

CHAMBER ACTION

1 The Elder & Long-Term Care Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to adult protective services; amending s.  
7 415.102, F.S.; redefining the terms "abuse" and "neglect";  
8 amending s. 415.1051, F.S.; providing that the Department  
9 of Children and Family Services may petition the court for  
10 an order authorizing protective services for a vulnerable  
11 adult in need of services; amending s. 415.107, F.S.;  
12 authorizing the Agency for Persons with Disabilities to  
13 have access to certain confidential records relating to  
14 abuse, neglect, or exploitation of vulnerable adults;  
15 authorizing certain entities to use certain confidential  
16 information in the central abuse hotline and the automated  
17 abuse information system for certain purposes; providing  
18 an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Subsections (1) and (15) of section 415.102,  
23 Florida Statutes, are amended to read:

24 415.102 Definitions of terms used in ss. 415.101-

25 415.113.--As used in ss. 415.101-415.113, the term:

26 (1) "Abuse" means any willful act or threatened act by a  
27 relative, caregiver, or household member that causes or is  
28 likely to cause significant impairment to a vulnerable adult's  
29 physical, mental, or emotional health. Abuse includes acts and  
30 omissions.

31 (15) "Neglect" means the failure or omission on the part  
32 of the caregiver or vulnerable adult to provide the care,  
33 supervision, and services necessary to maintain the physical and  
34 mental health of the vulnerable adult, including, but not  
35 limited to, food, clothing, medicine, shelter, supervision, and  
36 medical services, that a prudent person would consider essential  
37 for the well-being of a vulnerable adult. The term "neglect"  
38 also means the failure of a caregiver or vulnerable adult to  
39 make a reasonable effort to protect a vulnerable adult from  
40 abuse, neglect, or exploitation by others. "Neglect" is repeated  
41 conduct or a single incident of carelessness which produces or  
42 could reasonably be expected to result in serious physical or  
43 psychological injury or a substantial risk of death.

44 Section 2. Subsection (1) of section 415.1051, Florida  
45 Statutes, is amended to read:

46 415.1051 Protective services interventions when capacity  
47 to consent is lacking; nonemergencies; emergencies; orders;  
48 limitations.--

49 (1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.--If  
50 the department has reasonable cause to believe that a vulnerable  
51 adult or a vulnerable adult in need of services is being abused,

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52 neglected, or exploited and is in need of protective services  
53 but lacks the capacity to consent to protective services, the  
54 department shall petition the court for an order authorizing the  
55 provision of protective services.

56 (a) Nonemergency protective services petition.--The  
57 petition must state the name, age, and address of the vulnerable  
58 adult, allege specific facts sufficient to show that the  
59 vulnerable adult is in need of protective services and lacks the  
60 capacity to consent to them, and indicate the services needed.

61 (b) Notice.--Notice of the filing of the petition and a  
62 copy of the petition must be given to the vulnerable adult, to  
63 that person's spouse, guardian, and legal counsel, and, when  
64 known, to the adult children or next of kin of the vulnerable  
65 adult. Such notice must be given at least 5 days before the  
66 hearing.

67 (c) Hearing.--

68 1. The court shall set the case for hearing within 14 days  
69 after the filing of the petition. The vulnerable adult and any  
70 person given notice of the filing of the petition have the right  
71 to be present at the hearing. The department must make  
72 reasonable efforts to ensure the presence of the vulnerable  
73 adult at the hearing.

74 2. The vulnerable adult has the right to be represented by  
75 legal counsel at the hearing. The court shall appoint legal  
76 counsel to represent a vulnerable adult who is without legal  
77 representation.

78 3. The court shall determine whether:

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79 a. Protective services, including in-home services, are  
80 necessary.

81 b. The vulnerable adult lacks the capacity to consent to  
82 the provision of such services.

83 (d) Hearing findings.--If at the hearing the court finds  
84 by clear and convincing evidence that the vulnerable adult is in  
85 need of protective services and lacks the capacity to consent,  
86 the court may issue an order authorizing the provision of  
87 protective services. If an order for protective services is  
88 issued, it must include a statement of the services to be  
89 provided and designate an individual or agency to be responsible  
90 for performing or obtaining the essential services on behalf of  
91 the vulnerable adult or otherwise consenting to protective  
92 services on behalf of the vulnerable adult.

93 (e) Continued protective services.--

94 1. No more than 60 days after the date of the order  
95 authorizing the provision of protective services, the department  
96 shall petition the court to determine whether:

97 a. Protective services will be continued with the consent  
98 of the vulnerable adult pursuant to subsection (1);

99 b. Protective services will be continued for the  
100 vulnerable adult who lacks capacity;

101 c. Protective services will be discontinued; or

102 d. A petition for guardianship should be filed pursuant to  
103 chapter 744.

104 2. If the court determines that a petition for  
105 guardianship should be filed pursuant to chapter 744, the court,

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106 for good cause shown, may order continued protective services  
107 until it makes a determination regarding capacity.

108 (f) Costs.--The costs of services ordered under this  
109 section must be paid by the perpetrator if the perpetrator is  
110 financially able to do so; or by third-party reimbursement, if  
111 available. If the vulnerable adult is unable to pay for  
112 guardianship, application may be made to the public guardian for  
113 public guardianship services, if available.

114 Section 3. Paragraph (a) of subsection (3) and subsection  
115 (8) of section 415.107, Florida Statutes, are amended to read:

116 415.107 Confidentiality of reports and records.--

117 (3) Access to all records, excluding the name of the  
118 reporter which shall be released only as provided in subsection  
119 (6), shall be granted only to the following persons, officials,  
120 and agencies:

121 (a) Employees or agents of the department, ~~of~~ the Agency  
122 for Health Care Administration, the Agency for Persons with  
123 Disabilities, or ~~of~~ the Department of Elderly Affairs who are  
124 responsible for carrying out protective investigations, ongoing  
125 protective services, or licensure or approval of nursing homes,  
126 assisted living facilities, adult day care centers, adult  
127 family-care homes, home care for the elderly, hospices, or other  
128 facilities used for the placement of vulnerable adults.

129 (8) Information in the central abuse hotline may not be  
130 used for employment screening, except as provided in paragraphs  
131 (3) (a) and (h). Information in the central abuse hotline and the  
132 department's automated abuse information system may be used by  
133 the department, the department's authorized agents or contract

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134 providers, the Agency for Persons with Disabilities, the Agency  
135 for Health Care Administration, the Department of Elderly  
136 Affairs, the Department of Health, or county agencies as a part  
137 of the licensure or approval process pursuant to ss. 393.067-  
138 393.0678, parts II-VIII of chapter 400, and ss. 410.031-410.037.

139 Section 4. This act shall take effect upon becoming a law.