

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1562

INTRODUCER: Senator Passidomo

SUBJECT: Elder Abuse

DATE: February 28, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	Favorable
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1562 provides a civil cause of action for an injunction prohibiting exploitation of a vulnerable adult. The bill allows courts to grant a temporary injunction if certain conditions are met, and creates standards for the court to follow when issuing an injunction.

The bill identifies individuals who may petition the court for an injunction, provides for a choice of venue specifying where the petition may be filed, and provides a procedural framework for the parties and court.

The bill provides several remedies for vulnerable adults following issuance of an injunction, including temporary and exclusive use of a shared residence and the ability to freeze the assets of both the vulnerable adult and an individual accused of exploiting the vulnerable adult. The bill also imposes criminal penalties for violating an injunction.

The bill may increase workload and expenditures for clerks of court, law enforcement agencies, and state attorney's offices statewide.

The bill takes effect July 1, 2018.

II. Present Situation:

Vulnerable Adults

Florida is home to approximately 3.3 million residents aged 65 or older,¹ and five percent of Florida residents are aged 80 or older.² Many of Florida's elderly residents may be classified as 'vulnerable adults,' or individuals aged 18 or older who may experience abuse, neglect, or

¹ U.S. Census Bureau, 2013 American Community Survey

² *Id.*

exploitation by second parties or may fail to take care of themselves adequately.³ While abuse, neglect, and exploitation of a vulnerable adult can take various forms, the Department of Elder Affairs has described the “Financial or Material Exploitation” of a vulnerable adult to include the following activities: “Improper use of an elder’s funds, property, or assets; cashing checks without permission; forging signatures; forcing or deceiving an older person into signing a document; using an ATM/debit card without permission.”⁴

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly affected by financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.⁵ Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed, after reasonable and appropriate notice, to pay, or have paid under Medicare or Medicaid, for residence at the facility.⁶ Assisted living facilities and adult family care homes may relocate or terminate the residency of a vulnerable adult with 45 days’ notice or 30 days’ notice, respectively.⁷

Consequently, the responsibility of caring for exploited vulnerable adults at risk of discharge or eviction may fall on various state and federal programs. In 2010, a review of 80 elder financial exploitation cases in Utah found the state’s Medicaid program would potentially have to pay about \$900,000 to cover the cost of care for vulnerable adults who had suffered substantial losses due to financial exploitation.⁸

Adult Protective Services Act

In 1977, the Legislature enacted the “Adult Protective Services Act,” (APSA) ch. 415, F.S., which provides statutory authority for the Department of Children and Families (DCF), to investigate reports of abuse, neglect or exploitation of a vulnerable adult. Upon a report of alleged abuse, neglect, or exploitation, an assessment of an individual’s need for protective services is initiated.

The APSA defines a “vulnerable adult” as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.⁹ In addition to DCF intervention and services, the APSA authorizes a vulnerable adult that has been abused, neglected, or exploited, to bring a civil action to recover actual and punitive

³ S. 415.102, F.S.

⁴ Florida Department of Elder Affairs, *The Power to Prevent Elder Abuse*, available at http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English_web.pdf (last visited January 31, 2018).

⁵ Consumer Financial Protection Bureau, *We’re helping long-term care facilities protect older Americans from financial exploitation*, available at, <http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/> (last visited January 31, 2018).

⁶ S. 400.022(1)(p), F.S.; 42 U.S.C. § 1396r.

⁷ SS. 429.28(1)(k) and 429.85(1)(l), F.S.

⁸ *Supra* at note 5.

⁹ S. 415.102(28), F.S.

damages against the perpetrator.¹⁰ An action under s. 415.1111, F.S. may be brought within 4 years¹¹ of the injury in any court of competent jurisdiction by:

- The vulnerable adult;
- The vulnerable adult's guardian;
- A person or organization acting on behalf of the vulnerable adult or the vulnerable adult's guardian; or
- The personal representative of the estate of a deceased vulnerable adult.¹²

The prevailing party in an action under s. 415.1111, F.S., may be entitled to recover attorney fees and costs.¹³ The action is considered an addition to and cumulative with other legal and administrative remedies available to the vulnerable adult.

Current law also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.¹⁴ If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at \$50,000 or more, the offender commits a felony of the first degree. If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at \$10,000 or more, but less than \$50,000, the offender commits a felony of the second degree. If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult are valued at less than \$10,000, the offender commits a felony of the third degree.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 825.101, F.S., relating to abuse, neglect, and exploitation of elderly persons, to include definitions for the terms 'exploitation' and 'vulnerable adult.'

Section 2 creates s. 825.1035, F.S., to establish a cause of action for a protective injunction to be filed by a vulnerable adult in imminent danger of being exploited. A petition for injunction may be filed by the adult's guardian, a person or organization acting on the adult's behalf with the consent of their guardian, and an individual filing a petition to have the vulnerable adult deemed incapacitated. The bill allows the action to be filed in the judicial circuit where the vulnerable adult resides, where the individual accused of exploitation (the respondent) resides, where the person filing the action resides, or where the alleged exploitation occurred.

The bill prohibits the clerk of the circuit court from assessing a filing fee for petitions filed. Subject to legislative appropriation and on a quarterly basis, the clerk may submit to the Office of the State Courts Administrator a certified request for reimbursement for the processing of such petitions, at the rate of \$40 per petition.

¹⁰ S. 415.1111, F.S.

¹¹ S. 95.11(3)(f), F.S.

¹² S. 415.1111, F.S.

¹³ *Id.*

¹⁴ SS. 825.101-106, F.S.

¹⁵ S. 825.103(3), F.S.

The bill provides that the court may require payment of a bond before an injunction is issued, and requires a sworn petition be filed alleging exploitation or imminent exploitation of the vulnerable adult. The bill requires the petition to contain the following information:

- The last known residence of both the vulnerable adult and the respondent;
- The respondent's last known employer, a physical description of the respondent, and any aliases they are known to have;
- The manner in which the respondent is associated with the vulnerable adult and any previous or pending legal actions between the respondent and the vulnerable adult;
- The petitioner's knowledge of any reports made to a state agency regarding exploitation, abuse, or neglect of the vulnerable adult;
- The reasons the petitioner claims to genuinely fear an imminent danger of exploitation, or any facts the petitioner believes show the respondent has already committed exploitation; and
- Remedies sought through the injunction, which may include:
 - Prohibiting any direct or indirect contact between the respondent and the vulnerable adult;
 - Immediately restraining the respondent from committing any acts of exploitation;
 - Freezing specified assets of the vulnerable adult, whether solely in the adult's name, jointly named with the respondent, or solely in the respondent's name; and
 - Providing any other conditions the court feels necessary to protect the vulnerable adult or their assets.

The bill requires the court to schedule a hearing on the petition at the earliest possible date and requires that the respondent be personally served with a copy of the petition and any other documents relevant to the proceeding.

The bill also requires the clerk of the court to assist the petitioner in filing, including providing simplified forms and filing instructions. The clerk must provide the petitioner with two copies of the petition, one of which is serviceable, and explain the process of serving and enforcing the petition. Clerks of court in each county statewide must provide informational brochures to petitioners upon filing containing information about exploitation of vulnerable adults and the effect of providing false information to the court.

The bill requires the court to consider the following factors in determining whether to grant an injunction:

- The vulnerable adult is a victim of exploitation or the court has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation;
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and
- Granting of a temporary injunction will not disserve the public interest.

The bill allows the court to issue injunctions providing any of the following remedies:

- Restraining the respondent from committing any acts of exploitation;
- Awarding to the vulnerable adult the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent;

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing assets remain frozen until ownership can be determined; and/or
- Ordering such other relief as the court deems necessary for the protection of a vulnerable adult from exploitation, including injunctions or directives to law enforcement agencies.

The bill requires a temporary or final judgment on an injunction must indicate that the injunction is valid and enforceable in all counties of the state. The final judgment must indicate the date the respondent was served with the temporary or final order and include a statement that law enforcement officers are allowed to use their arrest powers to enforce the terms of the injunction.

The bill also requires the court to allow an advocate from a state attorney's office, law enforcement agency, or adult protective services to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made such a request and the advocate is able to be present.

The bill provides that when an injunction is issued, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in placing them in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must accept a copy of an injunction for protection against exploitation of a vulnerable adult, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served. Law enforcement must also serve any injunction freezing assets on the financial institution where the assets are held, unless the court waives such requirement.

All orders issued or changed subsequent to the service of original documents must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such an order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing is not possible, the clerk of the circuit court is required to mail certified copies of the order to the parties at the last known address of each party. When an order is served, the clerk of the circuit court must prepare a written certification to be placed in the court file specifying the time, date, and method of service.

The terms of the injunction remain in effect until the injunction is modified or dissolved. The petitioner, vulnerable adult, or the respondent may move the court to modify or dissolve an injunction at any time, and no specific allegations are required. The modification or dissolution of the injunction may be granted in addition to other civil or criminal penalties.

The clerk must notify the sheriff's office within 24 hours of the injunction being terminated, and the sheriff's office must then notify the Department of Law Enforcement of the termination within 24 hours.

Section 3 creates s. 825.1036, F.S., to require that, in cases where an injunction under s. 825.1035, F.S., has allegedly been violated, the clerk of the court must, upon request, assist the

petitioner in preparation of an affidavit attesting to the violation, or direct the petitioner to the office in that judicial circuit that serves as the central intake point for injunction violations.

The bill requires the clerk to forward completed affidavits to the state attorney's office and the appropriate court office in that circuit, and if the affidavit alleges criminal activity, to law enforcement. If criminal activity is alleged, within 20 days law enforcement must investigate the allegations and report findings to the state attorney's office, which must decide within 30 days whether or not to file criminal charges or state that the case remains under investigation.

The bill requires that if the court believes the vulnerable adult is in imminent danger should the court fail to act prior to the state attorney's decision to file charges, the court must order the state attorney's office to file an order to show cause as to why the respondent should not be held in contempt. Alternatively, the court may also notify the state attorney's office that it is proceeding to enforce the violation through a ruling of criminal contempt.

The bill provides that willful violation of an injunction constitutes a first degree misdemeanor. Violation of an injunction can occur through any of the following acts by the respondent:

- Refusing to vacate a dwelling shared with the vulnerable adult;
- Going within 500 feet of the vulnerable adult's residence;
- Exploiting the vulnerable adult;
- Violating the injunction in any other way through an intentional unlawful threat or act of violence toward the vulnerable adult;
- Contacting the vulnerable adult in any way unless otherwise allowed by the injunction; or
- Damaging the vulnerable adult's property.

The bill provides that anyone with two or more prior convictions for violation of an injunction against the same victim who violates a third time commits a third degree felony. Anyone who suffers any type of economic loss resulting from a violation can be awarded damages by the court that issued the injunction.

Section 4 amends s. 901.15, F.S., to add a violation of an injunction issued under the newly created statutes to the list of crimes that permit law enforcement to make a warrantless arrest.

Section 5 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will create an indeterminate increase in workload and expenditures for the clerks of courts, law enforcement agencies, and state attorney's offices due to the additional responsibilities imposed in issuing, serving, and enforcing injunctions. In Fiscal Year 2016-17, the Department of Children and Families reported that it received and investigated 55,890 reports of abuse from the Florida Abuse Hotline related to vulnerable adults, as defined by s. 415.102, F.S. Of those, roughly 1,000 were found to be verified exploitation cases. The department estimates that approximately 400 of those cases would result in an injunction.

The bill creates a new third degree felony for anyone with two or more prior convictions for violation of an injunction against the same victim who violates a third time. The Criminal Justice Impact Conference estimates that this provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is silent on instances where a respondent owns and operates an assisted living facility (ALF), or similar setting housing multiple patients/residents, the ALF is also the respondent's primary residence, and an injunction is issued with respect to a single patient living in the facility. Granting temporary, exclusive use of the residence to the vulnerable adult may create issues with regard to care of the other patients/residents of the facility. Similarly, a freeze on the respondent's assets in such a case, particularly if those assets are used in caregiving for other patients/residents, may also be problematic.

¹⁶ 2018 Conference Results (through February 12, 2018), Criminal Justice Impact Conference, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls> (last visited on Feb. 16, 2018).

The bill also provides a broad choice of venue, allowing an action to be brought in the circuit where the vulnerable adult lives, where the respondent lives, where the person filing the action lives, or where the alleged exploitation occurred. One purpose of venue rules is to ensure that the case takes place in a forum that is convenient for the parties.¹⁷ A possible solution could be to eliminate the site where the alleged exploitation occurred as a venue option, as it is possible none of the parties to the case reside in that judicial circuit.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 825.101 and 901.15.

This bill creates the following sections of the Florida Statutes: 825.1035 and 825.1036.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Mary Garvey Algero, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 Neb. L.Rev. 79 (1999).