

1 A bill to be entitled

2 An act relating to adult protective services; amending s.  
3 415.102, F.S.; redefining the term "abuse" to include  
4 actions by a relative or a household member which are  
5 likely to harm a vulnerable adult; redefining the term  
6 "neglect" to include actions of a vulnerable adult against  
7 himself or herself; amending s. 415.1051, F.S.; providing  
8 for the Department of Children and Family Services to  
9 petition the court for an order authorizing the provision  
10 of protective services for a vulnerable adult in need of  
11 services; amending s. 415.107, F.S.; authorizing the  
12 Agency for Persons with Disabilities to have access to  
13 certain otherwise confidential records and reports;  
14 providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

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

20 415.102 Definitions of terms used in ss. 415.101-  
21 415.113.--As used in ss. 415.101-415.113, the term:

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

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

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

42 415.1051 Protective services interventions when capacity  
 43 to consent is lacking; nonemergencies; emergencies; orders;  
 44 limitations.--

45 (1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.--If  
 46 the department has reasonable cause to believe that a vulnerable  
 47 adult or a vulnerable adult in need of services is being abused,  
 48 neglected, or exploited and is in need of protective services  
 49 but lacks the capacity to consent to protective services, the  
 50 department shall petition the court for an order authorizing the  
 51 provision of protective services.

52 (a) Nonemergency protective services petition.--The  
 53 petition must state the name, age, and address of the vulnerable

54 adult, allege specific facts sufficient to show that the  
55 vulnerable adult is in need of protective services and lacks the  
56 capacity to consent to them, and indicate the services needed.

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

63 (c) Hearing.--

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

70 2. The vulnerable adult has the right to be represented by  
71 legal counsel at the hearing. The court shall appoint legal  
72 counsel to represent a vulnerable adult who is without legal  
73 representation.

74 3. The court shall determine whether:

75 a. Protective services, including in-home services, are  
76 necessary.

77 b. The vulnerable adult lacks the capacity to consent to  
78 the provision of such services.

79 (d) Hearing findings.--If at the hearing the court finds  
80 by clear and convincing evidence that the vulnerable adult is in

81 | need of protective services and lacks the capacity to consent,  
82 | the court may issue an order authorizing the provision of  
83 | protective services. If an order for protective services is  
84 | issued, it must include a statement of the services to be  
85 | provided and designate an individual or agency to be responsible  
86 | for performing or obtaining the essential services on behalf of  
87 | the vulnerable adult or otherwise consenting to protective  
88 | services on behalf of the vulnerable adult.

89 | (e) Continued protective services.--

90 | 1. No more than 60 days after the date of the order  
91 | authorizing the provision of protective services, the department  
92 | shall petition the court to determine whether:

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

95 | b. Protective services will be continued for the  
96 | vulnerable adult who lacks capacity;

97 | c. Protective services will be discontinued; or

98 | d. A petition for guardianship should be filed pursuant to  
99 | chapter 744.

100 | 2. If the court determines that a petition for  
101 | guardianship should be filed pursuant to chapter 744, the court,  
102 | for good cause shown, may order continued protective services  
103 | until it makes a determination regarding capacity.

104 | (f) Costs.--The costs of services ordered under this  
105 | section must be paid by the perpetrator if the perpetrator is  
106 | financially able to do so; or by third-party reimbursement, if  
107 | available. If the vulnerable adult is unable to pay for

108 guardianship, application may be made to the public guardian for  
109 public guardianship services, if available.

110 Section 3. Paragraphs (a) and (h) of subsection (3) of  
111 section 415.107, Florida Statutes, are amended to read:

112 415.107 Confidentiality of reports and records.--

113 (3) Access to all records, excluding the name of the  
114 reporter which shall be released only as provided in subsection  
115 (6), shall be granted only to the following persons, officials,  
116 and agencies:

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

125 (h) Any appropriate official of the department, ~~of~~ the  
126 Agency for Health Care Administration, the Agency for Persons  
127 with Disabilities, or ~~of~~ the Department of Elderly Affairs who  
128 is responsible for:

129 1. Administration or supervision of the programs for the  
130 prevention, investigation, or treatment of abuse, neglect, or  
131 exploitation of vulnerable adults when carrying out an official  
132 function; or

133 |           2. Taking appropriate administrative action concerning an  
134 | employee alleged to have perpetrated abuse, neglect, or  
135 | exploitation of a vulnerable adult in an institution.

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