

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1569 Pub. Rec. and Meetings/Elder and Vulnerable Adult Abuse Fatality Review Teams

**SPONSOR(S):** Hawkins

**TIED BILLS:** HB 1567 **IDEN./SIM. BILLS:** SB 1542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	17 Y, 0 N	Osborne	Brazzell
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Shapiro	Toliver
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. This means that the only cases turned over by a state attorney to an EA-FRT for review are those cases which are no longer active and are open for public inspection.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 it is otherwise protected by a public record exemption.

HB 1569 creates public record and public meeting exemptions related to elder and vulnerable adult fatality review teams (review teams). Specifically, the bill requires that any information obtained by a review team for the purposes of conducting a case review which is exempt from public records requirements remains exempt when held by a review team. The bill also creates a public record exemption for records created or held by a review team which reveals the identity of a victim, the identity of persons responsible for the welfare of the victim, and any information which is otherwise exempt or confidential.

The bill creates a public meeting exemption for portions of a review team meeting in which the identity of the victim, the identity of the person responsible for the welfare of the victim, or otherwise exempt or confidential information is discussed. Records created by a review team during such portions of meetings are also exempt from public disclosure.

The bill includes a public necessity statement and states that the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless saved from repeal by reenactment by the Legislature.

The bill will become effective on the same date that HB 1567 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**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:

##### **Current Situation**

###### 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), 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.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings. 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.<sup>2</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>3</sup> Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>4</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>5</sup>

###### Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.<sup>6</sup> The general law must state with specificity the public necessity justifying the exemption<sup>7</sup> and must be no broader than necessary to accomplish its purpose.<sup>8</sup>

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<sup>1</sup> S. 286.011(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> S. 286.011(2), F.S.

<sup>4</sup> S. 286.011(1), F.S.

<sup>5</sup> S. 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.

<sup>6</sup> Article I, s. 24(c), Fla. Const.

<sup>7</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>8</sup> Article I, s. 24(c), Fla. Const.

Furthermore, the Open Government Sunset Review Act<sup>9</sup> 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:<sup>10</sup>

- 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.<sup>11</sup>

### 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 2019<sup>12</sup> to 80.8 million by 2040.<sup>13</sup> 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.<sup>14</sup> In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21 percent of the state's population.<sup>15</sup> 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.<sup>16</sup>

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>17</sup> In Florida, almost 1.5 million senior citizens live in medically underserved areas and approximately 758,000 have one or more disabilities.<sup>18</sup> According to the United States 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.<sup>19</sup> Elder abuse can have significant physical and emotional effects on an older adult and

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<sup>9</sup> S. 119.15, F.S.

<sup>10</sup> S. 119.15(6)(b), F.S.

<sup>11</sup> S. 119.15(3), F.S.

<sup>12</sup> 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 March 22, 2023).

<sup>13</sup> 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](https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf) (last visited March 22, 2023).

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Census Bureau, *Quick Facts— Florida*. Available at <https://www.census.gov/quickfacts/fact/table/FL#> (last visited March 23, 2023).

<sup>16</sup> Florida Office of Economic & Demographic Research, *Florida Population by Age Group*. Available at [http://edr.state.fl.us/Content/population-demographics/data/pop\\_census\\_day-2020.pdf](http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2020.pdf) (last visited March 22, 2023).

<sup>17</sup> National Center on Elder Abuse, *Research, Statistics, and Data: Risk Factors and Protective Factors*. Available at (last visited March 23, 2023); U.S. Department of Justice, *What is Elder Abuse*. Available at <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited March 23, 2023). See also, XinQi Dong, et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, *JAMA Intern Med.* 173:10 at 911-917 (2013).

<sup>18</sup> Florida Department of Elder Affairs, *2021 Profile of Older Floridians*. Available at [https://elderaffairs.org/wp-content/uploads/2021\\_Florida-Profile.pdf](https://elderaffairs.org/wp-content/uploads/2021_Florida-Profile.pdf) (last visited March 23, 2023).

<sup>19</sup> U.S. Department of Justice, *Elder Abuse Statistics*. Available at <https://www.justice.gov/file/1098056/download> (last visited March 19, 2023). 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 March 23, 2023).

can lead to premature death.<sup>20</sup> Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.<sup>24</sup> 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.<sup>25</sup> Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.<sup>26</sup>

### 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.<sup>27</sup> Additionally, an EA-FRT identifies any gaps, deficiencies, or problems in the delivery of services related to the fatal incident.<sup>28</sup> 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.<sup>29</sup> The state attorney, or his or her designee, is the only entity capable of initiating an EA-FRT under current law.<sup>30</sup> The state attorney or designee who initiated an EA-FRT is responsible for calling the first organizational meeting for the team.<sup>31</sup> There are currently two EA-FRTs established by state attorneys in this state: one in the Fourth Judicial Circuit<sup>32</sup> and the other in the Fifth Judicial Circuit.<sup>33</sup>

The state attorney assigns closed cases to an EA-FRT, redacting identifying information from such cases before assignment.<sup>34</sup> A case is considered closed when it no longer contains active<sup>35</sup> 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, while EA-FRT

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<sup>20</sup> *Id.* 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 March 23, 2023).

<sup>21</sup> XinQi Dong et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, JAMA Intern Med. 173:10 at 911-917 (2013).

<sup>22</sup> National Center on Elder Abuse, *Research, Statistics, and Data Behavioral Health: Social Conditions, Violence, and Elder Mistreatment*. Available at <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx> (last visited March 23, 2023).

<sup>23</sup> National Center on Elder Abuse, *Research, Statistics, and Data: Perpetrator Identity*. Available at <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#perpetrators> (last visited March 23, 2023).

<sup>24</sup> United States Center for Disease Control and Prevention, *Preventing Elder Abuse, Fact Sheet 2021*. Available at <https://www.cdc.gov/violenceprevention/pdf/elder/preventingElderAbuseFactsheet.pdf> (last visited March 23, 2022).

<sup>25</sup> 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. Available at <https://www.ncjrs.gov/pdffiles1/nij/242221.pdf> (last visited March 23, 2023).

<sup>26</sup> *Id.* at pp. 7-10.

<sup>27</sup> S. 415.1103(1)(a), F.S.

<sup>28</sup> S. 415.1103(3)(c), F.S.

<sup>29</sup> S. 415.1103(3)(b), F.S.

<sup>30</sup> S. 415.1103(1)(a), F.S.

<sup>31</sup> S. 415.1103(1)(e), F.S.

<sup>32</sup> State Attorney's Office of the 4<sup>th</sup> Judicial District, Elder Abuse Fatality Review Team (EAFRT). Available at <https://sao4th.com/resources/for-the-public/elder-abuse-fatality-review-team-eafrt/> (last visited March 26, 2023).

<sup>33</sup> State Attorney's Office of the 5<sup>th</sup> Judicial District, *State Attorney Creates Elder Abuse Fatality Review Team*. Available at <https://www.sao5.org/State-Attorney-Creates-Elder-Abuse-Fatality-Review-Team-1-9147.html> (last visited March 26, 2023).

<sup>34</sup> S. 415.1103(1)(e), F.S.

<sup>35</sup> See s. 119.011(3), F.S.

members may not directly contact a victim's family, the family of a victim or any other person may voluntarily provide information to an EA-FRT and an EA-FRT may share information with other EA-FRTs.<sup>36</sup> Such information is subject to public disclosure unless it is otherwise protected by a public record exemption. There is currently no public records exemption for the records created or held by an EA-FRT. There is also no public meetings exemption for the meetings held by an EA-FRT in which the members discuss sensitive or personal information.

## Effect of the Bill

HB 1569 creates public record and public meeting exemptions related to Elder and Vulnerable Adult Fatality Review Teams (review teams). The tied bill, HB 1567, expands the scope of the current elder abuse fatality review teams to include vulnerable adults, which the bill defines to include a disabled adult and elderly person as those terms are defined in s. 825.101(3) and (4), F.S., respectively:

- “Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.<sup>37</sup>
- “Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.<sup>38</sup>

The tied bill also expands the scope in terms of the types of incidents reviewed, including “near fatal” ones as well as fatal incidents. HB 1567 makes other changes, including removing the requirement that the state attorney be the entity that initiates the team.

Specifically, HB 1569, creating public records and meeting exemptions for review teams, requires that any information obtained by a review team for the purposes of conducting a case review which is exempt from public records requirements remains exempt when held by a review team. The bill creates a public record exemption for information contained in a record created or held by a review team which reveals the identity of an elder abuse victim and the identity of a person responsible for their welfare.

The bill also creates a public meeting exemption for portions of a review team 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.

The bill creates a public meeting exemption for portions of a review team meeting during which confidential or exempt information, the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed.

The bill declares it a public necessity that information that is exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain exempt or confidential and exempt when held by a review team. The bill also specifies that the Legislature finds that it is a public necessity that information that reveals the identity of a victim of elder or vulnerable

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<sup>36</sup> S. 415.1103(4)(b), F.S.

<sup>37</sup> S. 825.101(3), F.S.

<sup>38</sup> S. 825.101(4), F.S.

adult abuse, exploitation, or neglect or the identity of persons responsible for the welfare of such victim be confidential and exempt from public records requirements. The bill provides as a reason that the disclosure of such sensitive personal information could hamper the open communication and coordination among the parties involved in the review team, and the harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

The bill also addresses open meetings requirements, stating that the Legislature further finds that it is a public necessity that portions of meetings of a review team during which confidential or exempt information, the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed, are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The bill states that the failure to close the portions of the meetings in which such sensitive personal information is discussed would defeat the purpose of the public records exemption. Further, the bill includes the Legislature's finding that the exemption is narrowly tailored to apply to only those portions of the meetings in which such sensitive personal information is discussed and that the remainder of such meetings remain open to allow for public oversight.

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, 2028, unless saved from repeal by reenactment by the Legislature.

The bill will become effective on the same date that HB 1567 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 415.1104, F.S., relating to confidentiality of information and meetings held by elder and vulnerable adult abuse fatality review teams.
- Section 2:** Provides a public necessity statement.
- Section 3:** Provides that the bill will become effective on the same date as HB 1567 or similar legislation.

**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 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**