

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

SPONSOR(S): Health & Human Services Committee, Hawkins and others

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

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1569 passed the House on May 2, 2023 as CS/SB 1542.

Current law authorizes multidisciplinary, multiagency elder abuse fatality review teams (review teams) to be established in each judicial circuit. Currently, review teams may only review closed cases referred and redacted by a state attorney where the death of an elderly person was caused by, or related to, abuse or neglect, to recommend improvements to the systems involved in caring for elderly adults. The tied bill, CS/SB 1540, authorizes review teams to be initiated by entities other than a state attorney and significantly expands the types of records that they may obtain in the course of their case reviews.

CS/SB 1542 creates public record and public meeting exemptions related to review teams. Specifically, the bill requires information obtained by a review team which is exempt from public records requirements remains exempt when held by a review team. The bill creates a public record exemption for records created or held by a review team which reveals the identity of a victim or persons responsible for the victim's welfare, and any information otherwise exempt or confidential and exempt.

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the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless saved from repeal by reenactment by the Legislature.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 has no fiscal impact on state or local governments.

The bill was approved by the Governor on June 19, 2023, ch. 2023-261, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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. Records that are *confidential*, as well as exempt, under statute are not subject to inspection and may be released only to those persons and entities designated in the statute.¹

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.² 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.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 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

¹ *Government-in-the-Sunshine Manual: A Reference for Compliance with Florida's Public Records and Open Meetings Laws*. 2023 Edition. Available at <https://www.myfloridalegal.com/open-government/sunshine-manual> (last visited May 9, 2023).

² S. 286.011(1), F.S.

³ *Id.*

⁴ S. 286.011(2), F.S.

⁵ S. 286.011(1), F.S.

⁶ 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.

⁷ Article I, s. 24(c), Fla. Const.

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

⁹ Article I, s. 24(c), Fla. Const.

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:¹¹

- 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.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 nation.¹⁵ In 2022, Florida had an estimated 4.7 million people age 65 and 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 population 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 approximately 758,000 have one or more disabilities.¹⁹ The United States Department of Justice estimates that approximately one in 10 seniors is abused each year in the United States, although only one out of every 23 cases of elder abuse is reported to local authorities.²⁰ Elder abuse can have significant physical and emotional effects on an older adult

¹⁰ S. 119.15, F.S.

¹¹ S. 119.15(6)(b), F.S.

¹² S. 119.15(3), F.S.

¹³ U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age* (June 25, 2020) Press Release Number: CB20-99. Available at <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited May 9, 2023).

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 May 9, 2023).

¹⁵ *Id.*

¹⁶ U.S. Census Bureau, *Quick Facts – Florida*. Available at <https://www.census.gov/quickfacts/fact/table/FL#> (last visited May 9, 2023).

¹⁷ 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 (last visited May 9, 2023).

¹⁸ National Center on Elder Abuse, *Research, Statistics, and Data: Risk Factors and Protective Factors*. Available at https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#risk_factors (last visited May 9, 2023); U.S. Department of Justice, *What is Elder Abuse*. Available at <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited May 9, 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). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10001110/pdf/nihms-1865944.pdf> (last visited May 9, 2023).

¹⁹ Florida Department of Elder Affairs, *2021 Profile of Older Floridians*. Available at https://elderaffairs.org/wp-content/uploads/2021_Florida-Profile.pdf (last visited May 9, 2023).

²⁰ U.S. Department of Justice, *Elder Abuse Statistics*. Available at <https://www.justice.gov/file/1098056/download> (last visited May 9, 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). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/> (last visited May 9, 2023).

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

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; this is attributed to victims fearing retribution or caring for or trusting their abuser.²⁵ Deaths resulting from elder abuse often go undetected because an elder death is expected to occur, due to 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 (review teams) 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.²⁸ A review team is intended to identify any gaps, deficiencies, or problems in the delivery of services related to the fatal incident.²⁹ A review team's case 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.³⁰

Review teams were first authorized by the Florida Legislature in 2020.³¹ Since 2020, only two review teams have been established in Florida: one in the Fourth Judicial Circuit³² and the other in the Fifth Judicial Circuit.³³ Under current law, a state attorney, or his or her designee, is the only entity permitted to initiate a review team, the jurisdiction of which is limited to the state attorney's judicial circuit.³⁴ The state attorney or designee who initiated a review team is responsible for calling the first organizational meeting for the team.³⁵

²¹ *Id.* See also, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 JAMA at 428-432 (1998). Available at <https://jamanetwork.com/journals/jama/fullarticle/187817> (last visited May 9, 2023).

²² XinQi Dong et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, JAMA Intern Med. 173:10 at 911-917 (2013). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10001110/pdf/nihms-1865944.pdf> (last visited May 9, 2023).

²³ 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 May 9, 2023).

²⁴ 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 May 9, 2023).

²⁵ 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 May 9, 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. Available at <https://www.ncjrs.gov/pdffiles1/nij/242221.pdf> (last visited May 9, 2023).

²⁷ *Id.* at pp. 7-10.

²⁸ S. 415.1103(1)(a), F.S.

²⁹ S. 415.1103(3)(c), F.S.

³⁰ S. 415.1103(3)(b), F.S.

³¹ Ch. 2020-17, Laws of Fla.

³² State Attorney's Office of the 4th Judicial District, *Elder Abuse Fatality Review Team*. Available at <https://sao4th.com/resources/for-the-public/elder-abuse-fatality-review-team-eafrt/> (last visited May 9, 2023).

³³ State Attorney's Office of the 5th 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 May 9, 2023).

³⁴ S. 415.1103(1)(a), F.S.

³⁵ S. 415.1103(1)(e), F.S.

The state attorney assigns closed cases to a review team, redacting identifying information from such cases before assignment.³⁶ A case is considered closed when it no longer contains active³⁷ 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 review team are those cases which are no longer active and are open for public inspection. Additionally, while review team members may not directly contact a victim's family, the family of a victim or any other person may voluntarily provide information to a review team.³⁸ 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 a review team. There is also no public meetings exemption for the meetings held by a review team in which the members discuss sensitive or personal information. Review teams are not authorized under current law to access records that are exempt or confidential and exempt from public disclosure; as such, the lack of a public records exemption has not posed a significant risk to vulnerable persons.

Tied Bill – CS/SB 1540 (2023)

CS/SB 1542 is tied to CS/SB 1540, the policy bill relating to review teams. CS/SB 1540 significantly expands the scope of the current elder abuse fatality review teams to include vulnerable adults, such as disabled adults and persons over age 60 recovering from short-term disabilities or surgery, and deaths associated with exploitation. The tied bill makes other changes to the operations of review teams, such as allowing other state entities to initiate a review team and allowing for the review of open cases. These changes greatly expand the types, and sensitivity, of records that a review team may access, thus creating a risk of disclosure of sensitive, private information.

Effect of the Bill

The bill creates public record and public meeting exemptions related to Elder and Vulnerable Adult Fatality Review Teams (review teams). The bill requires that any information obtained by a review team for the purposes of conducting a case review which is exempt or confidential and exempt from public records requirements retains such status 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 or 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 abuse victim or the person responsible for the victim's welfare;
- 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 and exempt.

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

³⁶ S. 415.1103(1)(e), F.S.

³⁷ See s. 119.011(3), F.S.

³⁸ S. 415.1103(4)(b), F.S.

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 exempt or confidential and 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, F.S., 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. The bill further 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.

Subject to the Governor's veto powers, the bill is effective on the same date as the tied bill, which is July 1, 2023.

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.