



Oversight, Transparency & Public Management Subcommittee

**Wednesday, January 22, 2020
8:30 AM – 11:30 AM
Morris Hall (17 HOB)**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Public Management Subcommittee

Start Date and Time: Wednesday, January 22, 2020 08:30 am

End Date and Time: Wednesday, January 22, 2020 11:30 am

Location: Morris Hall (17 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 1 Dues and Uniform Assessments by Grant, J.

CS/HB 253 Elder Abuse Fatality Review Teams by Children, Families & Seniors Subcommittee, Driskell

NOTICE FINALIZED on 01/17/2020 4:03PM by Jones.Brenda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1 Dues and Uniform Assessments

SPONSOR(S): Grant, J.

TIED BILLS: **IDEN./SIM. BILLS:** SB 804

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Villa	Smith
2) State Affairs Committee			

SUMMARY ANALYSIS

Collective bargaining is a constitutional right afforded to public employees in Florida. The State Constitution also provides that Florida is a right to work state; therefore, the right of an individual to work cannot be denied based on membership or non-membership in any employee organization. As such, public employees have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.

Through collective bargaining, public employees collectively negotiate with their public employer in the determination of the terms and conditions of their employment. An employee organization that is authorized to represent public employees is known as a certified bargaining agent. A certified bargaining agent may deduct dues and uniform assessments from the salaries of employees who authorize such a deduction. The authorization is revocable by the employee upon 30 days' written notice to the employer and employee organization. The deductions start upon the bargaining agent's written request to the employer. The right to deductions will remain in effect as long as the employee organization remains the certified bargaining agent.

The bill requires a public employee who desires to join an employee organization to sign a membership authorization form. The form must contain an acknowledgement that Florida is a right to work state and union membership is not required as a condition of employment. The authorization form must also provide that union membership and payment of union dues and assessments is voluntary and the employee may not be discriminated against in any manner if he or she refuses to join or financially support a union.

The bill requires an employee organization to revoke an employee's membership upon the employee's written request. The bill prohibits an employer or employee organization from asking an employee to provide a reason for his or her decision to revoke membership in an employee organization.

The bill states that dues and uniform assessments may not be deducted from an employee's salary until the employer receives a signed authorization form from the bargaining agent and is able to confirm with the employee, electronically or otherwise, that he or she authorized such deductions. The bill provides that the deductions are in force for one year and must be reauthorized annually by the employee.

The bill may have an indeterminate, but likely insignificant, fiscal impact on public employers. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Right-to-Work

The State Constitution provides that Florida is a right to work state; therefore, the right of an individual to work cannot be denied based on membership or non-membership in any employee organization.¹ As such, public employees² have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.³

Collective Bargaining

Collective bargaining is a constitutional right afforded to public employees in Florida.⁴ To implement this constitutional provision, the Legislature enacted ch. 447, F.S., which provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.⁵ Through collective bargaining, public employees collectively negotiate with their public employer⁶ in the determination of the terms and conditions of their employment.⁷ The Public Employees Relations Commission is responsible for assisting in resolving disputes between public employees and public employers.⁸

An “employee organization” is any “labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.”⁹ An employee organization that is authorized to represent public employees in collective bargaining is known as a certified bargaining agent.¹⁰ A certified bargaining agent is the exclusive representative of all employees in that unit.¹¹

¹ Art. I, s. 6, FLA. CONST.

² Section 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
 1. Federal license requirement.
 2. Federal autonomy regarding investigation and disciplining of appointees.
 3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

³ Section 447.301(1) and (2), F.S.

⁴ Art. I, s. 6, FLA. CONST.

⁵ Section 447.201, F.S.

⁶ The term “public employer” means the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203(2), F.S.

⁷ Section 447.301(2), F.S.

⁸ Section 447.201(3), F.S.

⁹ Section 447.203(11), F.S.

¹⁰ Section 447.203(12), F.S.

¹¹ Section 447.307(1), F.S.

After an employee organization has been certified as the bargaining agent for a group of public employees, the bargaining agent and the chief executive officer of the appropriate public employer must bargain collectively in the determination of wages, hours, and terms and conditions of employment of the employees.¹² Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent.¹³ Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.¹⁴ Current law prohibits a collective bargaining agreement from providing for a term of existence of more than three years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.¹⁵

Employee Dues

The certified bargaining agent may have its dues and uniform assessments deducted and collected by the public employer from the salaries of those employees who authorize the deductions.¹⁶ Such authorization is revocable by the employee upon 30 days' written notice to the employer and employee organization.¹⁷ The deductions start upon the bargaining agent's written request to the employer.¹⁸ The right to deductions remains in force for as long as the employee organization remains the certified bargaining agent for that group of employees.¹⁹

Effect of the Bill

The bill requires a public employee who desires to join an employee organization to sign a membership authorization form that contains the following acknowledgement:

I acknowledge and understand that Florida is a right to work state and union membership is not required as a condition of employment. I understand that union membership and payment of union dues and assessments is voluntary and that I may not be discriminated against in any manner if I refuse to join or financially support a union.

The bill requires an employee organization to revoke an employee's membership upon receipt of the employee's written request. The employee organization and public employer cannot ask the employee to provide a reason for his or her decision to revoke his or her membership in the employee organization. If the employee must complete a form to request revocation, the form may not require a reason for the employee's decision.

The bill revises the requirements for the deduction of dues and requires the employer to verify that the employee authorized the deduction. Specifically, the bill states that dues and uniform assessments may not be deducted from an employee's salary until the employer receives a signed authorization form from the bargaining agent and is able to confirm with the employee, electronically or otherwise, that he or she authorized the deduction of dues and uniform assessments.

The bill provides that the deductions are in force for one year and must be reauthorized annually by the employee.

B. SECTION DIRECTORY:

Section 1 amends s. 447.301, F.S., relating to public employees' rights to join or refrain from joining an employee organization.

¹² Section 447.309(1), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 447.309(5), F.S.

¹⁶ Section 447.303, F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Section 2 amends s. 447.303, F.S., relating to dues and uniform assessments.

Section 3 reenacts s. 110.114, F.S., relating to employee wage deductions.

Section 4 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on employee organizations related to creating authorization and membership forms.

D. FISCAL COMMENTS:

The bill requires a public employer to confirm with the employee that he or she authorized the deduction of dues and uniform assessments prior to commencing the deduction of said dues and assessments from the employee's salary. Currently, employers are not required to verify the dues deduction authorization before beginning the deduction. As such, the verification may result in an indeterminate, but likely insignificant, fiscal impact on public employers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the State Constitution may apply because the bill requires employers to verify, prior to deducting dues and assessments from an employees paycheck, that the employee authorized the deduction of said dues and assessments; however, an exemption may apply because the fiscal impact is likely insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not grant rulemaking authority, nor does it appear to require a grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to dues and uniform assessments;
 3 amending s. 447.301, F.S.; requiring specified
 4 information be provided in an employee organization
 5 authorization form; prohibiting certain information
 6 from being elicited from certain employees; amending
 7 s. 447.303, F.S.; revising when certain deductions
 8 commence; requiring annual renewal of the
 9 authorization for such deductions; reenacting s.
 10 110.114(3), F.S., relating to employee wage
 11 deductions, to incorporate the amendments made by the
 12 act; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (1) of section 447.301, Florida
 17 Statutes, is amended to read:

18 447.301 Public employees' rights; organization and
 19 representation.—

20 (1) (a) Public employees ~~shall~~ have the right to form,
 21 join, and participate in, or to refrain from forming, joining,
 22 or participating in, any employee organization of their own
 23 choosing.

24 (b)1. An employee who desires to join an employee
 25 organization must sign a membership authorization form with the

26 bargaining agent. The membership form must contain the following
 27 acknowledgment in bold letters and in at least a 14-point type:

28
 29 I acknowledge and understand that Florida is a right
 30 to work state and union membership is not required as
 31 a condition of employment. I understand that union
 32 membership and payment of union dues and assessments
 33 is voluntary and that I may not be discriminated
 34 against in any manner if I refuse to join or
 35 financially support a union.

36
 37 2. An employee organization must revoke an employee's
 38 membership upon receipt of his or her written request for
 39 revocation, except as provided in s. 447.303. An employer or
 40 employee organization may not ask an employee to provide a
 41 reason for his or her decision to revoke his or her membership
 42 in the employee organization. If an employee must complete a
 43 form to request revocation from the employee organization, the
 44 form may not require a reason for the employee's decision to
 45 revoke his or her membership.

46 Section 2. Section 447.303, Florida Statutes, is amended
 47 to read:

48 447.303 Dues; deduction and collection.—An ~~Any~~ employee
 49 organization that ~~which~~ has been certified as a bargaining agent
 50 has ~~shall have~~ the right to have its dues and uniform

51 assessments deducted and collected by the employer from the
52 salaries of those employees who authorize the deduction of said
53 dues and uniform assessments. However, such authorization is
54 revocable at the employee's request upon 30 days' written notice
55 to the employer and employee organization. Said deductions shall
56 commence when the employer receives a signed authorization form
57 from the bargaining agent and is able to confirm with the
58 employee, electronically or by other means, that he or she
59 authorized the deduction of dues and uniform assessments ~~upon~~
60 ~~the bargaining agent's written request to the employer.~~
61 Reasonable costs to the employer of said deductions is ~~shall be~~
62 a proper subject of collective bargaining. Such right to
63 deduction, unless revoked under ~~pursuant to~~ s. 447.507, is ~~shall~~
64 ~~be~~ in force for 1 year after the date the deduction begins and
65 must be reauthorized annually ~~so long as the employee~~
66 ~~organization remains the certified bargaining agent for the~~
67 ~~employees in the unit.~~ The public employer is expressly
68 prohibited from any involvement in the collection of fines,
69 penalties, or special assessments.

70 Section 3. For the purpose of incorporating the amendment
71 made by this act to section 447.303, Florida Statutes, in a
72 reference thereto, subsection (3) of section 110.114, Florida
73 Statutes, is reenacted to read:

74 110.114 Employee wage deductions.—

75 (3) Notwithstanding the provisions of subsections (1) and

HB 1

2020

76 (2), the deduction of an employee's membership dues deductions
77 as defined in s. 447.203(15) for an employee organization as
78 defined in s. 447.203(11) shall be authorized or permitted only
79 for an organization that has been certified as the exclusive
80 bargaining agent pursuant to chapter 447 for a unit of state
81 employees in which the employee is included. Such deductions
82 shall be subject to the provisions of s. 447.303.

83 Section 4. This act shall take effect upon becoming a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee

3 Representative Eskamani offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 24-45 and insert:

7 (b) An employee who desires to join an employee
8 organization must sign a membership authorization form with the
9 bargaining agent. The membership form must contain the following
10 acknowledgment in bold letters and in at least a 14-point type:
11

12 I acknowledge and understand that Florida is a right
13 to work state and union membership is not required as
14 a condition of employment. I understand that union
15 membership and payment of union dues and assessments
16 is voluntary and that I may not be discriminated

Amendment No.

17 against in any manner if I refuse to join or
18 financially support a union.

19 -----

20 **T I T L E A M E N D M E N T**

21 Remove lines 5-6 and insert:

22 authorization form; amending

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee
3 Representative Fernández offered the following:
4

Amendment (with title amendment)

6 Remove lines 46-82
7
8

9 -----

T I T L E A M E N D M E N T

11 Remove lines 6-12 and insert:
12 from being elicited from certain employees; providing
13 an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 253 Elder Abuse Fatality Review Teams
SPONSOR(S): Children, Families & Seniors Subcommittee; Driskell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N, As CS	Morris	Brazzell
2) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Florida has the highest percentage of senior residents in the nation, projected to increase from 20 to 25 percent (5.9 million seniors) by 2030. Mental and physical infirmities of 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 incidents of elder abuse are reported in less than 5 percent of cases, primarily because the most common perpetrator is a relative, friend, neighbor, or caregiver whom the elder trusts or fears.

The Department of Children and Families (DCF) is responsible for the state's adult protective investigations. DCF investigates reports of elder abuse, including elder deaths, and facilitates supportive services to victims. In FY 2018-19, DCF received 37,145 reports of elder abuse, neglect, or exploitation and investigated 252 deaths in which the death was allegedly due to abuse or neglect.

Florida has programs to systematically review deaths due to child abuse or domestic violence. Different than protective investigations, these fatality review teams are generally established to understand the causes and incidents of deaths, identify any gaps in support and service delivery, and improve preventive interventions.

The bill creates s. 415.1103, F.S., authorizing the creation of a multidisciplinary, multiagency elder abuse fatality review team (EA-FRT) in each judicial circuit to review closed cases where the death of an elderly person was caused by, or related to, abuse or neglect. EA-FRTs are housed in the Department of Elder Affairs (DOEA) for administrative purposes only. Participation in EA-FRT is voluntary and team members serve without compensation.

The bill includes procedures for organization and creation of an EA-FRT, appointment of EA-FRT members, and obtaining relevant records for an EA-FRT. In its review, an EA-FRT must consider the surrounding circumstances and events leading up to a fatal incident, identify any gaps in support and service delivery, and make recommendations for systemic improvements to prevent elder abuse and deaths. The bill grants EA-FRT members immunity from monetary liability and prohibits a cause of action relating to their participation in an EA-FRT in certain circumstances, with exceptions.

The bill requires each EA-FRT to submit an annual report on its findings to DOEA by September 1 and DOEA to submit a summary report to the Governor, the Legislature, and DCF by November 1 each year.

The bill will have an indeterminate, but likely insignificant negative fiscal impact on DOEA.

The bill provides an effective date of July 1, 2020.

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.⁷ In Florida, almost 1.3 million senior citizens live in medically underserved areas and 1.4 million suffer from one or more disabilities.⁸ According to the Department of Justice, approximately 1 in 10 seniors is abused each year in the United States, and incidents of elder abuse are reported to local authorities in 1 out of every 23 cases.⁹ Elder abuse can have significant physical and emotional effects on an older adult, and can lead to premature death.¹⁰ Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.¹¹

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.¹² 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.¹³ Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.¹⁴ 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.¹⁵ Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.¹⁶

Florida's Adult Protective Services System

Chapter 415, F.S., creates Florida's Adult Protective Services (APS) under the Department of Children and Families (DCF). DCF protects vulnerable adults,¹⁷ including elders, from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse.¹⁸ This includes deaths allegedly due to abuse, neglect, and exploitation.¹⁹ In FY 2018-19, DCF received 37,145 reports of abuse, neglect, or exploitation of persons aged 60 years or older and investigated 252 deaths in which the death was allegedly due to abuse or neglect.²⁰ During that same fiscal year, DCF verified 6,277 allegations of abuse or neglect, 34 of which involved a fatality.²¹ Eighty-one (81) percent of these

⁷ 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. 17, 2020); U.S. DEPARTMENT OF JUSTICE, *Elder Justice Initiative, Older Adults, Families, and Caregivers*, <https://www.justice.gov/elderjustice/victims-families-caregivers> (last visited Jan. 17, 2020). 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).

⁸ DEPARTMENT OF ELDER AFFAIRS, *2018 Profile of Older Floridians*, available at: http://elderaffairs.state.fl.us/doea/pubs/stats/County_2018/Counties/Florida.pdf (last visited Jan. 17, 2020).

⁹ U.S. DEPARTMENT OF JUSTICE, *Elder Justice Initiative*, available at: <https://www.justice.gov/elderjustice> (last visited Jan. 17, 2020). 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 Jan. 17, 2020).

¹⁰ U.S. DEPARTMENT OF JUSTICE, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited Jan. 17, 2020). 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 Jan. 17, 2020).

¹¹ U.S. DEPARTMENT OF JUSTICE, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited Jan. 17, 2020). 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).

¹² NATIONAL CENTER ON ELDER ABUSE, *Challenges in Elder Abuse Research*, available at: <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#challenges> (last visited Jan. 17, 2020).

¹³ NATIONAL CENTER ON ELDER ABUSE, *Who are the Perpetrators?*, <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#perpetrators> (last visited Jan. 17, 2020).

¹⁴ CENTER FOR DISEASE CONTROL AND PREVENTION, *Understanding Elder Abuse, Fact Sheet 2016*, available at: <https://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf> (last visited Jan. 17, 2020).

¹⁵ 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 Jan. 17, 2019).

¹⁶ Id. at pp. 7-10.

¹⁷ A vulnerable adult is a person 18 years of age or older whose ability to perform normal activities of daily living or to provide for his or her own care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102(28), F.S.

¹⁸ S. 415.101(2), F.S.

¹⁹ DEPARTMENT OF CHILDREN AND FAMILIES, *CF Operating Procedure No. 140-2: Adult Protective Services* (Feb. 2019), pp. 4-9 - 4-10, available at: <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20140-xx%20Adult%20Services/CFOP%20140-02,%20Adult%20Protective%20Services.pdf> (last visited Jan. 17, 2020).

²⁰ Email from Lindsey Zander, Deputy Director of Legislative Affairs, Department of Children and Families, RE: APS Statistics (Oct. 30, 2019) (On file with House Health and Human Services Committee staff).

²¹ Id.

reports were from in-home settings, which is consistent with the research findings that relatives, friends, or caregivers are the main perpetrators of elder abuse.

DCF's Adult Investigations Involving Victims Age 60+ FYs 2012-2017 ²²							
FY	Reports Received ¹	Unique Reports ²	# Verified	Deaths Reported/ Investigated ³	# Verified	In-Home	Institutional
2018-2019	37,145	35,814	6,277	252	34	81.12%	18.88%
2017-2018	39,046	37,395	5,749	245	28	81.88%	18.12%
2016-2017	41,192	39,005	5,423	181	27	82.77%	17.23%
2015-2016	42,609	39,998	5,639	178	21	82.91%	17.09%
2014-2015	39,639	37,381	5,371	236	40	82.52%	17.48%
2013-2014	36,926	34,922	3,934	197	27	83.96%	16.04%
2012-2013	33,833	32,092	3,309	153	17	83.14%	16.86%

¹ Reports received counts Initial and Additional intakes accepted by the Hotline. There may be more than one call/reporter on the same incident.

² Unique reports represents a unique count of intakes received. Multiple intakes on the same incident are not counted.

³ All reports accepted by the Hotline are investigated.

Mandatory Reporting to the Central Abuse Hotline

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

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

²² Id.

²³ S. 415.103(1), F.S.

²⁴ S. 415.1034(1), F.S.

²⁵ S. 408.810(5)(a)2., F.S.

²⁶ 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 (last visited Jan. 17, 2020).

²⁷ DEPARTMENT OF CHILDREN AND FAMILIES, *Report Abuse Neglect or Exploitation*, <http://www.myflfamilies.com/service-programs/abuse-hotline/report-online> (last visited Jan. 17, 2020); AGENCY FOR HEALTH CARE ADMINISTRATION, *Complaint Administration Unit*, http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtml (last visited Jan. 17, 2020). DEPARTMENT OF ELDER AFFAIRS, *Elder Abuse Prevention Program*, http://elderaffairs.state.fl.us/doea/abuse_prevention.php (last visited Jan. 17, 2020).

²⁸ S. 415.1034(2), F.S.

²⁹ S. 415.1034(2), F.S.

STORAGE NAME: h0253d.OTM

DATE: 1/17/2020

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, to be conducted in cooperation with law enforcement and the state attorney.³⁰ 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.³¹ DCF investigators must complete their investigations and submit their recommendations within 60 days of the initial report.³² 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.³³ 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.³⁴

If there is a report that a death occurred due to elder abuse, neglect, or exploitation, the DCF investigator notifies the department's Registered Nurse Specialist (RNS)³⁵ staffing his or her region within 24 hours. If the alleged victim resided with other vulnerable adults, DCF conducts an on-site investigation to ensure the safety of these individuals as well.³⁶

The DCF investigator 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.³⁷ The DCF investigators also 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.³⁸

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.³⁹ In these cases involving an elder abuse death, DCF designates a second party to review the DCF investigators' findings before closing the case.⁴⁰ 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.⁴¹

³⁰ S. 415.104(1), F.S. Note, DCF does not investigate reports of elder abuse when the adult victim is determined *not* to be vulnerable under s. 415.102(28), F.S. Those elder abuse cases are the sole jurisdiction of law enforcement agencies.

³¹ S. 415.104(3), F.S.

³² S. 415.104(4), F.S.

³³ S. 415.105(1), F.S.

³⁴ DEPARTMENT OF CHILDREN AND FAMILIES, *CF Operating Procedure No. 140-2: Adult Protective Services* (Feb. 2019), p. 15-2, available at: <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20140-xx%20Adult%20Services/CFOP%20140-02,%20Adult%20Protective%20Services.pdf> (last visited Jan. 17, 2020).

³⁵ An RNS is a Florida-licensed registered nurse who assists the DCF in its APS 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.dcf.state.fl.us/admin/publications/cfops/CFOP%20140-xx%20Adult%20Services/CFOP%20140-11,%20Adult%20Protective%20Services%20Registered%20Nurse%20Specialist.pdf> (last visited Jan. 17, 2020).

³⁶ *Supra* note 34, at 21-1.

³⁷ *Supra* note 34, at 21-2.

³⁸ *Id.*

³⁹ *Supra* note 34, at 21-2 - 21-3

⁴⁰ *Supra* note 34, at 21-3.

⁴¹ *Id.*

Adult Protection Teams

DCF is also permitted to create multidisciplinary Adult Protection Teams in each district⁴² to support activities of the protective services program and provide services the team finds necessary for victims of elder abuse.⁴³ 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.⁴⁴

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

- Psychiatrists, psychologists, 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; or
- Public and professional guardians under part II of chapter 744, F.S.⁴⁵
- The community-based care lead agency;
- State, county, or local law enforcement agencies;
- The school district;
- A mental health treatment provider;
- A certified domestic violence center;
- A substance abuse treatment provider; and
- Any other members that are determined by guidelines developed by the State Child Abuse Death Review Committee (CADR).⁴⁶

CADR committees are granted access to all information and records from any state agency or political subdivision so long as the information may assist in reviewing a child's death.⁴⁷ Local CADR committees review individual facts and circumstances of a child's death and provide the state CADR committee with demographic data, any gaps or deficiencies identified in the system, and recommendations for improvement.⁴⁸ The state CADR committee provides direction for the review system and analyzes the data and recommendations received from local CADR committees.⁴⁹ The state CADR committee then submits a comprehensive annual report to the Governor and Legislature by December 1 each year.⁵⁰

In the last fiscal year, all 22 local CADR committees used collected data to develop prevention action plans, including 194 activities designed to prevent child abuse.⁵¹ Because drowning and asphyxia were the top causes of death in the previous year's data review, action plans included media campaigns, education, and training for safe sleep and water safety.⁵² Similarly, because there is significant overlap between child maltreatment and domestic violence, substance abuse, and mental health, some action plans also addressed improvements in and increased access to parenting education, domestic violence advocates, and mental health treatment.⁵³

⁴² DCF has now adopted a regional structure rather than a district-based structure.

⁴³ 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, Email from Lindsey Perkins Zander, Deputy Director of Legislative Affairs, Department of Children and Families, RE: Adult Protective Services Statistics (Jan. 5, 2018) (On file with House Health and Human Services Committee staff).

⁴⁴ Ss. 415.1102(4), 415.1102(5), F.S.

⁴⁵ Ss. 415.1102(1), 415.1102(2), F.S.

⁴⁶ S. 383.402(3)(a), F.S.

⁴⁷ S. 383.402(5), F.S.

⁴⁸ S. 383.402(3)(b), F.S.

⁴⁹ S. 383.402(2)(b), F.S.

⁵⁰ S. 383.402(4), F.S.

⁵¹ DEPARTMENT OF HEALTH, *State Child Abuse Death Review Committee Annual Report December 2017*, p. 51, available at: http://www.flcadr.com/reports/_documents/Final_CADR_2017.pdf (last visited Jan. 17, 2020).

⁵² *Id.*

⁵³ *Id.*

Florida's Domestic Violence Fatality Review Teams

The state's Domestic Violence Fatality Review Teams (DV-FRT) are multidisciplinary teams that review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides.⁵⁴ DV-FRTs can be established at the local, regional, or state level.⁵⁵ Currently, there are 24 local DV-FRTs and one statewide team.⁵⁶ The DV-FRTs are assigned to the Florida Coalition against Domestic Violence for administrative purposes only, so the structure and activities of a team are determined at the local level.⁵⁷

The DV-FRTs include, but are not limited to, representatives from the following agencies or organizations:

- Law enforcement agencies;
- The state attorney's office;
- The medical examiner's office;
- Certified domestic violence centers;
- Child protection service providers;
- The office of the court administration;
- The clerk of the court;
- Victim services programs;
- Child death review teams;
- Members of the business community;
- County probation or corrections agencies; and
- Any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence or suicide, including research, policy, law or other related matters.⁵⁸

The DV-FRTs review events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and parties, and any information or action deemed relevant by the team.⁵⁹ The teams' purpose is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence.⁶⁰ Each team determines the number and type of incidents it will review and makes policy and other recommendations as to how incidents of domestic violence may be prevented.⁶¹

The Office of the Attorney General and the Florida Coalition against Domestic Violence co-chair the statewide DV-FRT, which meets quarterly to review data collected by the local teams, identify systemic gaps, and summarize its findings and recommendations for changes to the service delivery system in an annual report.⁶²

Initiatives developed based on the reviews include:

- Since in 50 percent of cases reviewed, perpetrators had a prior history of domestic violence, substance abuse, or violent crimes, the statewide team developed a pilot project to train and increase coordination between local law enforcement agencies, prosecutors, judges, probation

⁵⁴ S. 741.316(1), F.S.

⁵⁵ S. 741.316(2), F.S.

⁵⁶ FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, *The Attorney General's Statewide Domestic Violence Fatality Review Team*, https://www.fcadv.org/projects-programs/attorney-general%E2%80%99s-statewide-domestic-violence-fatality-review-team#_ftn1 (last visited Jan. 17, 2020).

⁵⁷ Ss. 741.316(5), 741.316(2), F.S.

⁵⁸ S. 741.316(1), F.S.

⁵⁹ S. 741.316(2), F.S.

⁶⁰ S. 741.316(2), F.S.

⁶¹ S. 741.316(2), F.S.

⁶² *Supra* note 56.

officers, and domestic violence advocates.^{63,64} The purpose of this cooperation was to identify risk factors sooner, protect the victims, and prevent fatalities.⁶⁵

- Discovering that 70 percent of victims had surviving children--some of whom even witnessed the fatal incident--the statewide team identified the need for and promoted collaboration with community partners to protect and provide services to the surviving children.⁶⁶

Elder Fatality Review Teams in other States

Currently, at least 15 jurisdictions have elder fatality review teams at the state or local level.⁶⁷ For example, California, another state with a large senior population, statutorily authorized local elder fatality review teams in 2003 and now has an elder fatality review team in over 30 of its 58 counties.⁶⁸

One of the first multidisciplinary elder fatality review teams was created in 1999, in Sacramento County, California. After years of reviewing cases, the review team noted that a common pattern of abuse involved a relative caregiver's inability to cope with the responsibility of caring for an elder whose health and mobility were rapidly deteriorating. In response, the review team created a resource guide for elder caregivers and independent elders alike, including contact information for agencies that can help with financial issues, transportation, conservatorship, home repair, medical issues, mental health issues, and other important needs.⁶⁹ Pharmacies, senior centers, medical clinics, religious centers, and other senior organizations distributed the brochure.⁷⁰

The team also facilitated cooperation between disciplines to provide comprehensive vital services to elders in one location.⁷¹ Acting on the review team's recommendations, the local coroner's office and adult protective services launched a project to improve communication between both agencies, the local district attorney's office implemented training and education on elder issues, and the local sheriff's department launched a volunteer program in its elder abuse unit to better detect and investigate financial fraud cases. The review team also established an interdisciplinary team of adult protective services staff and medical staff to provide intensive case management services, which has resulted in a 49 to 69 percent reduction in emergency room visits for participating elders.⁷²

Soon after its inception, an elder fatality review team in Ingham County, Michigan, including police, prosecutors, adult protective services, the medical examiner, and emergency personnel, identified elder abuse in a death that law enforcement had deemed ordinary: through this multidisciplinary approach, the team determined that the elder's state caregiver had administered a lethal dose of morphine. These findings facilitated the prosecution and conviction of the perpetrator.⁷³

American Bar Association's Elder Abuse Fatality Review Team Manual

In 2001, the federal Department of Justice commissioned the American Bar Association Commission on Law and Aging (ABA-COLA) to identify promising practices in the development of elder abuse

⁶³ FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, *Faces of Fatality, Vol. VII: Report of the Attorney General's Statewide Domestic Violence Fatality Review Team* (June 2017), p. 21, available at: http://fcadv.org/sites/default/files/face_fatality_vii.pdf (last visited Jan. 17, 2020).

⁶⁴ FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, *Faces of Fatality, Vol. VI: Report of the Attorney General's Statewide Domestic Violence Fatality Review Team* (June 2016), pp. 6-8, available at: <http://fcadv.org/sites/default/files/FACES%20OF%20FATALITY%20VI.pdf> (last visited Jan. 17, 2020).

⁶⁵ Id.

⁶⁶ *Supra* note 63.

⁶⁷ NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION, *The State of Elder Fatality Reviews in the U.S.* (Webinar), available at: <http://www.napsa-now.org/wp-content/uploads/2017/03/03142017-EFRT-Webinar.pdf> (last visited on Jan. 17, 2020).

⁶⁸ THE NATIONAL LONG-TERM CARE OMBUDSMAN RESOURCE CENTER, *Long-Term Care Ombudsman Activities Regarding Abuse, Neglect and Exploitation*, May 10, 2011, available at: <http://ltcombudsman.org/uploads/files/issues/Chart-Summary-SLTCO-FINAL-May-10.pdf> (last visited Jan. 17, 2020).

⁶⁹ SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE, *County of Sacramento Elder Death Review Team 2012 Report*, p. 5, available at: http://www.sacda.org/files/7414/2671/1371/2012_EDRT_Annual_Report.pdf (last visited Jan. 17, 2020).

⁷⁰ SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE, *County of Sacramento Elder Death Review Team 2008 Report*, p. 5, available at: http://www.sacda.org/files/5514/2671/1055/2008_EDRT_Report_Final.pdf (last visited Jan. 17, 2020).

⁷¹ SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE, *County of Sacramento Elder Death Review Team 2015 Report*, p. 2-3, available at http://www.sacda.org/files/9914/2671/1266/EDRT_2015_Report_FINAL.pdf (last visited Jan. 17, 2020).

⁷² *Supra* note 70.

⁷³ Chisun Lee, A.C. Thompson, and Carl Byker, *Gone Without a Case: Suspicious Elder Deaths Rarely Investigated*, FRONTLINE PBS, <https://www.pbs.org/wgbh/frontline/article/gone-without-a-case-suspicious-elder-deaths-rarely-investigated/> (last visited Jan. 17, 2020).

fatality review teams. The ABA-COLA studied pilot programs from 8 local and state jurisdictions.⁷⁴ The ABA-COLA then created a replication manual based on these 8 programs.⁷⁵

The manual cites important factors for a successful review team: subject matter expertise and influence of membership, access to relevant records, confidentiality of review team meetings and records, and purpose and structure for the review process.

Pilot programs were generally to:

- Improve the systems that caused, contributed to, or failed to prevent the death, and thereby ensure that services are provided to elder abuse victims to help to prevent similar deaths in the future; or
- Determine whether law enforcement investigation and prosecution of alleged perpetrators is appropriate, and supporting those efforts.

The manual recommends that review teams include representatives from agencies or organizations that can provide insight into the systems and issues affecting elders, elder abuse, and elder fatalities, such as Adult Protective Services, the Attorney General's Office, elder lawyers, forensic pathologists, medical examiners, geriatricians, health providers, or victim assistance programs.

On the premise that lack of awareness may lead investigators and other professionals to miss signs of abuse and neglect in cases where abuse truly is present, the manual recommends broadening the scope of eligible cases to include fatalities where a history of elder abuse existed or elder abuse was suspected to be a contributing factor, even if not verified to be the cause of death.

The pilot programs studied by the ABA generally required legislative authorization to access the otherwise confidential records that were necessary for effective review of their cases. Similarly, confidentiality of review meetings and records allowed for open communication and rapport between members.

On October 20, 2017, the Department of Justice announced more than \$3.42 million in funding to respond to elder abuse and victims of financial crimes, which included funding to the ABA-COLA to enhance and evaluate elder abuse fatality review teams.⁷⁶

Florida's Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.⁷⁷ The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁷⁸ The public also has a right to notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.⁷⁹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record.⁸⁰ The Sunshine Law

⁷⁴ Houston, Texas; Maine; Orange County, California; Pima County, Arizona; Pulaski County, Arkansas; Sacramento, California; San Diego, California; and San Francisco, California. Lori A. Stiegel, J.D., *Elder Abuse Fatality Review Teams: A Replication Manual*, AMERICAN BAR ASSOCIATION COMMISSION ON LAW & AGING, available at:

https://www.americanbar.org/content/dam/aba/administrative/law_aging/fatalitymanual.authcheckdam.pdf (last visited Jan. 17, 2020).

⁷⁵ *Id.*

⁷⁶ Press Release, DEPARTMENT OF JUSTICE, *Justice Department Invests \$3.42 Million in Fight Against Elder Abuse and Financial Exploitation* (Oct. 20, 2017), available at: <https://www.justice.gov/opa/pr/justice-department-invests-342-million-fight-against-elder-abuse-and-financial-exploitation> (last visited Jan. 17, 2020).

⁷⁷ FLA. CONST., art. I, s. 24.

⁷⁸ FLA. CONST., art. I, s. 24(a).

⁷⁹ FLA. CONST., art. I, s. 24(b).

⁸⁰ Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(2), F.S. defines

requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.⁸¹

The Legislature may create an exemption to public records or open meetings requirements if there is a specifically stated public necessity justifying the exemption and it is narrowly tailored to accomplish the stated purpose of the law.⁸²

Confidentiality of Reports and Records concerning Vulnerable Adults

Current law protects all records concerning reports of abuse, neglect, or exploitation of a vulnerable adult,⁸³ including reports made to the central abuse hotline,⁸⁴ and all records generated as a result of those reports are confidential and exempt⁸⁵ from public record requirements.⁸⁶ Access⁸⁷ to these records is granted only to the following entities in specified circumstances:

- DCF, AHCA, DOEA, and Agency for Persons with Disabilities employees or agents with certain 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 who 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.⁸⁸

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 responsible for protective services, the central abuse hotline, or the appropriate state attorney or law enforcement agency.⁸⁹

Effect of the Bill:

"agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public under s. 11.0431, F.S.

⁸¹ S. 286.011(1)-(2), F.S.

⁸² FLA. CONST., art. I, s. 24(c).

⁸³ *Supra* note 17.

⁸⁴ *Supra* note 23.

⁸⁵ 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).

⁸⁶ S. 415.07, F.S.

⁸⁷ 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.

⁸⁸ S. 415.07(3), F.S.

⁸⁹ S. 415.07(6), F.S.

HB 253 creates s. 415.1103, F.S., authorizing the creation of a multidisciplinary, multiagency elder abuse fatality review team (EA-FRT) in each judicial circuit to review elderly persons' deaths alleged or found to have been caused by, or related to, abuse or neglect. The teams are housed in the Department of Elder Affairs (DOEA) for administrative purposes only.

Membership and Organization

An EA-FRT may include, but is not limited to, representatives from public and private entities that study, treat, investigate, or prevent elder abuse, including but not limited to law enforcement agencies, health and social services agencies, healthcare practitioners, and nonprofit organizations.⁹⁰ Participation in an EA-FRT is voluntary and members serve without compensation or reimbursement for per diem or travel expenses. Members or the entities whom they represent bear the administrative costs of operating the EA-FRT.

The state attorney or his or her designee may initiate establishment of an EA-FRT in his or her judicial circuit and may call the first organizational meeting of the team. At an initial EA-FRT meeting, members choose two members to serve as co-chairs and may reelect them by a majority vote for up to two consecutive terms. Members serve for two-year terms, to be staggered as determined by the chairs.

After its initial meeting, EA-FRTs determine their local operations, including the process for case selection and meeting schedule; however, EA-FRTs must limit their review to closed cases and meet at least once in each fiscal year.

The bill allows EA-FRTs already operating before July 1, 2020, to continue operating as long as they comply with the requirements established under the bill.

Review Process

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.

In its review, an EA-FRT must identify any gaps, deficiencies, or problems in the delivery of services that related to the fatal incident. Whenever possible, an EA-FRT should develop a communitywide approach to address these causes and contributing factors identified in its review. Lastly, an EA-FRT must recommend changes in law, rules, and policies to support the care of elderly persons and prevent elder abuse deaths.

Records

An EA-FRT may access information that is publicly available from the state attorney's office or voluntarily provided by a victim's family or any other person. Any identifying information concerning the victim must be redacted before the records are received for review by an EA-FRT. The bill also requires an EA-FRT to inform any person who voluntarily provides information or records that such information or records are subject to public disclosure unless a public records exemption applies. The bill authorizes an EA-FRT to share information with other EA-FRTs.

Annual Reports

Each EA-FRT must prepare an annual report which includes, but is not limited to:

⁹⁰ Specifically: law enforcement agencies; the state attorney; the medical examiner; a county court judge; Adult Protective Services; the Aging and Disability Resource Center; 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/or 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.

- Descriptive statistics of cases reviewed, including demographic information of the victims and the causes and nature of deaths;
- Current policies, procedures, rules, or statutes that the review team identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system improvements and needed resources, training, or information dissemination to address those identified issues; and
- Any other recommendations to prevent deaths from elder abuse or neglect based on an analysis of the data and information presented in the report.

Each EA-FRT must submit this report to DOEA by September 1 each year. DOEA will summarize all of these reports into one final report and submit it to the Governor, the President of the Senate, the Speaker of the House of Representatives, and DCF by November 1 each year.

Immunity

The bill provides EA-FRT members with immunity from monetary liability and prohibits a cause of action against them for matters that were in the performance of their duties as an EA-FRT member, such as any discussions by, or deliberations or recommendations of the team or the member. However, this immunity will not apply if the member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.

B. SECTION DIRECTORY:

Section 1: Creates s. 415.1103, F.S., relating to elder abuse fatality review teams.

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The bill creates an indeterminate negative fiscal impact on agencies and organizations that participate in an EA-FRT. However, such participation is voluntary.

The bill creates an indeterminate, but likely insignificant, negative fiscal impact on the Department of Elder Affairs (DOEA). To the extent that any EA-FRTs are established, DOEA is required to submit an annual report to the Governor, Legislature, and DCF summarizing the reports from all of the teams.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not require rulemaking to implement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires reviews conducted by an EA-FRT be limited to closed cases in which an elderly person's death is found to have been caused by, or related to, abuse or neglect. The bill then requires identifying information found in those cases be redacted prior to the EA-FRT's review. The bill does not define the term "closed cases," however presuming those cases contain only publicly available information it might be redundant to require the redaction of records already in the public domain.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 7, 2019, the Children, Families and Seniors Subcommittee adopted an amendment that allows Elder Abuse Fatality Review Teams in existence on July 1, 2020, to continue to exist.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Children, Families and Seniors Subcommittee.

1 A bill to be entitled
2 An act relating to elder abuse fatality review teams;
3 creating s. 415.1103, F.S.; authorizing the
4 establishment of elder abuse fatality review teams in
5 each judicial circuit, to be housed, for
6 administrative purposes only, in the Department of
7 Elderly Affairs; providing conditions for review team
8 membership, establishment, and organization;
9 specifying requirements for a review team's operations
10 and meeting schedules; requiring that the
11 administrative costs of operating a review team be
12 paid by team members or the entities they represent;
13 authorizing elder abuse fatality review teams in
14 existence on a certain date to continue to exist;
15 requiring such existing teams to comply with specified
16 requirements; specifying review team duties; requiring
17 each review team to annually submit to the department
18 a summary report containing specified information by a
19 certain date; requiring the department to annually
20 prepare a summary report based on the review teams'
21 information and submit such report to the Governor,
22 the Legislature, and the Department of Children and
23 Families; providing immunity from monetary liability
24 for review team members under certain conditions;
25 providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 415.1103, Florida Statutes, is created to read:

415.1103 Elder abuse fatality review teams.—

(1) (a) An elder abuse fatality review team may be established in each judicial circuit to review deaths of elderly persons found to have been caused by, or related to, abuse or neglect. The review teams shall be housed, for administrative purposes only, in the Department of Elderly Affairs.

(b) An elder abuse fatality review team may include, but is not limited to, representatives from any of the following entities or persons located in the review team's judicial circuit:

1. Law enforcement agencies.
2. The state attorney.
3. The medical examiner.
4. A county court judge.
5. Adult protective services.
6. The area agency on aging.
7. The State Long-Term Care Ombudsman Program.
8. The Agency for Health Care Administration.
9. The Office of the Attorney General.
10. The Office of the State Courts Administrator.

- 51 11. The clerk of the court.
- 52 12. A victim services program.
- 53 13. An elder law attorney.
- 54 14. Emergency services personnel.
- 55 15. A certified domestic violence center.
- 56 16. An advocacy organization for victims of sexual
 57 violence.
- 58 17. A funeral home director.
- 59 18. A forensic pathologist.
- 60 19. A geriatrician.
- 61 20. A geriatric nurse.
- 62 21. A geriatric psychiatrist or other individual licensed
 63 to offer behavioral health services.
- 64 22. A hospital discharge planner.
- 65 23. A public guardian.
- 66 24. Any other persons who have knowledge regarding fatal
 67 incidents of elder abuse, domestic violence, or sexual violence,
 68 including knowledge of research, policy, law, and other matters
 69 connected with such incidents involving elders, or who are
 70 recommended for inclusion by the review team.
- 71 (c) A state attorney, or his or her designee, may initiate
 72 the establishment of a review team in his or her judicial
 73 circuit and may call the first organizational meeting of the
 74 team. At the initial meeting, members of a review team shall
 75 choose two members to serve as co-chairs and shall establish a

76 | schedule for future meetings.

77 | (d) Participation in a review team is voluntary. Members
78 | of a review team shall serve without compensation and may not be
79 | reimbursed for per diem or travel expenses.

80 | (e) Members shall serve for terms of 2 years, to be
81 | staggered as determined by the co-chairs. Chairs may be
82 | reelected by a majority vote of a review team for not more than
83 | two consecutive terms.

84 | (f) Each review team shall determine its local operations,
85 | including, but not limited to, the process for case selection.
86 | Reviews must be limited to closed cases in which an elderly
87 | person's death is found to have been caused by, or related to,
88 | abuse or neglect. All identifying information concerning the
89 | person must be redacted in documents received for review. Each
90 | review team shall meet at least once each fiscal year.

91 | (g) Administrative costs of operating the review team must
92 | be borne by the team members or entities that they represent.

93 | (2) An elder abuse fatality review team in existence on
94 | July 1, 2020, may continue to exist and must comply with the
95 | requirements of this section.

96 | (3) An elder abuse fatality review team shall do all of
97 | the following:

98 | (a) Review deaths of elderly persons in its judicial
99 | circuit which are found to have been caused by, or related to,
100 | abuse or neglect.

101 (b) Take into consideration the events leading up to a
102 fatal incident, available community resources, current law and
103 policies, and the actions taken by systems or individuals
104 related to the fatal incident.

105 (c) Identify potential gaps, deficiencies, or problems in
106 the delivery of services to elderly persons by public and
107 private agencies which may be related to deaths reviewed by the
108 team.

109 (d) Whenever possible, develop communitywide approaches to
110 address the causes of, and contributing factors to, deaths
111 reviewed by the team.

112 (e) Develop recommendations and potential changes in law,
113 rules, and policies to support the care of elderly persons and
114 to prevent elder abuse deaths.

115 (4) (a) A review team may share with other review teams in
116 this state any relevant information that pertains to the review
117 of the death of an elderly person.

118 (b) A review team member may not contact, interview, or
119 obtain information by request directly from a member of the
120 deceased elder's family as part of the review unless a team
121 member is authorized to do so in the course of his or her
122 employment duties. A member of the deceased elder's family may
123 voluntarily provide information or any record to a review team
124 but must be informed that such information or any record is
125 subject to public disclosure unless a public records exemption

126 applies.

127 (5) (a) Annually by September 1, each elder abuse fatality
128 review team shall submit a summary report to the Department of
129 Elderly Affairs which includes, but is not limited to:

130 1. Descriptive statistics regarding cases reviewed by the
131 team, including demographic information on victims and the
132 causes and nature of their deaths;

133 2. Current policies, procedures, rules, or statutes the
134 review team has identified as contributing to the incidence of
135 elder abuse and elder deaths, and recommendations for system
136 improvements and needed resources, training, or information
137 dissemination to address such identified issues; and

138 3. Any other recommendations to prevent deaths from elder
139 abuse or neglect, based on an analysis of the data and
140 information presented in the report.

141 (b) Annually by November 1, the Department of Elderly
142 Affairs shall prepare a summary report of the review team
143 information submitted under paragraph (a). The department shall
144 submit its summary report to the Governor, the President of the
145 Senate, the Speaker of the House of Representatives, and the
146 Department of Children and Families.

147 (6) There is no monetary liability on the part of, and a
148 cause of action for damages may not arise against, any member of
149 an elder abuse fatality review team due to the performance of
150 his or her duties as a review team member in regard to any

151 | discussions by, or deliberations or recommendations of, the team
152 | or the member unless such member acted in bad faith, with wanton
153 | and willful disregard of human rights, safety, or property.

154 | Section 2. This act shall take effect July 1, 2020.