

CHAPTER 415

ADULT PROTECTIVE SERVICES

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- 415.101 Adult Protective Services Act; legislative intent.—**
- (1) Sections 415.101-415.113 may be cited as the "Adult Protective Services Act."
- (2) The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all disabled adults or elderly persons in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of disabled adults or elderly persons. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive involvement of families in the care and protection of disabled adults or elderly persons.
- History.**—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 61, ch. 85-81; s. 27, ch. 86-220; s. 93, ch. 95-418.
- 415.102 Definitions of terms used in ss. 415.101-415.113.**—As used in ss. 415.101-415.113, the term:
- (1) "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.
- (2) "Alleged perpetrator" means a person who has been named by a reporter as the person responsible for abusing, neglecting, or exploiting a vulnerable adult.
- (3) "Capacity to consent" means that a vulnerable adult has sufficient understanding to make and communicate responsible decisions regarding the vulnerable adult's person or property, including whether or not to accept protective services offered by the department.
- (4) "Caregiver" means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. "Caregiver" includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (8). For the purpose of departmental investigative jurisdiction, the term "caregiver" does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.
- (5) "Deception" means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable adult.
- (6) "Department" means the Department of Children and Family Services.
- (7)(a) "Exploitation" means a person who:
1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intim-

idation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) "Exploitation" may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;

2. Unauthorized taking of personal assets;

3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or

4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

(8) "Facility" means any location providing day or residential care or treatment for vulnerable adults. The term "facility" may include, but is not limited to, any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under chapter 393, adult day training center, or mental health treatment center.

(9) "False report" means a report of abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline which is not true and is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a vulnerable adult; or

(d) Personal benefit for the reporting person in any other private dispute involving a vulnerable adult.

The term "false report" does not include a report of abuse, neglect, or exploitation of a vulnerable adult which is made in good faith to the central abuse hotline.

(10) "Fiduciary relationship" means a relationship based upon the trust and confidence of the vulnerable adult in the caregiver, relative, household member, or other person entrusted with the use or management of the property or assets of the vulnerable adult. The relationship exists where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the vulnerable adult. For the purposes of this part, a fiduciary relationship may be formed by an informal agreement between the vulnerable adult and the other person and does not require a formal declaration or court order for its existence. A fiduciary relationship includes, but is not limited to, court-appointed or voluntary guardians, trustees, attorneys, or conservators of a vulnerable adult's assets or property.

(11) "Guardian" means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 744; or a health care surrogate expressly designated as provided in chapter 765.

(12) "In-home services" means the provision of nursing, personal care, supervision, or other services to vulnerable adults in their own homes.

(13) "Intimidation" means the communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

(14) "Lacks capacity to consent" means a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services.

(15) "Neglect" means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

(16) "Obtains or uses" means any manner of:

(a) Taking or exercising control over property;

(b) Making any use, disposition, or transfer of property;

(c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or

(d)1. Conduct otherwise known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or

2. Other conduct similar in nature.

(17) "Position of trust and confidence" with respect to a vulnerable adult means the position of a person who:

(a) Is a parent, spouse, adult child, or other relative by blood or marriage;

(b) Is a joint tenant or tenant in common;

(c) Has a legal or fiduciary relationship, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(d) Is a caregiver or any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult's funds, assets, or property.

(18) "Protective investigation" means acceptance of a report from the central abuse hotline alleging abuse, neglect, or exploitation as defined in this section; investigation of the report; determination as to whether

action by the court is warranted; and referral of the vulnerable adult to another public or private agency when appropriate.

(19) "Protective investigator" means an authorized agent of the department who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults.

(20) "Protective services" means services to protect a vulnerable adult from further occurrences of abuse, neglect, or exploitation. Such services may include, but are not limited to, protective supervision, placement, and in-home and community-based services.

(21) "Protective supervision" means those services arranged for or implemented by the department to protect vulnerable adults from further occurrences of abuse, neglect, or exploitation.

(22) "Psychological injury" means an injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable adult's ability to function within that person's customary range of performance and that person's behavior.

(23) "Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, videotapes, or other material, regardless of physical form or characteristics, made or received pursuant to a protective investigation.

(24) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(25) "Victim" means any vulnerable adult named in a report of abuse, neglect, or exploitation.

(26) "Vulnerable adult" means 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, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.

(27) "Vulnerable adult in need of services" means a vulnerable adult who has been determined by a protective 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.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 28, ch. 86-220; s. 29, ch. 87-238; s. 26, ch. 89-294; s. 1, ch. 90-50; s. 44, ch. 90-306; s. 1, ch. 91-57; s. 35, ch. 95-210; s. 94, ch. 95-418; s. 9, ch. 97-98; s. 127, ch. 97-101; s. 41, ch. 97-264; s. 1, ch. 98-182; s. 68, ch. 2000-153; s. 26, ch. 2000-349; s. 4, ch. 2003-57; s. 1, ch. 2006-131; s. 57, ch. 2006-227.

415.103 Central abuse hotline.—

(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to s. 415.1034 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report

known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department's designated protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the department's designated protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

(3) The department shall set standards, priorities, and policies to maximize the efficiency and effectiveness of the central abuse hotline.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 67, ch. 86-163; s. 29, ch. 86-220; s. 30, ch. 87-238; s. 16, ch. 88-337; s. 27, ch. 89-294; s. 2, ch. 90-50; s. 45, ch. 90-306; s. 2, ch. 91-57; s. 14, ch. 91-71; s. 36, ch. 95-210; s. 95, ch. 95-418; s. 27, ch. 2000-349.

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council member or long-term care ombudsman council member; or

8. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.

2. Names, addresses, and telephone numbers of the victim's family members.

3. Name, address, and telephone number of each alleged perpetrator.

4. Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.

5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.

6. Description of the physical or psychological injuries sustained.

7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.

8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

(2) MANDATORY REPORTS OF DEATH.—Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report the findings of the

investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

History.—s. 96, ch. 95-418; s. 10, ch. 97-98; s. 42, ch. 97-264; s. 256, ch. 98-166; s. 21, ch. 2000-263; s. 2, ch. 2000-318; s. 28, ch. 2000-349.

415.1035 Facility's duty to inform residents of their right to report abusive, neglectful, or exploitive practices.—The department shall work cooperatively with the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Elderly Affairs to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitive practices. Each facility must establish appropriate policies and procedures to facilitate such reporting.

History.—s. 97, ch. 95-418; s. 29, ch. 2000-349; s. 58, ch. 2006-227.

415.1036 Immunity.—

(1) Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult. Further, a resident or employee of a facility that serves vulnerable adults may not be subjected to reprisal or discharge because of the resident's or employee's actions in reporting abuse, neglect, or exploitation pursuant to s. 415.1034.

(2) Any person who makes a report under s. 415.1034 has a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of the reporting party's making the report. Any detrimental change made in the residency or employment status of such a person, such as, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations, within 120 days after the report is made establishes a rebuttable presumption that the detrimental action was retaliatory.

History.—s. 98, ch. 95-418; s. 30, ch. 2000-349.

415.104 Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.—

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a sec-

ond party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or long-term care ombudsman council, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or long-term care ombudsman council may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

(2) Upon commencing an investigation, the protective investigator shall inform all of the vulnerable adults and alleged perpetrators named in the report of the following:

- (a) The names of the investigators and identifying credentials from the department.
- (b) The purpose of the investigation.
- (c) That the victim, the victim's guardian, the victim's caregiver, and the alleged perpetrator, and legal counsel for any of those persons, have a right to a copy of the report at the conclusion of the investigation.
- (d) The name and telephone number of the protective investigator's supervisor available to answer questions.
- (e) That each person has the right to obtain his or her own attorney.

Any person being interviewed by a protective investigator may be represented by an attorney, at the person's own expense, or may choose to have another person present. The other person present may not be an alleged perpetrator in any report currently under investigation. Before participating in such interview, the other person present shall execute an agreement to comply with the confidentiality requirements of ss. 415.101-415.113. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In an investigative interview with a vulnerable adult, the protective investigator may conduct the interview with no other person present.

(3) For each report it receives, the department shall perform an onsite investigation to:

- (a) Determine that the person is a vulnerable adult as defined in s. 415.102.
- (b) Determine whether the person is a vulnerable adult in need of services, as defined in s. 415.102.
- (c) Determine the composition of the family or household, including the name, address, date of birth, social security number, sex, and race of each person in the household.
- (d) Determine whether there is an indication that a vulnerable adult is abused, neglected, or exploited.

(e) Determine the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof.

(f) Determine, if possible, the person or persons apparently responsible for the abuse, neglect, or exploitation, including name, address, date of birth, social security number, sex, and race.

(g) Determine the immediate and long-term risk to each vulnerable adult through utilization of standardized risk assessment instruments.

(h) Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the vulnerable adult's well-being and cause the delivery of those services.

(4) No later than 60 days after receiving the initial report, the designated protective investigative staff of the department shall complete the investigation and notify the guardian of the vulnerable adult, the vulnerable adult, and the caregiver of any recommendations of services to be provided to ameliorate the causes or effects of abuse, neglect, or exploitation.

(5) Whenever the law enforcement agency and the department have conducted independent investigations, the law enforcement agency shall, within 5 working days after concluding its investigation, report its findings to the state attorney and to the department.

(6) Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity has committed an act of abuse, neglect, or exploitation, the department shall commence, or cause to be commenced, a protective investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(7) With respect to any case of reported abuse, neglect, or exploitation of a vulnerable adult, the department, when appropriate, shall transmit all relevant reports to the state attorney of the circuit where the incident occurred.

(8) Within 15 days after completion of the state attorney's investigation of a case reported to him or her pursuant to this section, the state attorney shall report his or her findings to the department and shall include a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(9) The department shall not use a warning, reprimand, or disciplinary action against an employee, found in that employee's personnel records, as the sole basis for a finding of abuse, neglect, or exploitation.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 5, ch. 84-226; s. 2, ch. 85-143; s. 30, ch. 86-220; s. 31, ch. 87-238; s. 17, ch. 88-337; s. 28, ch. 89-294; s. 3, ch. 90-50; s. 46, ch. 90-306; s. 3, ch. 91-57; s. 64, ch. 97-103; s. 200, ch. 99-8; s. 22, ch. 2000-263; s. 31, ch. 2000-349.

415.1045 Photographs, videotapes, and medical examinations; abrogation of privileged communications; confidential records and documents.—

(1) PHOTOGRAPHS AND VIDEOTAPES.—

(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, may take or cause to be taken photographs and videotapes of the vulnerable adult, and of his or her environment, which are relevant to the investigation. All photographs and

videotapes taken during the course of the protective investigation are confidential and exempt from public disclosure as provided in s. 415.107.

(b) Any photographs or videotapes made pursuant to this subsection, or copies thereof, must be sent to the department as soon as possible.

(2) MEDICAL EXAMINATIONS.—

(a) With the consent of the vulnerable adult who has the capacity to consent or the vulnerable adult's guardian, or pursuant to s. 415.1051, the department may cause the vulnerable adult to be referred to a licensed physician or any emergency department in a hospital or health care facility for medical examination, diagnosis, or treatment if any of the following circumstances exist:

1. The areas of trauma visible on the vulnerable adult indicate a need for medical examination;

2. The vulnerable adult verbally complains or otherwise exhibits signs or symptoms indicating a need for medical attention as a consequence of suspected abuse, neglect, or exploitation; or

3. The vulnerable adult is alleged to have been sexually abused.

(b) Upon admission to a hospital or health care facility, with the consent of the vulnerable adult who has capacity to consent or that person's guardian, or pursuant to s. 415.1051, the medical staff of the facility may examine, diagnose, or treat the vulnerable adult. If a person who has legal authority to give consent for the provision of medical treatment to a vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the medical condition or to stabilize the patient pending a determination by the court of the department's petition authorizing protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(c) Medical examination, diagnosis, and treatment provided under this subsection must be paid for by third-party reimbursement, if available, or by the vulnerable adult, if he or she is able to pay; or, if he or she is unable to pay, the department shall pay the costs within available emergency services funds.

(d) Reports of examination, diagnosis, and treatment made under this subsection, or copies thereof, must be sent to the department as soon as possible.

(e) This subsection does not obligate the department to pay for any treatment other than that necessary to alleviate the immediate presenting problems.

(3) ABROGATION OF PRIVILEGED COMMUNICATIONS.—The privileged quality of communication between husband and wife and between any professional and the professional's patient or client, and any other privileged communication except that between attorney and client or clergy and person, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, does not apply to any situation involving known or suspected abuse, neglect, or exploitation of a vulnerable adult and does not constitute grounds for failure to

report as required by s. 415.1034, for failure to cooperate with law enforcement or the department in its activities under ss. 415.101-415.113, or for failure to give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

(4) MEDICAL, SOCIAL, OR FINANCIAL RECORDS OR DOCUMENTS.—

(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, must have access to, inspect, and copy all medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility which are relevant to the allegations under investigation, unless specifically prohibited by the vulnerable adult who has capacity to consent.

(b) The confidentiality of any medical, social, or financial record or document that is confidential under state law does not constitute grounds for failure to:

1. Report as required by s. 415.1034;

2. Cooperate with the department in its activities under ss. 415.101-415.113;

3. Give access to such records or documents; or

4. Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

(5) ACCESS TO RECORDS AND DOCUMENTS.

If any person refuses to allow a law enforcement officer or the protective investigator to have access to, inspect, or copy any medical, social, or financial record or document in the possession of any person, caregiver, guardian, or facility which is relevant to the allegations under investigation, the department may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.

(6) WORKING AGREEMENTS.—By March 1, 2004, the department shall enter into working agreements with the jurisdictionally responsible county sheriffs' office or local police department that will be the lead agency when conducting any criminal investigation arising from an allegation of abuse, neglect, or exploitation of a vulnerable adult. The working agreement must specify how the requirements of this chapter will be met. The Office of Program Policy Analysis and Government Accountability shall conduct a review of the efficacy of the agreements and report its findings to the Legislature by March 1, 2005. For the purposes of such agreement, the jurisdictionally responsible law enforcement entity is authorized to share Florida criminal history and local criminal history information that is not otherwise exempt from s. 119.07(1) with the district personnel. A law enforcement entity entering into such agreement must comply with s. 943.0525. Criminal justice information provided by such law enforcement

entity shall be used only for the purposes specified in the agreement and shall be provided at no charge. Notwithstanding any other provision of law, the Department of Law Enforcement shall provide to the department electronic access to Florida criminal justice information which is lawfully available and not exempt from s. 119.07(1), only for the purpose of protective investigations and emergency placement. As a condition of access to such information, the department shall be required to execute an appropriate user agreement addressing the access, use, dissemination, and destruction of such information and to comply with all applicable laws and rules of the Department of Law Enforcement.

History.—s. 99, ch. 95-418; s. 2, ch. 98-182; s. 32, ch. 2000-349; s. 4, ch. 2002-174; s. 1, ch. 2003-262.

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

(1) **PROTECTIVE SERVICES WITH CONSENT.**—If the department determines through its investigation that a vulnerable adult 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 vulnerable adult consents. A vulnerable adult in need of services as defined in s. 415.102 shall be referred to the community care for disabled adults program, or to the community care for the elderly program administered by the Department of Elderly Affairs.

(2) **WITHDRAWAL OF CONSENT.**—If the vulnerable adult withdraws consent to the receipt of protective services or protective supervision, the services may not be provided, except pursuant to s. 415.1051.

(3) **INTERFERENCE WITH THE PROVISION OF PROTECTIVE SERVICES.**—When any person refuses to allow the provision of protective services to a vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable adult.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 31, ch. 86-220; s. 29, ch. 89-294; s. 21, ch. 95-144; s. 37, ch. 95-210; s. 100, ch. 95-418; s. 3, ch. 98-182; s. 33, ch. 2000-349.

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.—

(1) **NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.**—If the department has reasonable cause to believe that a vulnerable adult or a vulnerable adult in need of services is being abused, neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the

department shall petition the court for an order authorizing the provision of protective services.

(a) **Nonemergency protective services petition.**—The petition must state the name, age, and address of the vulnerable adult, allege specific facts sufficient to show that the vulnerable adult is in need of protective services and lacks the capacity to consent to them, and indicate the services needed.

(b) **Notice.**—Notice of the filing of the petition and a copy of the petition must be given to the vulnerable adult, to that person's spouse, guardian, and legal counsel, and, when known, to the adult children or next of kin of the vulnerable adult. Such notice must be given at least 5 days before the hearing.

(c) **Hearing.**—

1. The court shall set the case for hearing within 14 days after the filing of the petition. The vulnerable adult and any person given notice of the filing of the petition have the right to be present at the hearing. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The court shall determine whether:

a. Protective services, including in-home services, are necessary.

b. The vulnerable adult lacks the capacity to consent to the provision of such services.

(d) **Hearing findings.**—If at the hearing the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and lacks the capacity to consent, the court may issue an order authorizing the provision of protective services. If an order for protective services is issued, it must include a statement of the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(e) **Continued protective services.**—

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:

a. Protective services will be continued with the consent of the vulnerable adult pursuant to this subsection;

b. Protective services will be continued for the vulnerable adult who lacks capacity;

c. Protective services will be discontinued; or

d. A petition for guardianship should be filed pursuant to chapter 744.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 744, the court, for good cause shown, may order continued protective services until it makes a determination regarding capacity.

(f) **Costs.**—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so; or by third-party reimbursement, if available. If the vulnerable adult is

unable to pay for guardianship, application may be made to the public guardian for public guardianship services, if available.

(2) **EMERGENCY PROTECTIVE SERVICES INTERVENTION.**—If the department has reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult and that the vulnerable adult lacks the capacity to consent to emergency protective services, the department may take action under this subsection. If the vulnerable adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

(a) *Emergency entry of premises.*—If, upon arrival at the scene of the incident, consent is not obtained for access to the alleged victim for purposes of conducting a protective investigation under this subsection and the department has reason to believe that the situation presents a risk of death or serious physical injury, a representative of the department and a law enforcement officer may forcibly enter the premises. If, after obtaining access to the alleged victim, it is determined through a personal assessment of the situation that no emergency exists and there is no basis for emergency protective services intervention under this subsection, the department shall terminate the emergency entry.

(b) *Emergency removal from premises.*—If it appears that the vulnerable adult lacks the capacity to consent to emergency protective services and that the vulnerable adult, from the personal observations of the representative of the department and specified medical personnel or law enforcement officers, is likely to incur a risk of death or serious physical injury if such person is not immediately removed from the premises, then the representative of the department shall transport or arrange for the transportation of the vulnerable adult to an appropriate medical or protective services facility in order to provide emergency protective services. Law enforcement personnel have a duty to transport when medical transportation is not available or needed and the vulnerable adult presents a threat of injury to self or others. If the vulnerable adult's caregiver or guardian is present, the protective investigator must seek the caregiver's or guardian's consent pursuant to subsection (4) before the vulnerable adult may be removed from the premises, unless the protective investigator suspects that the vulnerable adult's caregiver or guardian has caused the abuse, neglect, or exploitation. The department shall, within 24 hours after providing or arranging for emergency removal of the vulnerable adult, excluding Saturdays, Sundays, and legal holidays, petition the court for an order authorizing emergency protective services.

(c) *Emergency medical treatment.*—If, upon admission to a medical facility, it is the opinion of the medical staff that immediate medical treatment is necessary to prevent serious physical injury or death, and that such treatment does not violate a known health care advance directive prepared by the vulnerable adult, the medical facility may proceed with treatment to the vulnerable adult. If a person with legal authority to give consent for the provision of medical treatment to a

vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient pending court determination of the department's petition authorizing emergency protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(d) *Emergency protective services petition.*—A petition filed under this subsection must state the name, age, and address of the vulnerable adult and allege the facts constituting the emergency protective services intervention and subsequent removal of the vulnerable adult or provision of in-home services, the facts relating to the capacity of the vulnerable adult to consent to services, the efforts of the department to obtain consent, and the services needed or delivered.

(e) *Notice.*—Notice of the filing of the emergency protective services petition and a copy of the petition must be given to the vulnerable adult, to that person's spouse, to that person's guardian, if any, to legal counsel representing the vulnerable adult, and, when known, to adult children or next of kin of the vulnerable adult. Such notice must be given at least 24 hours before any hearing on the petition for emergency protective services.

(f) *Hearing.*—When emergency removal has occurred under this subsection, a hearing must be held within 4 days after the filing of the emergency protective services petition, excluding Saturday, Sunday, and legal holidays, to establish reasonable cause for grounds to continue emergency protective services.

1. The court shall determine, by clear and convincing evidence, whether an emergency existed which justified the emergency protective services intervention, whether the vulnerable adult is in need of emergency protective services, whether the vulnerable adult lacks the capacity to consent to emergency protective services, and whether:

a. Emergency protective services will continue with the consent of the vulnerable adult;

b. Emergency protective services will continue without the consent of the vulnerable adult; or

c. Emergency protective services will be discontinued.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

4. If an order to continue emergency protective services is issued, it must state the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services, or otherwise consenting to protective services on behalf of the vulnerable adult.

(g) *Continued emergency protective services.*—

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:

- a. Emergency protective services will be continued with the consent of the vulnerable adult;
- b. Emergency protective services will be continued for the vulnerable adult who lacks capacity;
- c. Emergency protective services will be discontinued; or
- d. A petition should be filed under chapter 744.

2. If it is decided to file a petition under chapter 744, for good cause shown, the court may order continued emergency protective services until a determination is made by the court.

(h) *Costs.*—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so, or by third-party reimbursement, if available.

(3) **PROTECTIVE SERVICES ORDER.**—In ordering any protective services under this section, the court shall adhere to the following limitations:

(a) Only such protective services as are necessary to ameliorate the conditions creating the abuse, neglect, or exploitation may be ordered, and the court shall specifically designate the approved services in the order of the court.

(b) Protective services ordered may not include a change of residence, unless the court specifically finds such action is necessary to ameliorate the conditions creating the abuse, neglect, or exploitation and the court gives specific approval for such action in the order. Placement may be made to such facilities as adult family-care homes, assisted living facilities, or nursing homes, or to other appropriate facilities. Placement may not be made to facilities for the acutely mentally ill, except as provided in chapter 394.

(c) If an order to continue emergency protective services is issued, it must include the designation of an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(4) **PROTECTIVE SERVICES INTERVENTIONS WITH CAREGIVER OR GUARDIAN PRESENT.**—

(a) When a vulnerable adult who lacks the capacity to consent has been identified as the victim, the protective investigator must first request consent from the caregiver or guardian, if present, before providing protective services or protective supervision, unless the protective investigator suspects that the caregiver or guardian has caused the abuse, neglect, or exploitation.

(b) If the caregiver or guardian agrees to engage or provide services designed to prevent further abuse, neglect, or exploitation, the department may provide protective supervision.

(c) If the caregiver or guardian refuses to give consent or later withdraws consent to agreed-upon services, or otherwise fails to provide needed care and supervision, the department may provide emergency protective services as provided in subsection (2). If

emergency protective services are so provided, the department must then petition the court for an order to provide emergency protective services under subsection (3).

(5) **INTERFERENCE WITH COURT-ORDERED PROTECTIVE SERVICES.**—When a court order exists authorizing protective services for a vulnerable adult who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services, the appropriate law enforcement agency shall enforce the order of the court.

(6) **LIMITATIONS.**—This section does not limit in any way the authority of the court or a criminal justice officer, or any other duly appointed official, to intervene in emergency circumstances under existing statutes. This section does not limit the authority of any person to file a petition for guardianship under chapter 744.

History.—s. 101, ch. 95-418; s. 11, ch. 97-98; s. 34, ch. 2000-349; s. 2, ch. 2006-131.

415.1052 Interference with investigation or with the provision of protective services.—

(1) If, upon arrival of the protective investigator, any person refuses to allow the department to begin a protective investigation, interferes with the department's ability to conduct such an investigation, or refuses to give access to the vulnerable adult, the appropriate law enforcement agency must be contacted to assist the department in commencing the protective investigation.

(2) When any person refuses to allow the provision of protective services to the vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable adult.

History.—s. 102, ch. 95-418; s. 35, ch. 2000-349.

415.1055 Notification to administrative entities.—

(1) Upon receipt of a report that alleges that an employee or agent of the department, the Agency for Persons with Disabilities, or the Department of Elderly Affairs, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, the department shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. This notification may be oral or written.

(2) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred shall be notified immediately, either orally or in writing.

(3) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the appropriate law enforcement agency shall be immediately notified. Such agency may begin a criminal investigation concurrent with or independent of the protective investigation of the department. This notification may be oral or written.

(4) If at any time during a protective investigation the department has reasonable cause to believe that abuse, neglect, or exploitation of a vulnerable adult has occurred within a facility that receives Medicaid funds, the department shall notify the Medicaid Fraud Control Unit within the Department of Legal Affairs, Office of the Attorney General, in order that it may begin an investigation concurrent with the protective investigation of the department. This notification may be oral or written.

(5) If at any time during a protective investigation the department has reasonable cause to believe that an employee of a facility, as defined in s. 415.102, is the alleged perpetrator of abuse, neglect, or exploitation of a vulnerable adult, the department shall notify the Agency for Health Care Administration, Division of Health Quality Assurance, in writing.

(6) If at any time during a protective investigation the department has reasonable cause to believe that professional licensure violations have occurred, the department shall notify the Division of Medical Quality Assurance within the Department of Health. This notification must be in writing.

(7) The department shall notify the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred if evidence indicates that further criminal investigation is warranted. This notification must be in writing.

(8) At the conclusion of a protective investigation at a facility, the department shall notify either the Florida local advocacy council or long-term care ombudsman council of the results of the investigation. This notification must be in writing.

(9) When a report involving a guardian of the person or property, or both, is received, the department shall notify the probate court having jurisdiction over the guardianship, in writing.

(10) When a report has been received and the department has reason to believe that a vulnerable adult resident of a facility licensed by the Agency for Health Care Administration or the Agency for Persons with Disabilities has been the victim of abuse, neglect, or exploitation, the department shall provide a copy of its investigation to the appropriate agency. If the investigation determines that a health professional licensed or certified under the Department of Health may have abused, neglected, or exploited a vulnerable adult, the department shall also provide a copy to the Department of Health.

History.—s. 103, ch. 95-418; s. 12, ch. 97-98; s. 30, ch. 98-166; s. 4, ch. 98-182; s. 69, ch. 2000-153; s. 23, ch. 2000-263; s. 36, ch. 2000-349; s. 59, ch. 2006-227.

415.106 Cooperation by the department and criminal justice and other agencies.—

(1) All criminal justice agencies have a duty and responsibility to cooperate fully with the department so as to enable the department to fulfill its responsibilities under ss. 415.101-415.113. Such duties include, but are not limited to, forced entry, emergency removal, emergency transportation, and the enforcement of court orders obtained under ss. 415.101-415.113.

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Council, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities.

(3) To the fullest extent possible, the department shall cooperate with and seek cooperation from all appropriate public and private agencies, including health agencies, educational agencies, social service agencies, courts, organizations, or programs providing or concerned with human services related to the prevention, identification, or treatment of abuse, neglect, or exploitation of vulnerable adults.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 32, ch. 86-220; s. 27, ch. 93-177; s. 104, ch. 95-418; s. 24, ch. 2000-263; s. 37, ch. 2000-349.

415.107 Confidentiality of reports and records.—

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113.

(2) Upon the request of the committee chairperson, access to all records shall be granted to staff of the legislative committees with jurisdiction over issues and services related to vulnerable adults, or over the department. All confidentiality provisions that apply to the Department of Children and Family Services continue to apply to the records made available to legislative staff under this subsection.

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

(b) A criminal justice agency investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(c) The state attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or exploitation occurred.

(d) Any victim, the victim's guardian, caregiver, or legal counsel, and any person who the department has determined might be abusing, neglecting, or exploiting the victim.

(e) A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must be limited to inspection in camera, unless the court determines that public disclosure of the information contained in such records is necessary for the resolution of an issue then pending before it.

(f) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(g) Any appropriate official of the Florida advocacy council or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(h) Any appropriate official of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or

2. Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

(i) Any person engaged in bona fide research or auditing. However, information identifying the subjects of the report must not be made available to the researcher.

(j) Employees or agents of an agency of another state that has jurisdiction comparable to the jurisdiction described in paragraph (a).

(k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information that specifically identifies persons other than the employee.

(l) Any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(4) The Department of Health, the Department of Business and Professional Regulation, and the Agency for Health Care Administration may have access to a report, excluding the name of the reporter, when considering disciplinary action against a licensee or certified nursing assistant pursuant to allegations of abuse, neglect, or exploitation.

(5) The department may release to any professional person such information as is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult or the person perpetrating the abuse, neglect, or exploitation.

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

(7) For the purposes of this section, the term "access" means a visual inspection or copy of the hard-copy record maintained in the district.

(8) Information in the central abuse hotline may not be used for employment screening.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 33, ch. 86-220; s. 32, ch. 87-238; s. 7, ch. 88-219; s. 18, ch. 88-337; s. 4, ch. 89-170; s. 30, ch. 89-294; s. 4, ch. 90-50; s. 7, ch. 90-208; s. 47, ch. 90-306; s. 4, ch. 91-57; s. 15, ch. 91-71; ss. 43, 47, ch. 92-58; s. 31, ch. 93-39; s. 15, ch. 93-214; s. 57, ch. 94-218; s. 38, ch. 95-210; s. 106, ch. 95-418; s. 267, ch. 96-406; s. 1, ch. 98-111; s. 9, ch. 98-182; s. 2, ch. 98-255; s. 41, ch. 98-280; s. 70, ch. 2000-153; s. 25, ch. 2000-263; s. 38, ch. 2000-349; s. 3, ch. 2006-131; s. 60, ch. 2006-227.

415.1071 Release of confidential information.—

(1) Any person or organization, including the Department of Children and Family Services, may petition the court for an order making public the records of the Department of Children and Family Services which pertain to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. The court shall determine whether good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Family Services and the court system in providing vulnerable adults of this state with the protections enumerated in s. 415.101. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting the abuse, neglect, or exploitation of a vulnerable adult.

(2) In cases involving serious bodily injury to a vulnerable adult, the Department of Children and Family Services may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation. The petition must be personally served upon the vulnerable adult, the vulnerable adult's legal guardian, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, or exploitation. The court must

determine whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

(a) A confirmation that an investigation has been conducted concerning the alleged victim.

(b) The dates and brief description of procedural activities undertaken during the department's investigation.

(c) The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court.

The summary information shall not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting abuse, neglect, or exploitation of a vulnerable adult.

(3) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any protective investigation report until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, neglect, or exploitation.

History.—s. 18, ch. 2004-335.

415.1099 Court and witness fees not allowed.—In all proceedings under ss. 415.101-415.113, court fees must not be charged to the department; to any party to a petition; to any legal custodian of records, documents, or persons; or to any adult named in a summons. In a proceeding under ss. 415.101-415.113, witness fees are not allowed to the department; to any party to a petition; to any legal custodian of records, documents, or persons; or to any adult named in a summons.

History.—s. 108, ch. 95-418.

415.1102 Adult protection teams.—

(1) 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. As used in this section, the term "multidisciplinary adult protection team" means a team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly persons, as defined in s. 430.602, or of dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons.

(2) Such teams may be composed of, but need not be limited to:

(a) Psychiatrists, psychologists, or other trained counseling personnel;

(b) Police officers or other law enforcement officers;

(c) Medical personnel who have sufficient training to provide health services;

(d) Social workers who have experience or training in preventing the abuse of elderly or dependent persons; and

(e) Public guardians as described in part IX of chapter 744.

(3) The department shall utilize and convene the teams to supplement the protective services activities of the protective services program of the department.

(4) This section does not prevent a person from reporting under s. 415.1034 all suspected or known cases of abuse, neglect, or exploitation of a vulnerable adult. The role of the teams is to support activities of the protective services program and to provide services deemed by the teams to be necessary and appropriate to abused, neglected, and exploited vulnerable adults upon referral. Services must be provided with the consent of the vulnerable adult or that person's guardian, or through court order.

(5) If an adult protection team is providing certain services to abused, neglected, or exploited vulnerable adults, other offices and units of the department shall avoid duplicating those services.

History.—s. 32, ch. 89-294; s. 48, ch. 90-306; s. 109, ch. 95-418; s. 6, ch. 98-182; s. 71, ch. 2000-153; s. 39, ch. 2000-349; s. 2, ch. 2003-262.

415.1105 Training programs.—

(1) The department shall develop rules governing preservice and inservice training for adult protective investigation staff and, within available resources, shall provide appropriate preservice and inservice training to such staff.

(2) Within available resources, the department shall cooperate with other appropriate agencies in developing and providing preservice and inservice training programs for those persons specified in s. 415.1034(1)(a).

History.—s. 110, ch. 95-418.

415.111 Criminal penalties.—

(1) A person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or who knowingly and willfully prevents another person from doing so, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in ss. 415.101-415.113, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who has custody of records and documents the confidentiality of which is abrogated under s. 415.1045(3) and who refuses to grant access to such records commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(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 department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning the same vulnerable adult 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 vulnerable adult. 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) A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who advises another to make a false report, commits a felony of the third 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 vulnerable adult 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.

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

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 36, ch. 86-220; s. 19, ch. 88-337; s. 1, ch. 89-322; s. 49, ch. 90-306; s. 5, ch. 91-57; s. 16, ch. 91-71; s. 250, ch. 91-224; s. 1, ch. 91-258; s. 4, ch. 95-140; s. 20, ch. 95-158; s. 111, ch. 95-418; s. 7, ch. 96-293; s. 2, ch. 98-111; s. 10, ch. 98-182; s. 40, ch. 2000-349; s. 4, ch. 2002-70.

415.1111 Civil actions.—A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult. A party who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult. Notwithstanding the foregoing, any civil action for damages against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part II of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.023, or against any

licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part I of chapter 429 relating to its operation of the licensed facility shall be brought pursuant to s. 429.29. Such licensee or entity shall not be vicariously liable for the acts or omissions of its employees or agents or any other third party in an action brought under this section.

History.—s. 112, ch. 95-418; s. 23, ch. 96-418; s. 41, ch. 2000-349; s. 12, ch. 2001-45; s. 86, ch. 2006-197.

415.1113 Administrative fines for false report of abuse, neglect, or exploitation of a vulnerable adult.—

(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 for each violation, upon a person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who counsels another to make a false report.

(2) If the department alleges that a person has knowingly and willfully filed a false report with the central abuse hotline, the department must file a notice of intent that alleges the name, age, and address of the individual; the facts constituting the allegation that the individual made a false report; and the administrative fine that the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.

(3) The notice of intent to impose the administrative fine must be served by certified mail, return receipt requested, upon the person alleged to have filed the false report and upon the person's legal counsel, if any.

(4) Any person alleged to have filed the false report is entitled to an administrative hearing under chapter 120 before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the notice of intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the notice of intent constitutes a waiver of the right to a hearing, making the administrative fine final.

(5) At the hearing, the department must prove by clear and convincing evidence that the person knowingly and willfully filed a false report with the central abuse hotline. The person has the right to be represented by legal counsel at the hearing.

(6) In determining the amount of fine to be imposed, if any, the following factors must be considered:

(a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.

(b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.

(c) Any previous false reports filed by the same individual.

(7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action

within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and upon the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine under s. 120.68.

(8) All amounts collected under this section must be deposited into the Operations and Maintenance Trust Fund within the Adult Services Program of the department.

(9) A person who is determined to have filed a false report of abuse or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report must be made public, pursuant to s. 119.01(1). Such information is admissible in any civil or criminal proceeding.

(10) Any person who makes a report and acts in good faith is immune from any liability under this section and continues to be entitled to have the confidentiality of his or her identity maintained.

History.—s. 113, ch. 95-418; s. 68, ch. 97-103; s. 3, ch. 98-111; s. 11, ch. 98-182; s. 201, ch. 99-8; s. 42, ch. 2000-349.

415.1115 Civil actions involving elderly parties; speedy trial.—In a civil action in which a person over the age of 65 is a party, such party may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial on the docket. The motion may

be filed and served with the initial complaint or at any time thereafter.

History.—s. 1, ch. 91-251; s. 115, ch. 95-418.

Note.—Former s. 415.114.

415.112 Rules for implementation of ss. 415.101-415.113.—The department shall promulgate rules for the implementation of ss. 415.101-415.113.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 37, ch. 86-220.

415.113 Statutory construction; treatment by spiritual means.—Nothing in ss. 415.101-415.112 shall be construed to mean a person is abused, neglected, or in need of emergency or protective services for the sole reason that the person relies upon and is, therefore, being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a well-recognized church or religious denomination or organization; nor shall anything in such sections be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such person. Such construction does not:

(1) Eliminate the requirement that such a case be reported to the department;

(2) Prevent the department from investigating such a case; or

(3) Preclude a court from ordering, when the health of the individual requires it, the provision of medical services by a licensed physician or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious denomination or organization.

History.—s. 1, ch. 85-143; s. 114, ch. 95-418; s. 43, ch. 2000-349.