

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1567 Elder and Vulnerable Adult Abuse Fatality Review Teams

**SPONSOR(S):** Health & Human Services Committee and Children, Families & Seniors Subcommittee, Hawkins and others

**TIED BILLS:** CS/HB 1569 **IDEN./SIM. BILLS:** CS/SB 1540

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**FINAL HOUSE FLOOR ACTION:** 119 Y's 0 N's **GOVERNOR'S ACTION:** N/A

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### SUMMARY ANALYSIS

CS/CS/HB 1567 passed the House on May 2, 2023 as CS/SB 1540 as amended.

In 2022, an estimated 4.7 million Floridians were age 65 and older, approximately 21 percent of the state's population. Mental and physical infirmities associated with aging and social isolation make elders vulnerable to abuse, which increases their rates of hospitalization and hastens death. One in 10 elders is abused, but less than 5 percent of cases are reported. This is believed to be primarily because perpetrators are usually a relative, friend, neighbor, or caregiver whom the elder trusts or fears.

Current law authorizes state attorneys to establish multidisciplinary, multiagency elder abuse fatality review teams (review teams) in their judicial circuits. Review teams review closed cases of an elderly person's death where the death was caused by, or related to, abuse or neglect, to produce recommendations for improvements to the systems involved in caring for elderly adults. A review team may only review closed cases referred by the state attorney. Only two review teams have been established; in the Fourth and Fifth Judicial Circuits.

The bill expands the scope of the existing review teams to include vulnerable adults, such as disabled adults and persons over 60 recovering from short-term disabilities or surgery, and deaths resulting from exploitation. It also removes the provision restricting review teams to reviewing only closed cases referred by a state attorney.

The bill also expands who may initiate a review team to include law enforcement agencies, the Department of Children and Families, the Office of the Attorney General, and the Agency for Persons with Disabilities. The bill requires a representative of the initiating entity to serve as a co-chair of the review team. The initiating entity must specify the geographic area served by the review team, this is restricted to the service area of the initiating entity.

The bill excludes information from individuals interviewed or otherwise collected by review teams from use in a civil or criminal proceeding, and prohibits members of a review team from directly contacting family members of a deceased victim except under specified circumstances. The bill requires review team members to sign an acknowledgement of public records requirements.

The bill has no fiscal impact on state or local governments.

Subject to the Governor's veto powers, the bill is effective July 1, 2023.

# I. SUBSTANTIVE INFORMATION

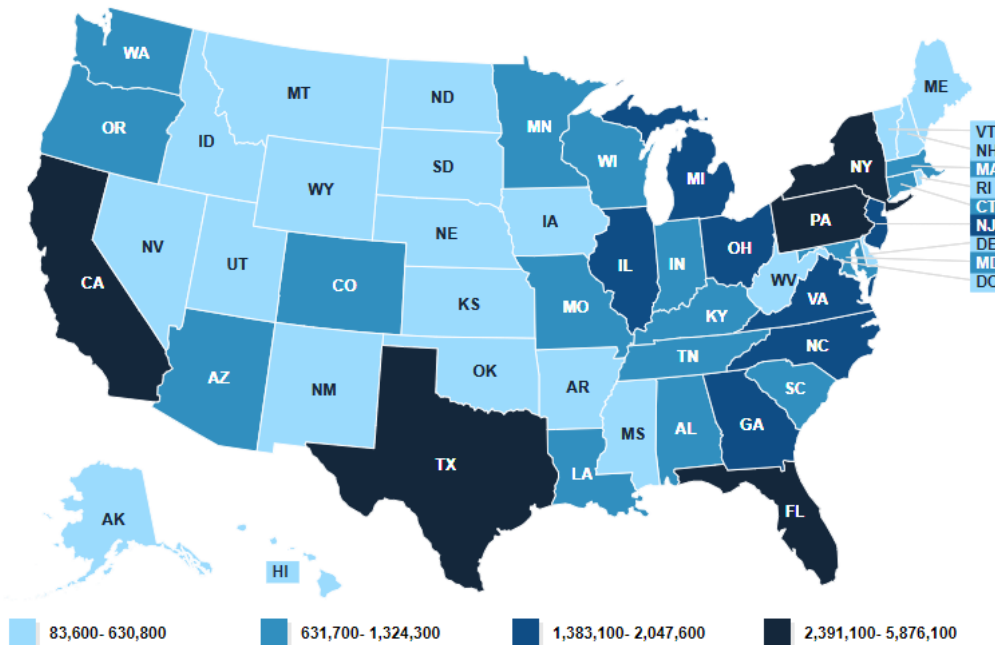
## A. EFFECT OF CHANGES:

### Current Situation

#### 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>1</sup> to 80.8 million by 2040.<sup>2</sup> Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the nation.<sup>3</sup> In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21 percent of the state's population.<sup>4</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>5</sup>

National Distribution of Population Ages 65 and Older (2021)<sup>6</sup>



In Florida, almost 1.5 million senior citizens live in medically underserved areas and 758,000 have one or more disabilities.<sup>7</sup>

#### Elder Abuse

<sup>1</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 19, 2023).

<sup>2</sup> U.S. Department of Health and Human Services Administration on Aging, *2020 Profile of Older Americans* (May 2021). Available at [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 May 15, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Census Bureau, *Quick Facts – Florida*. Available at <https://www.census.gov/quickfacts/fact/table/FL#> (last visited May 15, 2023).

<sup>5</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 May 15, 2023).

<sup>6</sup> Kaiser Family Foundation, *State Health Facts, Population Distribution by Age*. Available at <https://www.kff.org/other/state-indicator/distribution-by-age/> (last visited May 15, 2023). Kaiser Family Foundation, *State Health Facts, Population Distribution by Age*. Available at <https://www.kff.org/other/state-indicator/distribution-by-age/> (last visited May 15, 2023).

<sup>7</sup> 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 May 15, 2023).

Under Chapter 415, F.S., the Adult Protective Services Act, a “vulnerable adult” is considered a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, brain damage, or the infirmities of aging.<sup>8</sup> The term includes elderly persons experiencing the infirmities of aging, but does not expressly include elderly persons experiencing short-term illness or disability. The term does incorporate disabled adults and other adults whom the Legislature has determined to be at risk of abuse, neglect, and exploitation, and in need of protective services.<sup>9</sup>

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>10</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; a victim of elder abuse will often experience multiple forms of abuse at the same time.<sup>11</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>12</sup> Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.<sup>13</sup>

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 are reported to local authorities.<sup>14</sup> Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.<sup>15</sup> Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.<sup>16</sup> Elder abuse deaths are more likely to go undetected than other deaths due to abuse such as a child death or a death involving domestic violence; this is at least in part because an elder death is expected to occur due to age or infirmity.<sup>17</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>18</sup>

### Adult Protective Services System

Florida’s Adult Protective Services system is established in ch. 415, F.S., and operates under the Department of Children and Families (DCF). DCF protects vulnerable adults from abuse, neglect, and

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<sup>8</sup> S. 415.102(28), F.S.

<sup>9</sup> S. 415. 101, F.S.

<sup>10</sup> 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> (last visited May 15, 2023); U.S. Department of Justice, *What is Elder Abuse*. Available at <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited May 15, 2023). 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).

<sup>11</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 May 15, 2023).

<sup>12</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 May 15, 2023).

<sup>13</sup> Center for Disease Control and Prevention, *Understanding Elder Abuse, Fact Sheet 2021*. Available at <https://www.cdc.gov/violenceprevention/pdf/elder/preventingElderAbuseFactsheet.pdf> (last visited May 15, 2023).

<sup>14</sup> U.S. Department of Justice, *Elder Abuse Statistics*. Available at <https://www.justice.gov/file/1098056/download> (last visited May 15, 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 15, 2023).

<sup>15</sup> *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 15, 2023).

<sup>16</sup> 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).

<sup>17</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 May 15, 2023).

<sup>18</sup> *Id.* at pp. 7-10.

exploitation through mandatory reporting and investigation of suspected abuse.<sup>19</sup> This includes investigating deaths allegedly due to abuse, neglect, and exploitation.<sup>20</sup> In 2022, DCF received 30,581 reports of abuse, neglect, or exploitation of persons aged 60 or older and investigated 206 deaths in which the death was allegedly due to abuse or neglect.<sup>21</sup> DCF verified 5,167 of the reported allegations of abuse or neglect, 37 of which involved a fatality. Eighty-one (81) percent of these reports were from in-home settings, which is consistent with the research findings that relatives, friends, or caregivers are the primary perpetrators of elder abuse.<sup>22</sup>

### *Confidentiality of Reports and Records Concerning Vulnerable Adults*

Current law protects all records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline operated by DCF,<sup>23</sup> and all records generated as a result of those reports are confidential and exempt<sup>24</sup> from public record requirements.<sup>25</sup> Access<sup>26</sup> to these records is granted only to the following entities in specified circumstances:

- Certain employees or agents of DCF, Agency for Health Care Administration (AHCA), Department of Elder Affairs (DOEA), and the Agency for Persons with Disabilities (APD) with relevant responsibilities, or the employees or agents of an agency of another state with jurisdiction similar to those agencies;
- A criminal justice agency investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult;
- The state attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or exploitation occurred;
- Any victim, the victim's guardian, caregiver, or legal counsel, and any person whom DCF has determined might be abusing, neglecting, or exploiting the victim;
- A court;
- A grand jury, by subpoena upon its determination that access to such records is necessary;
- An official of the Florida advocacy council, State Long-Term Care Ombudsman program, or long-term care ombudsman council;
- Any person engaged in bona fide research or auditing, so long as the identifying information is not made available;
- The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals; and
- Any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation.<sup>27</sup>

Additionally, the identity of any person reporting abuse, neglect, or exploitation of a vulnerable adult may not be released without that person's consent to any person other than the employees of DCF

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<sup>19</sup> S. 415.101(2), F.S.

<sup>20</sup> Department of Children and Families, *CF Operating Procedure No. 140-2: Adult Protective Services* (2022), pp. 4-9 - 4-10. Available at [https://www.myflfamilies.com/sites/default/files/2022-12/cfop\\_140-02\\_adult\\_protective\\_services.pdf](https://www.myflfamilies.com/sites/default/files/2022-12/cfop_140-02_adult_protective_services.pdf) (last visited May 15, 2023).

<sup>21</sup> Email from Tarah Yeager, Gubernatorial Fellow, Department of Children and Families, Re: APS Statistics Info Request (March 22, 2023). On file with the Children, Families & Seniors Subcommittee.

<sup>22</sup> *Id.*

<sup>23</sup> S. 415.103(1), F.S.

<sup>24</sup> There is a difference between records the Legislature designates 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. Sch. Bd. 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 683, 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 Op. Att'y Gen. Fla. 85-62 (1985).

<sup>25</sup> S. 415.107, F.S.

<sup>26</sup> The term "access" is defined to mean a visual inspection or copy of the hard-copy record maintained in the district. S. 415.07(7), F.S.

<sup>27</sup> S. 415.107(3), F.S.

responsible for protective services, the central abuse hotline, or the appropriate state attorney or law enforcement agency.<sup>28</sup>

### *Reporting Abuse*

DCF maintains a statewide 24/7 toll-free central abuse hotline where anyone can report known or suspected abuse, neglect, or exploitation.<sup>29</sup> 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.<sup>30</sup> The hotline number must be provided to clients in nursing homes<sup>31</sup> and publicly displayed in every health facility licensed by AHCA.<sup>32</sup> The number is also listed on the agency websites for DCF, AHCA, and DOEA.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup>

### *Protective Investigations*

Once DCF believes there is reasonable cause to suspect abuse or neglect of a vulnerable adult, they begin an investigation within 24 hours, conducted in cooperation with law enforcement and the state attorney.<sup>36</sup> DCF investigators determine, among other things, whether the vulnerable adult is in need of services, whether there is evidence of abuse, neglect, or exploitation, the nature and extent of any harm, and what is necessary to ensure the victim's safety and well-being.<sup>37</sup> DCF investigators must complete their investigations and submit their recommendations within 60 days of the initial report.<sup>38</sup> If DCF determines that a victim is in need of protective services or supervision, it will provide or facilitate the provision of those services to the victim.<sup>39</sup> If a victim dies during an open investigation, DCF investigators must verify the cause of death before closing the case to determine if the death was related to abuse or neglect.<sup>40</sup>

If there is a report that a death occurred due to elder abuse, neglect, or exploitation, a DCF investigator notifies the department's regional registered nurse specialist (RNS) within 24 hours.<sup>41</sup> If the alleged

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<sup>28</sup> S. 415.107(6), F.S.

<sup>29</sup> S. 415.103(1), F.S.

<sup>30</sup> S. 415.1034(1), F.S.

<sup>31</sup> S. 408.810(5)(a)2., F.S.

<sup>32</sup> S. 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](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/docs/Nursing_Homes/Posters/NURSING_HOME_POSTER_ENGLISH_LETTER.pdf) (last visited May 15, 2023).

<sup>33</sup> Department of Children and Families, *Report Abuse, Neglect, or Exploitation*. Available at <http://www.myflfamilies.com/service-programs/abuse-hotline/report-online> (last visited May 15, 2023); Agency for Health Care Administration, *Complaint Administration Unit*. Available at [http://ahca.myflorida.com/MCHQ/Field\\_Ops/CAU.shtm](http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtm) (last visited May 15, 2023); Department of Elder Affairs, *Elder Abuse Prevention Program*. Available at <https://elderaffairs.org/programs-services/elder-protection-programs/> (last visited May 15, 2023).

<sup>34</sup> S. 415.1034(2), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> S. 415.104(1), F.S. Note, DCF does not investigate reports of elder abuse when the adult victim is determined *notto* be vulnerable under s. 415.102(28), F.S. Those elder abuse cases are the sole jurisdiction of law enforcement agencies.

<sup>37</sup> S. 415.104(3), F.S.

<sup>38</sup> S. 415.104(4), F.S.

<sup>39</sup> S. 415.105(1), F.S.

<sup>40</sup> Department of Children and Families, *CF Operating Procedure No. 140-2: Adult Protective Services* (2022), pp. 4-9 - 4-10. Available at [https://www.myflfamilies.com/sites/default/files/2022-12/cfop\\_140-02\\_adult\\_protective\\_services.pdf](https://www.myflfamilies.com/sites/default/files/2022-12/cfop_140-02_adult_protective_services.pdf) (last visited May 15, 2023).

<sup>41</sup> An RNS is a Florida-licensed registered nurse who assists the DCF in its Adult Protective Services investigations by providing medical expertise to help inform the DCF's findings. Department of Children and Families, *CF Operating Procedure No. 140-11: Adult Protective Services Registered Nurse Specialist* (Oct. 21, 2011), p. 1. Available at [https://www.myflfamilies.com/sites/default/files/2022-12/cfop\\_140-11\\_adult\\_protective\\_services\\_registered\\_nurse\\_specialist.pdf](https://www.myflfamilies.com/sites/default/files/2022-12/cfop_140-11_adult_protective_services_registered_nurse_specialist.pdf) (last visited May 15, 2023).

victim resided with other vulnerable adults, DCF conducts an on-site investigation to ensure the safety of these individuals as well.<sup>42</sup> The DCF investigators and RNS work together to gather all relevant medical investigative information, including, but not limited to, medical records, the death certificate, the autopsy report, and specific questions to be included in the investigative process.<sup>43</sup> DCF investigators gather other relevant information such as copies of any related law enforcement investigations, criminal history and abuse reports relating to the alleged perpetrator, and prior adult protective services records relating to the victim or perpetrator, including the facilities where the death occurred.<sup>44</sup>

The DCF investigators review all of this information before making their determinations as to the cause of death and will summarize their findings in a report.<sup>45</sup> In cases involving an elder abuse death, DCF designates a second party to review the DCF investigators' findings before closing the case.<sup>46</sup> The second party reviews the investigation process to ensure that it was thorough and that all issues were properly addressed, reviews the reports for completeness and accuracy, and documents its review for DCF's records.<sup>47</sup>

### *Adult Protection Teams*

Current law authorizes DCF to create multidisciplinary Adult Protection Teams in each district<sup>48</sup> to support activities of the protective services program and provide services the team finds necessary for victims of elder abuse.<sup>49</sup> The teams can only provide these services with the consent of the vulnerable adult, the person's guardian, or court order, and should not duplicate services provided by other units or offices of DCF.<sup>50</sup>

The teams can consist of anyone trained in the prevention, identification, and treatment of abuse of elderly persons, such as:<sup>51</sup>

- Psychiatrists, psychologists, and other trained counseling personnel;
- Police officers or other law enforcement officers;
- Medical personnel who have sufficient training to provide health services;
- Social workers who have experience or training in preventing the abuse of elderly or dependent persons; and
- Public and professional guardians under part II of chapter 744, F.S.

### Elder Adult Fatality Review Teams

In 2020, the Legislature authorized Elder Abuse Fatality Review Teams (review teams) to be operated in the state.<sup>52</sup> Review teams are multidisciplinary, multiagency teams<sup>53</sup> established in the state's judicial

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<sup>42</sup> *Supra* note 40, at pp. 21-1.

<sup>43</sup> *Supra* note 40, at 21-2.

<sup>44</sup> *Id.*

<sup>45</sup> *Supra* note 40, at 21-2 - 21-3

<sup>46</sup> *Supra* note 40, at 21-3.

<sup>47</sup> *Id.*

<sup>48</sup> DCF has now adopted a regional structure rather than a district-based structure.

<sup>49</sup> Ss. 415.1102(1), 415.1102(4), F.S. DCF has established 15 Adult Protection Teams statewide, varying in how often and under what circumstances they convene.

<sup>50</sup> Ss. 415.1102(4) and 415.1102(5), F.S.

<sup>51</sup> Ss. 415.1102(1) and 415.1102(2), F.S.

<sup>52</sup> Ch. 2020-17, L.O.F.

<sup>53</sup> S. 415.1103, F.S. Review teams may include representatives from any of the following entities or persons: law enforcement agencies; the state attorney; the medical examiner; a county court judge; Adult Protective Services; the 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 the 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 who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents or who are recommended for inclusion by the review team.

circuits to review elderly persons' deaths alleged or found to have been caused by, or related to, abuse<sup>54</sup> or neglect.<sup>55</sup> A review team is intended to identify any gaps, deficiencies, or problems in the delivery of services related to the fatal incident.<sup>56</sup> 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.<sup>57</sup>

Under current law, a state attorney, or his or her designee, is the only entity authorized to initiate a review team, the jurisdiction of which is limited to the state attorney's judicial district.<sup>58</sup> The state attorney or designee who initiated the review team is then responsible for calling the first organizational meeting of the review team.<sup>59</sup> The state attorney refers closed cases to a review team, redacting identifying information from such cases before referral.<sup>60</sup> A case is considered closed when it no longer contains active<sup>61</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 a 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.<sup>62</sup> Such information is subject to public disclosure unless it is otherwise protected by a public record exemption. This significantly limits the cases which may be reviewed by a review team, particularly within the context of elder abuse, which is widely understood to be underreported.

Membership in a review team is voluntary; the only party required to participate as a prerequisite for a review team to operate is a state attorney. Members of the review team serve without compensation or reimbursement. Current law instructs that review team members are to serve two-year terms. Review team members are immune from monetary liability, and a cause of action may not be brought against them related to the performance of their duties as a review team member, such as any discussions by, or deliberations or recommendations of the team or the member. However, this immunity does not apply if the member acted in bad faith, with wanton and willful disregard of human rights, safety, or property. This immunity does not extend to witnesses or other individuals associated with the case review process.

Review team members are not permitted to directly contact members of a victim's family; however, a victim's family members or any other person may voluntarily provide information to a review team, which may then be shared with other review teams.<sup>63</sup> There currently is no public records exemption for review teams; as a result, all records provided to them or created in the course of their reviews are subject to public disclosure.

Each review team prepares an annual report to be submitted to DOEA by September 1 of each year. The annual reports must include:<sup>64</sup>

- Descriptive statistics of cases reviewed, including victims' demographic information and the causes and nature of their deaths;

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<sup>54</sup> See s. 415.102(1), F.S., "Abuse" means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

<sup>55</sup> S. 415.1103(1)(a), F.S. See also, s. 415.102(16), F.S. "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult through a single incident or repeated conduct.

<sup>56</sup> S. 415.1103(3)(c), F.S.

<sup>57</sup> S. 415.1103(3)(b), F.S.

<sup>58</sup> S. 415.1103(1)(a), F.S.

<sup>59</sup> S. 415.1103(1)(e), F.S.

<sup>60</sup> S. 415.1103(1)(e), F.S.

<sup>61</sup> See s. 119.011(3), F.S.

<sup>62</sup> S. 415.1103(4)(b), F.S.

<sup>63</sup> S. 415.1103(4)(b), F.S.

<sup>64</sup> S. 415.1103(5), F.S.



- Current policies, procedures, rules, or statutes contributing to the incidence of elder abuse and deaths, and recommendations for system improvements; and
- Any other recommendations to prevent deaths from elder abuse or neglect.

Since their authorization in 2020, only two review teams have been established in Florida: one each in the Fourth<sup>65</sup> and the Fifth Judicial Circuits.<sup>66</sup> The 2<sup>nd</sup> annual report from the Fourth Judicial Circuit's review team included a series of recommendations for changes to the statute governing review teams with the intent of enabling the review teams to conduct more meaningful case reviews and form comprehensive recommendations.<sup>67</sup> The recommendations included removing the statutory restrictions on the types of cases that a review team may review, removing the requirement that review teams be initiated by a state attorney, and creating public records and meeting exemptions so that review teams may review complete case files.

## Effect of the Bill

### Review Team Scope

The bill expands the scope of review teams to include broader categories of vulnerable adults in addition to elders. Under the bill, review teams are authorized to review fatal incidents involving persons in any of the following categories:

- “*Vulnerable adult*,” as defined in s. 415.102(28), F.S., meaning a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.
- “*Disabled adult*,” as defined in s. 825.101(3), F.S., meaning 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.
- “*Elderly person*,” as defined in s. 825.101(4), F.S., meaning 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.

The bill changes the name of the review teams to Elder and Vulnerable Adult Abuse Review Teams to reflect the change in scope. The bill also expands the types of incidents that can be reviewed to include fatal incidents resulting from exploitation, in addition to incidents of abuse and neglect which may be reviewed under current law. The bill deletes the provision of current law restricting review teams to reviewing only closed cases that have been referred and redacted by the state attorney. This change in particular significantly increases the type and number of cases that may be reviewed by a review team.

The bill makes conforming changes throughout s. 415.1103, F.S., to align with the changes to the scope of the review teams.

### Review Team Administration and Membership

The bill revises the conditions under which a review team may be organized and the jurisdictions in which they can operate. It expands the entities that may initiate a review team to include a law enforcement agency, the Department of Children and Families, the Office of the Attorney General, and

<sup>65</sup> State Attorney's Office of the 4<sup>th</sup> 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 15, 2023).

<sup>66</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 May 15, 2023).

<sup>67</sup> The Fourth Judicial Circuit Elder Abuse Fatality Review Team, Second Annual Report to the Florida Department of Elder Affairs (September 2022). On file with the Children, Families & Seniors Subcommittee.



the Agency for Persons with Disabilities. The bill requires a representative of the initiating entity to serve as a co-chair on the review team, and also requires the initiating entity to specify the geographic area served by the review team; such geographic area is limited to the jurisdiction or service area of the initiating entity.

The bill also adds the Agency for Persons with Disabilities and disability rights attorneys to the list of entities which may be represented in review team membership, consistent with the expansion of the scope of the teams to include disabled adults. The bill also allows other persons identified and invited by the review team who possess relevant knowledge and experience to be included on the team even if they are not expressly listed in statute.

The bill revises the provision of current law prohibiting review team members from contacting victims' family members. Under the bill, review team members may directly contact a victim's family members in the following circumstances:

- A team member is authorized to do so in the course of their employment; or
- Such contact is necessary for the review team to complete its review and determine findings, and such information is not obtainable through any other means.

### Public Records

The bill significantly expands the types of records accessible to a review team. The tied bill, CS/SB 1542, ensures records which are exempt or confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution retain such status when held by a review team.

To further address the review team's expanded access to sensitive records, the bill requires review team members to sign a written acknowledgement of their obligations to comply with applicable public records requirements under Ch. 119, F.S., and Article I of the State Constitution, and to not knowingly disclose or reveal information that is confidential and exempt from such provisions. The review team's initiating entity is responsible for providing that acknowledgement and must also provide review team members with training on public records requirements.

### Immunity and Use of Information

Current law immunizes review team members from monetary liability and civil causes of action against the related to the performance of their duties on the review team, unless they acted in bad faith. The bill extends this protection to review team investigators, people who report incidents, and witnesses for review teams.

Similarly, the bill also limits the use of records held or created by review teams, by prohibiting their discovery or introduction into evidence in a civil, criminal, or administrative proceeding. This applies to records or information produced or discovered by the review team, and does not apply to such information if it is available from other sources.

Subject to the Governor's veto powers, the bill is effective 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.