

CHAPTER 98-182

House Bill No. 4167

An act relating to adult abuse, neglect, and exploitation; amending ss. 415.102 and 415.1102, F.S.; deleting references to self-neglect from provisions relating to adult protective services cases and reports; defining “disabled adult in need of services” and “elderly person in need of services”; amending s. 415.1045, F.S.; providing for determinations in onsite protective investigations that certain persons are persons in need of services; amending s. 415.105, F.S.; providing for referral of such persons to programs of the Department of Elderly Affairs; amending s. 415.1055, F.S.; providing that no classification or notification is required for reports resulting in such determinations; amending s. 415.1065, F.S.; providing for retention and expunction of records of such reports; amending s. 430.205, F.S.; revising circumstances under which certain elderly persons must receive primary consideration for community-care-for-the-elderly services; defining “primary consideration”; providing for a review and follow-up study by the office of Program Policy Analysis and Government Accountability; providing for reports to the Legislature; amending s. 415.107, F.S.; authorizing the Department of Children and Family Services to provide the identity of a person reporting adult abuse, neglect, or exploitation to a law enforcement agency; amending s. 415.111, F.S.; providing for investigation by local law enforcement agencies of possible false reports; providing for law enforcement entities to handle certain reports of abuse, neglect, or exploitation during the pendency of such an investigation; providing procedures; providing for law enforcement agencies to refer certain reports to the state attorney for prosecution; specifying the penalty for knowingly and willfully making or advising another to make a false report; providing for the Department of Children and Family Services to report annually to the Legislature the number of reports referred to law enforcement agencies for investigation of possible false reports; providing for state attorneys to report annually to the Legislature the number of complaints that have resulted in informations or indictments; amending s. 415.1113, F.S.; increasing the maximum amount of the administrative fine that may be imposed for knowingly and willfully making or counseling another to make a false report; providing an effective date.

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

Section 1. Subsection (5) of section 415.102, Florida Statutes, is amended, subsection (11) is redesignated as subsection (12), present subsections (12) through (35) are redesignated as subsections (14) through (37), respectively, and new subsections (11) and (13) are added to that section, to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(5) “Closed without classification” means the closure of a report in which an adult protective investigator determines that:

(a) Some evidence exists that abuse, neglect, or exploitation has occurred, but a preponderance of evidence cannot be established; or

(b) A preponderance of the evidence exists that abuse, neglect, or exploitation has occurred, but no perpetrator can be identified; ~~or~~

~~(c) Self-neglect is the sole cause of the neglect.~~

(11) “Disabled adult in need of services” means a disabled adult who has been determined by an adult protective services investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

(13) “Elderly person in need of services” means an elderly person who has been determined by an adult protective services investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

Section 2. Paragraphs (b) through (f) of subsection (2) of section 415.1045, Florida Statutes, are redesignated as paragraphs (c) through (g), respectively, and a new paragraph (b) is added to said subsection to read:

415.1045 Protective investigations; onsite investigations; photographs, videotapes, and medical examinations; abrogation of privileged communications; confidential records and documents; classification or closure of records.—

(2) ONSITE INVESTIGATIONS.—For each report it receives, the department shall perform an onsite investigation to:

(b) Determine whether the person is a disabled adult in need of services or an elderly person in need of services, as defined in s. 415.102.

Section 3. Subsection (1) of section 415.105, Florida Statutes, is amended to read:

415.105 Provision of protective services with consent; withdrawal of consent.—

(1) PROTECTIVE SERVICES WITH CONSENT.—If the department determines through its investigation that a disabled adult or an elderly person demonstrates a need for protective services or protective supervision, the department shall immediately provide, or arrange for the provision of, protective services or protective supervision, including in-home services, provided that the disabled adult or elderly person consents. A disabled person in need of services as defined in s. 415.102 shall be referred to the community care for disabled adults program. An elderly person in need of services as defined in s. 415.102 shall be referred to the community care for the elderly program administered by the Department of Elderly Affairs.

Section 4. Paragraph (d) of subsection (2) of section 415.1055, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to said section to read:

415.1055 Notification to administrative entities, subjects, and reporters; notification to law enforcement and state attorneys.—

(2) NOTIFICATION TO OTHER PERSONS.—

(d) In the case of a report that has been determined by an adult protective services investigator to be either a disabled adult in need of services or an elderly person in need of services, as defined in s. 415.102, no classification of the report shall be made and no notification shall be required.

Section 5. Subsections (6), (7), and (8) of section 415.1065, Florida Statutes, are renumbered as subsections (7), (8), and (9), respectively, and a new subsection (6) is added to said section, to read:

415.1065 Records management.—All records must be maintained in their entirety for their full retention period, except as otherwise provided in this section:

(6) RECORDS OF REPORTS CLOSED AS DISABLED ADULT IN NEED OF SERVICES OR ELDERLY PERSON IN NEED OF SERVICES.—The department may retain the records of reports determined to be a disabled adult in need of services or an elderly person in need of services for up to 1 year for purposes of facilitating the provision of services, program performance reporting, and research and statistical analysis. After 1 year the record must be expunged in its entirety.

Section 6. Paragraph (c) of subsection (2) of section 415.1102, Florida Statutes, is amended to read:

415.1102 Adult protection teams; services; eligible cases.—Subject to an appropriation, the department may develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of the districts of the department. Such teams may be composed of, but need not be limited to, representatives of appropriate health, mental health, social service, legal service, and law enforcement agencies.

(2) The adult abuse, neglect, or exploitation cases that are appropriate for referral by the adult protective services program to adult protection teams for supportive services include, but are not limited to, cases involving:

(c) Reported medical, physical, or emotional neglect, ~~either self or second party,~~ of a disabled adult or an elderly person.

Section 7. Subsection (5) of section 430.205, Florida Statutes, is amended to read:

430.205 Community care service system.—

(5) Any person who has been classified as a functionally impaired elderly person is eligible to receive community-care-for-the-elderly core services.

~~Those elderly persons who are determined by adult protective services to be elderly persons in need of services, pursuant to s. 415.1045(2)(b), or to be the functional assessment to be at risk of institutionalization and victims of abuse, neglect, or exploitation who are in need of immediate services to prevent further harm and are referred by adult protective services, shall be given primary consideration for receiving community-care-for-the-elderly services. As used in this subsection, "primary consideration" means that an assessment and services must commence within 72 hours after referral to the department or as established in accordance with department contracts by local protocols developed between department service providers and adult protective services.~~

Section 8. The Office of Program Policy Analysis and Government Accountability shall conduct a review and follow-up study of the process by which the Department of Children and Family Services elder victims of abuse, neglect, or exploitation are referred to the Department of Elderly Affairs for community services. The study shall also examine the process used by the Department of Elderly Affairs to establish service priorities for and provides service to these persons. The Office of Program Policy Analysis and Government Accountability shall submit a report of the review to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 1998 and a report of the follow-up study no later than December 31, 2000.

Section 9. Subsection (6) of section 415.107, Florida Statutes, is amended to read:

415.107 Confidentiality of reports and records.—

(6) The identity of any person reporting adult abuse, neglect, or exploitation may not be released, without that person's written consent, to any person other than employees of the department responsible for adult protective services, the central abuse registry and tracking system, or the appropriate state attorney or law enforcement agency. This subsection grants protection only for the person who reported the adult abuse, neglect, or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting adult abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect a disabled adult or an elderly person who is the subject of a report, if the fact that the person made the report is not disclosed.

Section 10. Present subsections (4) and (5) of section 415.111, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and amended, and a new subsection (4) is added to that section, to read:

415.111 Criminal penalties.—

(4) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the reports to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report

as defined in s. 415.102. During the pendency of the investigation by the local law enforcement agency, the local law enforcement agency must respond to all subsequent reports concerning the same disabled adult or elderly person in accordance with s. 415.104 or s. 415.1045. If the law enforcement agency believes that there are indicators of abuse, neglect, or exploitation, it must immediately notify the department, which must assure the safety of the disabled adult or elderly person. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(5)(4) A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a disabled adult or an elderly person, or a person who advises another to make a false report, commits a felony of the third misdemeanor ~~of the second degree~~, punishable as provided in s. 775.082 or s. 775.083.

(a) The department shall establish procedures for determining whether a false report of abuse, neglect, or exploitation of a disabled adult or an elderly person has been made and for submitting all identifying information relating to such a false report to the local law enforcement agency as provided in this subsection and shall report annually to the Legislature the number of reports referred state attorney for prosecution.

(b) Anyone making a report who is acting in good faith is immune from any liability under this subsection.

(6)(5) Each state attorney shall establish and publish procedures to facilitate the prosecution of persons under this section and shall report to the Legislature annually the number of complaints that have resulted in the filing of an information or indictment under this section.

Section 11. Subsection (1) of section 415.1113, Florida Statutes, is amended to read:

415.1113 Administrative fines for false report of abuse, neglect, or exploitation of a disabled adult or an elderly person.—

(1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 ~~\$1,000~~ for each violation, upon a person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a disabled adult or an elderly person, or a person who counsels another to make a false report.

Section 12. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 23, 1998.

Filed in Office Secretary of State May 22, 1998.