.

<sup>7</sup> S. 415.102(1), F.S.

<sup>8</sup> S. 415.102(4), F.S.

<sup>9</sup> Id.

- When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns;
- Immediately identify and locate prior reports of abuse, neglect, or exploitation;
- Track critical steps in the investigative process to ensure compliance with all requirements for all reports;
- Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation; and
- Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

The Adult Protective Services Act imposes a mandatory reporting requirement on any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected or exploited.<sup>10</sup> In addition, the Act imposes a reporting requirement on any person who is required to investigate such reports, where there is a reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect or exploitation. In such instances, these individuals are required to immediately report their suspicion to the appropriate medical examiner, criminal justice agency, and to DCF.<sup>11</sup>

Current law provides that all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline must be confidential and exempt from the public records statutes, unless specifically authorized in ch. 415, F.S.<sup>12</sup> Section 415.107(3)(a), F.S., provides that employees or agents of DCF, AHCA, or the Department of Elderly Affairs who are responsible for carrying out the following functions shall be granted access to all records except for the name of the reporter of abuse:

- Protective investigations;
- Ongoing protective services; or
- Licensure approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, or other facilities used for the placement of vulnerable adults.

In October 2004, the Agency for Persons with Disabilities (APD) became an agency separate from the Department of Children and Families, specifically tasked with serving the needs of persons with developmental disabilities<sup>13</sup> and licensing facilities that provide care and services to the disabled. Prior to that time, it existed as the Developmental Disabilities Program within DCF. The Agency for Persons with Disabilities works in partnership with local communities to ensure the safety, well-being and self-sufficiency for more than 32,000 persons with developmental disabilities throughout Florida. The agency provides assistance to identify the needs of people with developmental disabilities and funding to purchase supports and services. Since APD is now its own agency and not a part of DCF, APD does not have access to abuse reports and records as it did when it was under DCF. APD employs people and contracts with outside agents who provide care and services for children and adults with disabilities. APD also is responsible for granting licenses for facilities providing room and board and personal care for persons with developmental disabilities.<sup>14</sup> APD believes that it needs access to such records to ensure that those employed by APD or that seek licenses through APD have not abused persons with disabilities in the past.

<sup>10</sup> Section 415.1034(1)(a), F.S.

<sup>11</sup> Section 415.1034(2), F.S.

<sup>12</sup> Section 415.107, F.S.

<sup>13</sup> "developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

<sup>14</sup> Section 393.067, F.S.

## **Effect of Bill -- Access to Reports and Records of Abuse, Neglect, or Exploitation of Vulnerable Adults**

This bill inserts the APD into the list of agencies, departments, employees and agents contained in s. 415.107(3)(a), F.S. with access to records and reports of the Adult Protective Services. Therefore, under this bill, employees and agents of APD who are responsible for carrying out protective investigations, ongoing protective services, or licensure of facilities used for the placement of vulnerable adults would have access to all records and reports of abuse, neglect, or exploitation of a vulnerable adult. The definition of vulnerable adult includes adults with developmental disabilities. Therefore, this bill grants APD access to abuse reports and records of adults with disabilities, since APD is involved in the licensure of facilities used for the placement of vulnerable adults. It is unclear whether this section of the bill would allow APD access to abuse reports and records of children with developmental disabilities.

This bill also amends 415.107(8), F.S., to provide exceptions to the general rule that information in the central abuse hotline may not be used for employment screening. This bill provides that information in the central abuse hotline may not be used for employment screening, "except as provided in paragraphs (3)(a)<sup>15</sup> and (h)<sup>16</sup>. However, s. 415.107(3)(a), F.S., does not make any reference to allowing access to abuse reports and records for the purpose of pre- or post-employment screening. Section 415.107(3)(h), F.S. does provide for access to abuse reports and records for current employees screening, however, it does not make any provision for allowing access to these reports and records to APD. Therefore, it seems that this bill will not give APD access to information in the central abuse hotline for the purpose of employment screening.

This bill also amends s. 415.107(8), F.S., to provide that the following people and entities may use the information in the central abuse hotline and the automated abuse information system for the purposes of licensure or approval of nursing homes, residential facilities for the developmentally disabled, and home care facilities :

- DCF and its authorized agents and contract providers;
- Agency for Persons with Disabilities;
- Agency for Health Care Administration (AHCA);
- Department of Elderly Affairs (DOEA);
- Department of Health (DOH); or
- County agencies.

These proposed changes to s. 415.107, F.S., may allow unfounded allegations of abuse to be used by DCF, APD, AHCA, and Department of Elderly Affairs for employment screening, and by DCF, APD, AHCA, DOEA, DOH, and county agencies for the licensure or approval process of treatment facilities for the developmentally disabled, nursing homes and intermediate, special services, and transitional living facilities, and home care for aging and disabled adults. This appears contrary to last years SB 758 enacted by ch. 2005-173, Laws of Florida, which specifically prohibits the use of information contained in any report of abuse or neglect for the purpose of employment screening or licensure.

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<sup>15</sup> Section 415.107(3)(a), F.S., provides that access to all records must be granted to Employees or agents of DCF, AHCA, APD or of the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, or other facilities used for the placement of vulnerable adults.

<sup>16</sup> Section 415.107(3)(h), F.S., provides that access to all records must be granted to any appropriate official of DCF, AHCA, or the Department of Elderly Affairs who is responsible for: (1) The administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or (2) Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

C. SECTION DIRECTORY:

Section 1 amends s. 415.102(1), F.S., adding abuse committed by a relative or household member to the definition of "abuse"; amends s. 415.102(15), F. S., adding "vulnerable adult" to the definition of "neglect" to include within the definition of neglect the concept of self-neglect.

Section 2 amends s. 415.1051(1), F. S., adding "vulnerable adult in need of services" to include, within the department's authority to seek an order authorizing the provision of protective services, those persons determined to have neglected themselves.

Section 3 amends s. 415.107(3)(a), F.S., including the APD among the list of agencies, departments, employees and agents able to access Adult Protective Services records and reports; amends s. 415.107(8), F.S., enabling information collected from the central abuse hotline to be used for employment screening under certain scenarios and allowing DCF and its authorized agents and contract providers, APD, AHCA, DOEA, DOH or county agencies to use such central abuse hotline information as part of the licensure or approval of certain nursing facilities.

Section 4 provides the act is effective upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF anticipates that this bill will have a minimal fiscal impact on the department, which it states can be absorbed within existing departmental resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is some redundancy of language in the CS, as lines 121-128 and 131-138 both appear to grant DCF, AHCA, APD and DOEA access to information from the central abuse hotline for the purpose of "licensure or approval" of certain nursing facilities.

The second sentence of s. 415.107(8), F.S., should possibly be its own paragraph (9).

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

At its January 11, 2006 meeting, the Committee on Elder & Long-Term Care adopted an amendment to HB 329. The amendment:

- Includes the Agency for Persons with Disabilities to the list of agencies, departments, employees and agents bestowed with access to all Adult Protective Services records for the purpose of carrying out protective investigations, ongoing protective services, or licensure and approval of certain nursing facilities.
- Enables information collected from the central abuse hotline to be used for employment screening in the instances contemplated pursuant to ss. 415.107(3)(a) and (h).
- Allows such information, and information collected from the automated abuse information system to be used by the Department of Children and Family Services and its agents and contract providers, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health and county agencies for licensure and approval of certain nursing facilities.

The Committee favorably reported a Committee Substitute.