

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): State Affairs Committee, 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) State Affairs Committee	19 Y, 1 N, As CS	Landry	Williamson
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.

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 it is otherwise protected by a public record exemption.

The bill creates public record and public meeting exemptions related to EA-FRTs. The bill provides that any information obtained by an EA-FRT for the purposes of conducting a case review that is confidential or exempt from public records requirements remains confidential or exempt when held by an EA-FRT. The bill also creates a public record exemption for information contained in a record held by an EA-FRT that reveals:

- The identity of an elder abuse victim and the address or location of the victim's residence;
- The identity of a person providing direct care to the victim and the address or location of such person's residence; and
- The identity of any person reporting abuse, neglect, or exploitation to the central abuse hotline.

The bill creates a public meeting exemption for portions of an EA-FRT meeting during which the confidential or exempt information is discussed.

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the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 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 and public meeting 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.

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

Public Meetings

Article I, s. 24(b) of the Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority, or of any agency or authority of any county, municipality, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴ Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.⁶

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.⁷ The general law must state with specificity the public necessity justifying the exemption⁸ and must be no broader than necessary to accomplish its purpose.⁹

Furthermore, the Open Government Sunset Review Act¹⁰ 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:

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 286.011(1), F.S.

⁶ Section 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor, which is punishable by up to 60 days imprisonment and a \$500 fine.

⁷ Art. I, s. 24(c), FLA. CONST.

⁸ This portion of a public record exemption is commonly referred to as a "public necessity statement."

⁹ Art. I, s. 24(c), FLA. CONST.

¹⁰ Section 119.15, F.S.

- 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.¹¹

The Open Government Sunset Review Act requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹²

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 2019¹³ to 80.8 million by 2040.¹⁴ 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.¹⁵ In 2020, Florida had an estimated 4.5 million people age 65 or older, approximately 21 percent of the state's population.¹⁶ By 2030, this number is 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.¹⁷

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.¹⁸ In Florida, almost 1.5 million senior citizens live in medically underserved areas and 758,000 suffer from one or more disabilities.¹⁹ According to the Department of Justice, approximately one in 10 seniors is abused each year in the United States, though incidents of elder abuse are reported to local authorities in one out of every 23 cases.²⁰ Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.²¹ Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.²²

¹¹ Section 119.15(6)(b), F.S.

¹² Section 119.15(3), F.S.

¹³ 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).

¹⁴ 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).

¹⁵ *Id.*

¹⁶ U.S. Census Bureau, *Quick Facts – Florida*, <https://www.census.gov/quickfacts/fact/table/FL#> (last visited Jan. 26, 2022).

¹⁷ 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).

¹⁸ 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).

¹⁹ Department of Elder Affairs, *2021 Profile of Older Floridians*, https://elderaffairs.org/wp-content/uploads/2021_Florida-Profile.pdf (last visited Jan. 26, 2022).

²⁰ 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).

²¹ 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).

²² 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).

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.²³ 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.²⁴ Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.²⁵ 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.²⁶ Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.²⁷

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 the Fifth 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.

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 active²⁸ 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

The Department of Children and Families (DCF) maintains a statewide 24/7 toll-free central abuse hotline where anyone can report known or suspected abuse, neglect, or exploitation.²⁹ 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.³⁰ The hotline number must be provided to clients in nursing

²³ 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).

²⁴ 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).

²⁵ 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).

²⁶ 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).

²⁷ *Id.* at pp. 7-10.

²⁸ *See* s. 119.011(3), F.S.

²⁹ Section 415.103(1), F.S.

³⁰ Section 415.1034(1), F.S.

homes³¹ and publicly displayed in every health facility licensed by the Agency for Health Care Administration (AHCA).³² The number is also listed on the agency websites for DCF, AHCA, and the Department of Elder Affairs (DOEA).³³

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 the appropriate criminal justice agency.³⁴ 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.³⁵

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 exempt³⁶ from public disclosure.³⁷ Meetings wherein such information is discussed are not exempt from public meeting 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 that is confidential or exempt from public records requirements remains confidential or exempt when held by an EA-FRT. The bill also creates a public record exemption for information contained in a record held by an EA-FRT that reveals the identity of an elder abuse victim and the address or location of such victim, the identity of a person providing direct care to the victim and the address or location of such person's residence, and the identity of any person reporting abuse, neglect, or exploitation to the central abuse hotline.

The bill creates a public meeting exemption for portions of an EA-FRT meeting during which confidential or exempt information is discussed.

The bill provides that the public record 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 through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

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

B. SECTION DIRECTORY:

³¹ Section 408.810(5)(a)2., F.S.

³² 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).

³³ 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).

³⁴ Section 415.1034(2), F.S.

³⁵ Section 415.1034(2), F.S.

³⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

³⁷ Section 415.107, F.S.

- Section 1:** Creates s. 415.1103, F.S., relating to public record and public meeting exemptions for elder abuse fatality review teams.
- Section 2:** Provides a public necessity statement.
- Section 3:** Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal fiscal impact on an EA-FRT because task force staff responsible for complying with public record requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of the EA-FRT.

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 and public meeting 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 and public meeting exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution provides that a newly created or expanded public record

or public meeting exemption be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for certain identification and location information of elder abuse victims and their caregivers, as well as individuals reporting abuse and neglect. In addition, the bill creates a public meeting exemption for portions of meetings wherein confidential or exempt information is discussed.

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 & Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment created 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.

On February 17, 2022, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment did the following:

- Clarified that the newly created section creates public record and public meeting exemptions for elder abuse fatality review teams;
- Removed a redundant public record exemption for confidential or exempt information received from a domestic violence review team;
- Clarified that the public record exemption applies to the address or location of a victim's residence;
- Provided that the public record exemption also applied to the identity of a person providing direct care to the victim and the address or location of the caregiver's residence;
- Clarified that the public meeting exemption only applied to portions of task force meetings wherein confidential or exempt information is discussed; and
- Conformed the public necessity statement to the changes made to the exemption.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.