

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 Judiciary

BILL: CS/CS/SB 452

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Gibson

SUBJECT: Elder Abuse Fatality Review Teams

DATE: March 13, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 452 authorizes the establishment of elder abuse fatality review teams, composed of volunteer members, in each of the 20 judicial circuits. The teams will review fatal incidents of elder abuse and make policy and other recommendations to help prevent future incidents of elder abuse-related fatalities. The review teams are assigned to the Department of Elder Affairs (DOEA) for administrative purposes only. The DOEA must submit a report, annually by November 1, that summarizes the findings and recommendations of the review teams to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill may have an insignificant fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

The Adult Protective Services Act, chapter 415, Florida Statutes, charges the Department of Children and Families (DCF), to investigate reports of abuse or exploitation of a vulnerable adult or elderly person. The mandatory reporting requirement of persons who are required to investigate reports of abuse, neglect, or exploitation also extends to alleged deaths due to abuse or neglect.

Florida Abuse Hotline and Investigations

The Florida Abuse Hotline, administered by the DCF, screens allegations of adult abuse and neglect to determine if the allegations meet the criteria for an abuse report. If the allegations meet the criteria, a protective investigation is initiated to confirm whether the evidence substantiates that abuse has occurred, whether the situation presents an immediate or long-term risk to the victim, and whether the victim needs additional services for protection.¹

Section 415.1034, F.S., enumerates people who have an immediate, mandatory requirement to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited. Additionally, any person required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation must immediately report the suspicion to the appropriate medical examiner, the appropriate criminal justice agency and to the DCF, notwithstanding the existence of a death certificate signed by a practicing physician.²

The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to begin within 24 hours a protective investigation of the matter.³ For each report it receives, the DCF must perform an onsite investigation to determine, among other things, if the person meets the definition of a vulnerable adult and, if so, if the person is in need of services; whether there is an indication that the vulnerable adult was abused, neglected, or exploited; and if protective, treatment, and ameliorative services are necessary to safeguard and ensure the vulnerable adult's well-being.⁴

Adult Protection Teams

Section 415.1102, F.S., authorizes the DCF to develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of its regions. A "multidisciplinary adult protection team" is defined as a team of two or more persons trained in the prevention, identification, and treatment of abuse of elderly persons.⁵ The multidisciplinary teams may be composed of, but are not limited to, psychiatrists, psychologists, or other trained counseling personnel; law enforcement officers; medical personal with experience or training to provide health services; social workers who have experience or training in the prevention of abuse of the elderly or dependent persons; and public and professional guardians.⁶ The multidisciplinary team is convened to supplement the protective services activities of the Adult Protective Services program of the DCF.⁷

¹Florida Department of Children and Families; Protecting Vulnerable Adults, *available at*: <http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults> (last visited Mar. 7, 2019).

² Section 415.1034(2), F.S.

³ Section 415.104(1), F.S.

⁴ Section 415.104(3), F.S.

⁵ Section 415.1102(1), F.S.

⁶ Section 415.1102(2), F.S.

⁷ Section 415.1102(3), F.S.

Records Access

Section 415.107(3), F.S., enumerates persons and entities that may have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S. The identity of any person reporting abuse, neglect, or exploitation of a vulnerable person shall not be released to these persons and entities.

III. Effect of Proposed Changes:

Creation of Elder Abuse Fatality Review Teams

The bill authorizes the creation of an elder abuse fatality review team of volunteers in each of the 20 judicial circuits. Each team will review fatal incidents of abuse, neglect, or violence against the elderly. The review teams will be housed in the Department of Elderly affairs, but only for administrative purposes.

Organization

The state attorney, or his or her designee, in each judicial circuit may initiate a review team and call for the team's organizational meeting. At that initial meeting the members will choose two co-chairs who will establish a schedule for future meetings. The review team must meet at least once during each fiscal year.

Composition

Each review team is composed of volunteers from numerous state and local agencies as well as community partners.⁸ Each volunteer serves without compensation for a two-year term and the co-chairs will determine the team's staggered terms. Members may not be reimbursed for per diem or travel expenses. All administrative costs for operating the review team must be borne by the team members themselves or the entities that they represent.

Operations

Each team will determine how it operates and selects cases. The cases, however, must be limited to closed cases in which an elderly person's death is verified by the state attorney to have been caused by abuse or neglect in order to avoid interference with an ongoing criminal investigation or prosecution. All information that would identify the person must be redacted in the documents that the team will review.

⁸ The bill provides for membership to include, but not be limited to, the following or their representatives: law enforcement agencies; the state attorney; the medical examiner; a county court judge; adult protective services; area agency on aging; the State Long-Term Care Ombudsman Program; the Agency for Health Care Administration; the Office of the Attorney General; the Office of State Courts Administrator; the clerk of the court; a victim services program; an elder law attorney; emergency services personnel; a certified domestic violence center; an advocacy organization for victims of sexual violence; a funeral home director; a forensic pathologist; a geriatrician; a geriatric nurse; a geriatric psychiatrist or other individual licensed to offer behavioral health services; a hospital discharge planner; a public guardian; and other persons with relevant expertise who are recommended by the review team.

Responsibilities

The elder abuse fatality team must:

- Review deaths of elderly people in its judicial circuit that were alleged or found to have been caused by, or related to, abuse or neglect;
- Consider events leading up to the fatal incident, available resources, current law and policies, and the actions taken by systems and individuals related to the fatal incident;
- Identify potential gaps and deficiencies in the delivery of services by agencies which may be related to the deaths;
- Develop communitywide approaches to address causes and contributing factors related to deaths reviewed by the team; and
- Develop recommendations and possible changes in law and policies to support the care for the elderly and prevent elder abuse deaths.

Prohibited Contact

Team members are prohibited from directly contacting someone in the deceased person's family as part of the review unless the team member is authorized to do so in the course of his or her employment duties. However, nothing in the bill prohibits a family member from voluntarily providing information or records to the review team.

Reporting Requirements

Each team is required to submit its findings and recommendations to the DOEA annually by September 1. The report may include descriptive statistics, current policies that contribute to the incidence of elder abuse and deaths with recommendation for improvements, and any other recommendations to prevent deaths from elder abuse or neglect. By November 1 of each year, the DOEA shall prepare a summary report of the information provided by the review teams, and submit the report to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

Outside Access to Team Information and Records

The bill places limitations on outside access to the team's records. The bill provides that information and records acquired by a team are *not* subject to discovery or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any state or local government department or agency *if* the information or record arose from matters that are the subject of review by a team *unless* the information and records are not discoverable from any other source. Therefore, if the information is obtainable from another source, it is protected. However, information and records that are available from other sources are not protected from discovery or from introduction into evidence *solely* because the information or records were presented to or reviewed by a review team.

Protection for Attendees of Review Team Meetings

If a person attends a meeting of an elder abuse fatality review team, or participates in activities authorized by the bill, that person may not be allowed or compelled to testify regarding any

information or records produced or presented to the review team during a meeting or authorized activity *unless* the testimony is necessary to determine that the information or records were available to the team. This restriction does not prevent any one who testifies before the team or is a team member from testifying about matters that are otherwise within his or her knowledge. Additionally, a linked bill, CS/SB 454, creates public records exemptions and public meetings exemptions applicable to the review teams which will protect the identities of victims of elder abuse from being publically disclosed.

Protection from Liability for Team Members

Unless a team member acts in bad faith with wanton and willful disregard of human rights, safety, or property, he or she is not liable financially or subject to a cause of action for damages due to the performance of duties as a review team member with regard to any discussions, deliberations, or recommendation of the team or the member.

The act takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Any public records or open meetings issues are addressed in SB 454.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

The Department of Elder Affairs may incur additional costs associated with providing administrative support to the various elder abuse fatality review teams and with submitting the required annual report.

VI. **Technical Deficiencies:**

The bill does not specify the appointing authority for the members of the review team. The bill does however, allow for the state attorney to initiate a review team.

VII. **Related Issues:**

The bill does not define the term “elder,” specifically the age at which a person is deemed to be an elder, which may lead to inconsistency in the cases a team chooses to review.

VIII. **Statutes Affected:**

The bill creates section 415.1103 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

CS by Judiciary on March 13, 2019:

The committee substitute corrects a scrivener’s error in section 415.1103(5)(a), F.S., and moves the word “and” from the end of sub-paragraph 3. to sub-paragraph 2.

CS by Children, Families, and Elder Affairs on February 19, 2019:

- The CS removes language amending s. 415.101, F.S., the Adult Protective Services Act that would have expressed the intent of the Legislature that all adult protective service investigators be certified by a third-party credentialing agency selected by the Department of Children and Families.
- The CS removes language amending s. 415.107, F.S., that would have granted access to confidential records of an adult protective service investigation to the elder abuse fatality review team.

B. **Amendments:**

None.