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CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
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 term "abuse" to include
8 actions by a relative or a household member which are
9 likely to harm a vulnerable adult; redefining the term
10 "neglect" to include actions of a vulnerable adult against
11 himself or herself; amending s. 415.1051, F.S.; providing
12 for the Department of Children and Family Services to
13 petition the court for an order authorizing the provision
14 of protective services for a vulnerable adult in need of
15 services; amending s. 415.107, F.S.; authorizing the
16 Agency for Persons with Disabilities to have access to
17 certain otherwise confidential records and reports;
18 providing an effective date.

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

21
22 Section 1. Subsections (1) and (15) of section 415.102,
23 Florida Statutes, are amended to read:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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 which ~~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, which ~~that~~ a prudent person would consider
37 essential for the well-being of a vulnerable adult. The term
38 "neglect" also means the failure of a caregiver or vulnerable
39 adult to make a reasonable effort to protect a vulnerable adult
40 from abuse, neglect, or exploitation by others. "Neglect" is
41 repeated conduct or a single incident of carelessness which
42 produces or could reasonably be expected to result in serious
43 physical or 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,

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. Paragraphs (a) and (h) of subsection (3) of
115 | 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 | (h) Any appropriate official of the department, ~~of~~ the
130 | Agency for Health Care Administration, the Agency for Persons
131 | with Disabilities, or ~~of~~ the Department of Elderly Affairs who
132 | is responsible for:

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133 1. Administration or supervision of the programs for the
134 prevention, investigation, or treatment of abuse, neglect, or
135 exploitation of vulnerable adults when carrying out an official
136 function; or

137 2. Taking appropriate administrative action concerning an
138 employee alleged to have perpetrated abuse, neglect, or
139 exploitation of a vulnerable adult in an institution.

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