

By the Committee on Appropriations; and Senator Gibson

576-04122-18

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1 A bill to be entitled
2 An act relating to elder abuse fatality review teams;
3 amending s. 415.101, F.S.; revising legislative
4 intent; creating s. 415.1103, F.S.; authorizing the
5 establishment of elder abuse fatality review teams in
6 each judicial circuit housed, for administrative
7 purposes only, in the Department of Elderly Affairs;
8 providing conditions for team establishment and
9 organization; specifying review team duties; providing
10 review teams with access to and use of records;
11 requiring each review team to submit an annual report
12 by a certain date to the Department of Elderly Affairs
13 containing specified information; requiring the
14 department to prepare an annual report by a certain
15 date with such information to the Governor, the
16 Legislature, and the Department of Children and
17 Families; exempting certain information and records
18 from discovery; providing exceptions; prohibiting a
19 member from testifying about information or records
20 presented during meetings or activities of the team;
21 providing immunity from monetary liability for members
22 under certain conditions; prohibiting review teams and
23 review team members from disclosing confidential
24 information; amending s. 415.107, F.S.; requiring that
25 elder abuse fatality review teams be granted access to
26 certain records; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 415.101, Florida Statutes, is amended to
31 read:

32 415.101 Adult Protective Services Act; legislative intent.—

33 (1) Sections 415.101-415.113 may be cited as the "Adult
34 Protective Services Act."

35 (2) The Legislature recognizes that there are many persons
36 in this state who, because of age or disability, are in need of
37 protective services. Such services should allow such an
38 individual the same rights as other citizens and, at the same
39 time, protect the individual from abuse, neglect, and
40 exploitation. It is the intent of the Legislature to provide for
41 the detection and correction of abuse, neglect, and exploitation
42 through social services and criminal investigations and to
43 establish a program of protective services for all vulnerable
44 adults in need of them. It is intended that the mandatory
45 reporting of such cases will cause the protective services of
46 the state to be brought to bear in an effort to prevent further
47 abuse, neglect, and exploitation of vulnerable adults. In taking
48 this action, the Legislature intends to place the fewest
49 possible restrictions on personal liberty and the exercise of
50 constitutional rights, consistent with due process and
51 protection from abuse, neglect, and exploitation. Further, the
52 Legislature intends to encourage the constructive involvement of
53 families in the care and protection of vulnerable adults or
54 elderly persons. It is the intent of the Legislature that each
55 protective investigator, as defined in s. 415.102, earn and
56 maintain a valid certification as a protective investigator
57 through a third party credentialing entity in accordance with s.
58 402.40(3).

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59 Section 2. Section 415.1103, Florida Statutes, is created
60 to read:

61 415.1103 Elder abuse fatality review teams.-

62 (1) (a) An elder abuse fatality review team may be
63 established in each judicial circuit to review deaths of elderly
64 persons alleged or found to have been caused by, or related to,
65 abuse or neglect. The teams are housed, for administrative
66 purposes only, in the Department of Elderly Affairs.

67 (b) An elder abuse fatality review team may include, but is
68 not limited to, representatives from the following entities
69 within the review team's judicial circuit:

- 70 1. Law enforcement agencies;
- 71 2. The state attorney;
- 72 3. The medical examiner;
- 73 4. A county court judge;
- 74 5. Adult protective services;
- 75 6. The area agency on aging;
- 76 7. The State Long-Term Care Ombudsman Program;
- 77 8. The Agency for Health Care Administration;
- 78 9. The Office of the Attorney General;
- 79 10. The Office of the State Courts Administrator;
- 80 11. The clerk of the court;
- 81 12. A victim services program;
- 82 13. An elder law attorney;
- 83 14. Emergency services personnel;
- 84 15. A certified domestic violence center;
- 85 16. An advocacy organization for victims of sexual
86 violence;
- 87 17. A funeral home director;

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88 18. A forensic pathologist;

89 19. A geriatrician;

90 20. A geriatric nurse;

91 21. A geriatric psychiatrist or other individual licensed
92 to offer behavioral health services;

93 22. A hospital discharge planner;

94 23. A public guardian; or

95 24. Any other persons who have knowledge regarding fatal
96 incidents of elder abuse, domestic violence, or sexual violence,
97 including knowledge of research, policy, law, and other matters
98 connected with such incidents involving elders or who are
99 recommended for inclusion by the review team.

100 (c) A person eligible under paragraph (b) may initiate the
101 establishment of a team in his or her judicial circuit and call
102 the first organizational meeting of the team. At the initial
103 meeting, members of the team shall choose two members to serve
104 as co-chairs.

105 (d) Participation in a review team is voluntary. Members of
106 the review team shall serve without compensation and may not be
107 reimbursed for per diem or travel expenses.

108 (e) Members shall serve for terms of 2 years, to be
109 staggered as determined by the co-chairs. Chairs may be
110 reelected by a majority of the review team but not for more than
111 2 consecutive terms.

112 (f) A review team shall determine the local operations of
113 the team, including, but not limited to, the process for case
114 selection, which must be limited to closed cases in which an
115 elderly person's death is verified to have been caused by abuse
116 or neglect, and the meeting schedule, to include at least one

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117 meeting in each fiscal year.

118 (g) Administrative costs of operating the review team shall
119 be borne by the team members or entities whom they represent.

120 (2) An elder abuse fatality review team must do all of the
121 following:

122 (a) Review deaths of elderly persons in its judicial
123 circuit alleged or found to have been caused by, or related to,
124 abuse or neglect.

125 (b) Consider the events leading up to a fatal incident,
126 available community resources, current law and policies, and the
127 actions taken by systems and individuals related to the fatal
128 incident.

129 (c) Identify gaps, deficiencies, or problems in the
130 delivery of services to elderly persons by public and private
131 agencies which may be related to deaths reviewed by the team.

132 (d) Whenever possible, develop a communitywide approach to
133 address causes of, and contributing factors to, deaths reviewed
134 by the team.

135 (e) Develop practice standards and recommend changes in
136 law, rules, and policies to support the care of elderly persons
137 and prevent elder abuse deaths.

138 (3) (a) Upon written request from a co-chair of a review
139 team, the following information or records pertaining to an
140 elderly person whose death is being reviewed by the team shall
141 be disclosed:

142 1. Information and records held by a criminal justice
143 agency, as defined in s. 119.011(4), not including active
144 criminal intelligence or investigative information, as defined
145 in s. 119.011(3).

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146 2. Information and records from Adult Protective Services
147 pursuant to s. 415.107(3) (m).

148 3. An autopsy report from the Medical Examiner's Office,
149 not including materials protected under s. 406.135.

150 (b) Review teams may share with each other any relevant
151 information that pertains to the review of the death of an
152 elderly person.

153 (c) A team member may not contact, interview, or obtain
154 information by request directly from a member of the deceased
155 elder's family as part of the review, unless a team member is
156 authorized to do so in the course of his or her employment
157 duties. A member of the deceased elder's family may voluntarily
158 provide records or information to a review team.

159 (4) (a) By September 1 of each year, each review team shall
160 submit a report to the Department of Elderly Affairs, including,
161 but not limited to:

162 1. Descriptive statistics regarding cases reviewed by the
163 review team, including demographic information regarding victims
164 and caregivers, and the causes and nature of deaths;

165 2. Current policies, procedures, rules, or statutes that
166 the review team identified as contributing to the incidence of
167 elder abuse and elder deaths, and recommendations for system
168 improvement and needed resources, training, or information
169 dissemination to address those identified issues;

170 3. Any other recommendations to prevent deaths from elder
171 abuse, based on an analysis of the data and information
172 presented in the report; and

173 4. Any steps taken by the review team and public and
174 private agencies to implement necessary changes and improve the

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175 coordination of services and reviews.

176 (b) By November 1 of each year, the Department of Elderly
177 Affairs shall prepare a summary report of the information
178 required by paragraph (a), which shall be provided to the
179 Governor, the President of the Senate, the Speaker of the House
180 of Representatives, and the Department of Children and Families.

181 (5) Information and records acquired by an elder abuse
182 fatality review team are not subject to discovery or
183 introduction into evidence in any civil or criminal action or
184 administrative or disciplinary proceeding by any state or local
185 government department or agency if the information or records
186 arose out of the matters that are the subject of review by a
187 review team, unless the information and records are not
188 discoverable from any other source. Information and records that
189 are available from other sources are not immune from discovery
190 or introduction into evidence solely because the information,
191 documents, or records were presented to or reviewed by a review
192 team.

193 (6) A person who has attended a meeting of the review team
194 or who has otherwise participated in the activities authorized
195 by this section may not be allowed or required to testify in any
196 civil, criminal, administrative, or disciplinary proceeding as
197 to any records or information produced or presented to a team
198 during a meeting or other activity authorized by this section,
199 unless such testimony is necessary to determine the records or
200 information that was available to the fatality review team.
201 However, this paragraph does not prevent any person who
202 testifies before the team or who is a member of the team from
203 testifying as to matters otherwise within his or her knowledge.

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204 (7) There is no monetary liability on the part of, and a
205 cause of action for damages may not arise against, any member of
206 an elder abuse fatality review team in the performance of his or
207 her duties as a review team member in regard to any discussions
208 by, or deliberations or recommendations of, the team or the
209 member, unless such member acted in bad faith, with wanton and
210 willful disregard of human rights, safety, or property.

211 (8) Elder abuse fatality review teams and their members may
212 not disclose any information that is confidential pursuant to
213 law.

214 Section 3. Paragraph (m) is added to subsection (3) of
215 section 415.107, Florida Statutes, to read:

216 415.107 Confidentiality of reports and records.—

217 (3) Access to all records, excluding the name of the
218 reporter which shall be released only as provided in subsection
219 (6), shall be granted only to the following persons, officials,
220 and agencies:

221 (m) An elder abuse fatality review team established under
222 s. 415.1103(1) that is reviewing the death of an elderly person.

223 Section 4. This act shall take effect July 1, 2018.