

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1243 Pub. Rec. and Meetings/Elder Abuse Fatality Review Teams

SPONSOR(S): Children, Families & Seniors Subcommittee, Hawkins

TIED BILLS: **IDEN./SIM. BILLS:** SB 1594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 1 N, As CS	Morris	Brazzell
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Elder abuse fatality review teams (EA-FRT) are multidisciplinary, multiagency teams established in the state's judicial circuits to review elderly persons' deaths alleged or found to have been caused by, or related to, abuse or neglect. The state attorney or his or her designee initiates establishment of an EA-FRT in his or her judicial circuit. An EA-FRT's review includes consideration of the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by public and private systems and individuals related to the fatal incident. There are currently two EA-FRTs established by state attorneys in this state; one in the Fourth Judicial Circuit and the other in Fifth Judicial Circuit.

The state attorney assigns closed cases to an EA-FRT, and he or she redacts identifying information from such cases before assignment. A case is considered closed when it no longer contains active information related to ongoing intelligence gathering, an ongoing investigation, or pending prosecutions or appeals. This means that the only cases turned over by a state attorney to an EA-FRT for review are those cases which are no longer active and are open for public inspection. Additionally, a victim's family or any other person may voluntarily provide information to an EA-FRT and an EA-FRT may share information with other EA-FRTs. Such information is subject to public disclosure unless a current public records exemption applies.

CS/HB 1243 creates public record and public meeting exemptions related to EA-FRTs. Specifically, the bill requires that any information obtained by an EA-FRT for the purposes of conducting a case review which is exempt from public records requirements remains exempt when held by an EA-FRT. The bill also creates a public record exemption for information contained records created by an EA-FRT which reveals the name of a victim, the location, address, or other identifying information of a victim's residence or residential facility, the name of any person reporting to the central abuse hotline, and any information which is otherwise exempt or confidential.

The bill creates a public meeting exemption for portions of an EA-FRT meeting in which the identity of the victim, the location, address, or other identifying information of a victim's residence or residential facility, the name of any person reporting to the central abuse hotline, or otherwise exempt or confidential information is discussed. Records created by an EA-FRT during such portions of meetings are also exempt from public disclosure.

The bill provides that the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless saved from repeal by reenactment by the Legislature.

The bill provides an effective date of October 1, 2022.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of art. I, s. 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:⁵

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Elder Population in Florida

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 54.1 million in 2019⁷ to 80.8 million by 2040.⁸ Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the entire nation behind Maine.⁹ In 2020, Florida had an estimated 4.5 million people age 65 and older, approximately 21 percent of the state's population.¹⁰ By 2030, this number is

¹ Article I, s. 24(c), Fla. Const.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Article I, s. 24(c), Fla. Const.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ Press Release, U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age* (June 25, 2020), Release Number: CB20-99, <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited Jan. 26, 2022).

⁸ U.S. Department of Health and Human Services Administration on Aging, *2020 Profile of Older Americans* (May 2021), https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf (last visited Jan. 26, 2022).

⁹ *Id.*

¹⁰ U.S. Census Bureau, *Quick Facts – Florida*, <https://www.census.gov/quickfacts/fact/table/FL#> (last visited Jan. 26, 2022).

projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.¹¹

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.¹² In Florida, almost 1.5 million senior citizens live in medically underserved areas and 758,000 suffer from one or more disabilities.¹³ According to the Department of Justice, approximately 1 in 10 seniors is abused each year in the United States, though incidents of elder abuse are reported to local authorities in 1 out of every 23 cases.¹⁴ Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.¹⁵ Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.¹⁶

Elder abuse occurs in community settings, such as private homes, as well as in institutional settings like nursing homes and other long-term care facilities. Prevalent forms of abuse are financial exploitation, neglect, emotional or psychological abuse, and physical abuse; however, an elder abuse victim will often experience multiple forms of abuse at the same time.¹⁷ The most common perpetrators of elder abuse are relatives, such as adult children or a spouse, followed by friends and neighbors, and then home care aides.¹⁸ Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.¹⁹ Elder abuse deaths are more likely to go undetected because an elder death is expected to occur, given age or infirmity, more so than other deaths due to abuse such as a child death or a death involving domestic violence.²⁰ Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.²¹

Elder Abuse Fatality Review Teams

Elder abuse fatality review teams (EA-FRT) are multidisciplinary, multiagency teams established in the state's judicial circuits to review elderly persons' deaths alleged or found to have been caused by, or related to, abuse or neglect. Additionally, an EA-FRT identifies any gaps, deficiencies, or problems in the delivery of services related to the fatal incident.

The state attorney or his or her designee initiates establishment of an EA-FRT in his or her judicial circuit and calls the first organizational meeting of the team. There are currently two EA-FRTs established by state attorneys in this state; one in the Fourth Judicial Circuit and the other in Fifth Judicial Circuit.

¹¹ Florida Office of Economic & Demographic Research, *Florida Population by Age Group*, http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2020.pdf (last visited Jan. 26, 2022).

¹² National Center on Elder Abuse, *What are the Risk Factors?*, <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#risk> (last visited Jan. 26, 2022); U.S. Department of Justice, *What is Elder Abuse*, <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited Jan. 26, 2022). See also, Xing Qi Dong et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, *JAMA Intern Med.* 173:10 at 911-917 (2013).

¹³ Department of Elder Affairs, *2021 Profile of Older Floridians*, https://elderaffairs.org/wp-content/uploads/2021_Florida-Profile.pdf (last visited Jan. 26, 2022).

¹⁴ U.S. Department of Justice, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited Jan. 26, 2022). See also, Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100:2 *Am. J. Pub. Health*, at 292-297 (Feb. 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/> (last visited Jan. 26, 2022).

¹⁵ U.S. Department of Justice, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited Jan. 26, 2022). See also, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 *JAMA* at 428-432 (1998), <https://jamanetwork.com/journals/jama/fullarticle/187817> (last visited Jan. 26, 2022).

¹⁶ U.S. Department of Justice, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited Jan. 26, 2022). See also, Xing Qi Dong et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, *JAMA Intern Med.* 173:10 at 911-917 (2013).

¹⁷ National Center on Elder Abuse, *Behavioral Health, Social Conditions, Violence, and Elder Mistreatment*, <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx> (last visited Jan. 26, 2022).

¹⁸ National Center on Elder Abuse, *Perpetrator Identity*, <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#perpetrators> (last visited Jan. 26, 2022).

¹⁹ Center for Disease Control and Prevention, *Understanding Elder Abuse, Fact Sheet 2021*, <https://www.cdc.gov/violenceprevention/pdf/elder/preventingElderAbuseFactsheet.pdf> (last visited Jan. 26, 2022).

²⁰ U.S. Department of Justice, National Institute of Justice, *Elder Justice Roundtable Report: Medical Forensic Issues Concerning Abuse and Neglect*, October 18, 2000, p. 8, <https://www.ncjrs.gov/pdffiles1/nij/242221.pdf> (last visited Jan. 26, 2022).

²¹ *Id.* at pp. 7-10.

An EA-FRT's review includes consideration of the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by public and private systems and individuals related to the fatal incident.

The state attorney assigns closed cases to an EA-FRT, and he or she redacts identifying information from such cases before assignment. A case is considered closed when it no longer contains active²² information related to ongoing intelligence gathering, an ongoing investigation, or pending prosecutions or appeals. This means that the only cases turned over by a state attorney to an EA-FRT for review are those cases which are no longer active and are open for public inspection. Additionally, a victim's family or any other person may voluntarily provide information to an EA-FRT and an EA-FRT may share information with other EA-FRTs. Such information is subject to public disclosure unless a current public records exemption applies.

Central Abuse Hotline

DCF maintains a statewide 24/7 toll-free central abuse hotline where anyone can report known or suspected abuse, neglect, or exploitation.²³ This includes, but is not limited to, vulnerable adults. Any person who knows or has reasonable cause to suspect abuse, neglect, or exploitation of a vulnerable adult is required to immediately report this knowledge or suspicion to the central abuse hotline.²⁴ The hotline number must be provided to clients in nursing homes²⁵ and publicly displayed in every health facility licensed by the Agency for Health Care Administration (AHCA).²⁶ The number is also listed on the agency websites for DCF, AHCA, and the Department of Elder Affairs (DOEA).²⁷

Additionally, any person who is required to investigate allegations of abuse, neglect, or exploitation, and who has reasonable cause to suspect that a vulnerable adult died as result of such harm must report that suspicion to DCF, the medical examiner, and appropriate criminal justice agency.²⁸ Medical examiners in turn are required to consider this information in their cause of death determinations and report their findings to DCF and the appropriate criminal justice agency and state attorney.²⁹

All records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central hotline, and all records generated as a result of such reports are confidential and exempt from public disclosure.³⁰ Such information is not exempt from public meeting disclosure requirements.

Effect of the Bill

The bill creates public record and public meeting exemptions related to EA-FRTs.

Specifically, the bill provides that any information obtained by an EA-FRT for the purposes of conducting a case review which is exempt from public records requirements remains exempt when held by an EA-FRT.

The bill creates a public record exemption for information contained in a record created or held by an EA-FRT which reveals the:

²² See s. 119.011(3), F.S.

²³ Section 415.103(1), F.S.

²⁴ Section 415.1034(1), F.S.

²⁵ Section 408.810(5)(a)2., F.S.

²⁶ Section 400.141(1)(m), F.S.; AHCA poster can be found here:

https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/docs/Nursing_Homes/Posters/NURSING_HOME_POSTER_ENGLISH_LETTER.pdf (last visited Feb. 3, 2022).

²⁷ Department of Children and Families, *Report Abuse Neglect or Exploitation*, <http://www.myflfamilies.com/service-programs/abuse-hotline/report-online> (last visited Feb. 3, 2022); Agency for Health Care Administration, *Complaint Administration Unit*, http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtml (last visited Feb. 3, 2022). Department of Elder Affairs, *Elder Abuse Prevention Program*, http://elderaffairs.state.fl.us/doea/abuse_prevention.php (last visited Feb. 3, 2022).

²⁸ Section 415.1034(2), F.S.

²⁹ Section 415.1034(2), F.S.

³⁰ Section 415.107, F.S.

- Identity of an elder abuse victim;
- Location, address, or other identifying information of a victim's residence or residential facility; and
- Identity of any person reporting abuse, neglect, or exploitation to the central hotline.

The bill creates a public meeting exemption for portions of an EA-FRT meeting during which the following are discussed:

- The identity of an elder abuse victim;
- The location, address, or other identifying information of a victim's residence or residential facility;
- The identity of any person reporting abuse, neglect, or exploitation to the central hotline; and
- Any information which is otherwise exempt or confidential.

Records created by an EA-FRT during such portions of meetings are also exempt from public disclosure.

The bill provides that the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement for the public records exemption, as required by the State Constitution, and states that the protection of such information is necessary to facilitate open communication and coordination among EA-FRT members. Additionally, the public record exemption is needed to protect sensitive personal information concerning elder abuse victims and their caregivers, and persons reporting to the central abuse hotline.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as required by the State Constitution. It states that failing to close portions of meetings where the identity of a victim, the location, address, or other identifying information of a victim's residence or residential facility, the identity of any person reporting abuse, neglect, or exploitation to the central hotline, any information which is otherwise exempt or confidential is discussed, and records created in such meetings, would defeat the purpose of the public record exemption for the identity of the victim created by the bill. Further, the public record and public meeting exemption is narrowly tailored to apply to only certain portions of EA-FRT meetings and the records created in such portions of meetings, allowing for public oversight.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 415.1103, F.S., relating to elder abuse fatality review teams.
Section 2: Provides a public necessity statement.
Section 3: Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. The exemption does not appear to be in conflict with the constitutional requirement.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is not needed to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment creates an exemption from public record and public meeting requirements, when contained in a record created or held by an EA-FRT, the:

- Identity of an elder abuse victim;

- Location, address, or other identifying information of the victim's residence or residential facility;
and
- Identity of the person reporting to the central abuse hotline.

This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.