

CS/SB 318 by **JU, Diaz de la Portilla (CO-INTRODUCERS) Detert;** (Similar to CS/CS/CS/H 0005) Guardianship Proceedings

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SB 684 by **Grimsley;** (Similar to H 0755) Convenience Businesses

CS/SB 746 by **CJ, Lee (CO-INTRODUCERS) Thompson, Soto, Latvala;** (Similar to CS/H 0201) Diabetes Awareness Training for Law Enforcement Officers

SB 1016 by **Abruzzo (CO-INTRODUCERS) Negrón;** (Similar to H 0711) Care for Retired Law Enforcement Dogs

405188 A S ACJ, Joyner Delete L.118 - 141: 03/31 07:08 PM

SB 1170 by **Bradley;** (Similar to H 1187) Problem-solving Courts

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SB 1362 by **Simmons;** (Similar to CS/CS/CS/H 0439) Department of Legal Affairs

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
CIVIL JUSTICE
Senator Negrón, Chair
Senator Joyner, Vice Chair

MEETING DATE: Thursday, April 2, 2015
TIME: 9:00 —11:00 a.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Negrón, Chair; Senator Joyner, Vice Chair; Senators Bradley, Evers, Flores, and Soto

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Secretary of Corrections

1	Jones, Julie ()	Pleasure of Governor	
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	CS/SB 318 Judiciary / Diaz de la Portilla (Similar CS/CS/CS/H 5, Compare CS/H 7, CS/S 360, S 366)	Guardianship Proceedings; Authorizing a court to refer guardianship matters to mediation or alternative dispute resolution under certain circumstances; providing that a settlement of a minor's claim is subject to certain confidentiality provisions; requiring the court to specify authority for health care decisions with respect to a ward's advance directive; prohibiting abuse, neglect, or exploitation of a ward by a guardian, etc. JU 03/10/2015 Fav/CS ACJ 04/02/2015 AP	
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3	SB 684 Grimsley (Similar H 755)	Convenience Businesses; Revising the term "convenience business"; removing the requirement that a curriculum be submitted for reapproval biennially with a specified administrative fee; removing a requirement that specified curriculum be subject to reapproval 2 years from initial approval and biennially thereafter, etc. CM 03/10/2015 Favorable ACJ 04/02/2015 FP	
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4	CS/SB 746 Criminal Justice / Lee (Similar CS/H 201)	Diabetes Awareness Training for Law Enforcement Officers; Citing this act as the "Arthur Green, Jr., Act"; requiring the Department of Law Enforcement to establish an online continued employment training component relating to diabetic emergencies, etc. CJ 03/16/2015 Fav/CS ACJ 04/02/2015 FP	
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COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Thursday, April 2, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 1016 Abruzzo (Similar H 711)	Care for Retired Law Enforcement Dogs; Creating the "Care for Retired Law Enforcement Dogs Program Act"; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a corporation not for profit to administer and manage the program; providing requirements for the disbursement of funds for the veterinary care of eligible retired law enforcement dogs; placing an annual cap on the amount of funds available for the care of an eligible retired law enforcement dog, etc.	
		CJ 03/23/2015 Favorable ACJ 04/02/2015 AP	
6	SB 1170 Bradley (Similar H 1187, Compare CS/H 1069, H 7113, S 1452)	Problem-solving Courts; Defining the term "problem-solving court"; authorizing a person eligible for participation in a problem-solving court to transfer his or her case to another county's problem-solving court under certain circumstances, etc.	
		JU 03/10/2015 Favorable ACJ 04/02/2015 FP	
7	SB 1362 Simmons (Similar CS/CS/CS/H 439)	Department of Legal Affairs; Revising the list of offenses that may be investigated and prosecuted by the Office of Statewide Prosecution; specifying the distribution of certain funds recovered in Medicaid fraud actions; revising the maximum victim compensation amounts that the department may award to elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life in certain circumstances; providing for relocation assistance for human trafficking victims, etc.	
		JU 03/10/2015 Favorable ACJ 04/02/2015 AP	

Other Related Meeting Documents



FLORIDA DEPARTMENT OF STATE

Ken Detzner
Secretary of State

DIVISION OF ELECTIONS

14 January 2015

Ms. Julie Jones

Dear Secretary Jones,

Congratulations on your appointment as Secretary, Department of Corrections.

Your appointment will be considered for confirmation by the Senate during the next regular session.

If my staff or I may be of assistance to you, please let us know.

Sincerely,

A handwritten signature in black ink that reads "Ken Detzner".

Secretary of State

Enclosures

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

RECEIVED
15 JAN 14 AM 10:10
DIV. OF ELECTIONS
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Corrections

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

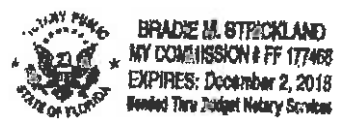
Sworn to and subscribed before me this 31st day of December, 2014.

Bradie M. Strickland
Signature of Officer Administering Oath or of Notary Public

Bradie M. Strickland
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced Drivers License



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

Willie L. Jones
Print name as you desire commission issued

[Signature]
Signature

Amended

Ⓢ

A black and white copy of this document is not official

500

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Julie Jones

is duly appointed

**Secretary,
Department of Corrections**

for a term beginning on the
Sixth day of January, A.D., 2015,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Fifth day of February, A.D., 2015.*

Ken Detzner

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document

The Florida Senate
COMMITTEE NOTICE OF HEARING

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Julie Jones
Appointee Name

Secretary of Corrections
Agency Name

NOTICE OF HEARING

TO: Ms. Julie Jones
501 South Calhoun Street
Tallahassee, Florida 32399-2500

YOU ARE HEREBY NOTIFIED that the Appropriations Subcommittee on Criminal and Civil Justice of the Florida Senate will conduct a hearing on your executive appointment on Thursday, April 2, 2015, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.

DATED this the 27th day of March, 2015.

Appropriations Subcommittee on Criminal and Civil
Justice



Senator Joe Negron
As Chair and by authority of the committee

cc: Members, Appropriations Subcommittee
on Criminal and Civil Justice
Office of the Sergeant at Arms

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 318

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla and others

SUBJECT: Guardianship Proceedings

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 318 amends the power of attorney and guardianship statutes to:

- Permit the automatic suspension of a power of attorney during guardianship proceedings only if the petitioner specifically requests the suspension and states facts under oath supporting the suspension;
- Authorize mediation or alternative dispute resolution for guardianship conflicts;
- Authorize the appointment of the office of criminal conflict and civil regional counsel for indigent wards;
- Clarify that attorneys for a ward are entitled to compensation from the guardianship estate;
- Clarify that expert testimony is not necessary to establish compensation for a guardian or guardian's attorney;
- Provide that advance notice is not required before a hearing when appointing an emergency temporary guardian if the 24 hour advance notice could result in substantial harm to the alleged incapacitated person;
- Limit the appointment of an emergency temporary guardian to 60 days;
- Permit a nonprofit charitable corporation to serve as a guardian;
- Require a court, when modifying the authority of a health care surrogate in an advance directive, to specify in its orders to what extent a guardian's authority will supersede a health care surrogate and base that decision on findings of fact;
- Establish factors a court must consider in determining who to appoint as a guardian;

- Provide a code of conduct or ethical standards for a guardian and requires the reporting of abuse of a ward to the Department of Children and Families;
- Require guardianship plans to be filed in advance of the plan year;
- Authorize family members of wards to challenge a decision by a guardian which denies visitation to family members;
- Provide that the results of a court-ordered medical exam after a suggestion of capacity is filed is evidence that a court can use for determining capacity or restoring rights; and
- Require a court to give priority to scheduling restoration of capacity proceedings.

This bill does not have a discernable fiscal impact.

The bill takes effect upon becoming law.

II. Present Situation:

Power of Attorney

A power of attorney is an instrument that grants someone authority to act as an agent for the grantor.¹ The “principal” is the individual who grants authority to the agent who then acts in place of the principal, whether the term “agent” is actually used in the writing or not.² Under existing law, an alleged incapacitated person’s power of attorney is automatically suspended upon the filing of a petition to determine incapacity of the principal. The result is that the agent then loses the ability to act on behalf of the principal.

Guardianship

Background

A guardianship is a relationship based upon trust in which one person, a guardian, has the legal duty and authority to care for the person or property of another person, who is referred to as a ward. A guardianship is established because a court has determined that the ward is not capable of managing his or her affairs, generally due to infancy, incapacity, or disability.³ A guardian may be appointed over the person, over the property, or both.

When a court determines that someone is incapacitated,⁴ it must consider whether there is an alternative to guardianship which will sufficiently meet the person’s needs. If no alternative can be found, then a guardian⁵ must be appointed.⁶ The Legislature has stated, however, that the

¹ BLACK’S LAW DICTIONARY 1191 (7th ed. 1999).

² Sections 709.2102 (1), (9), and (11), F.S.

³ BLACK’S LAW DICTIONARY 712 (9th ed. 2009).

⁴ An “incapacitated person” is a person who has been judicially determined to lack the capacity to manage at least some of his or her property or to meet at least some of his or her essential health and safety requirements. Section 744.102(12), F.S.

⁵ Various provisions in ch. 744, F.S., provide for a guardian ad litem, limited guardian, plenary guardian, standby guardian, foreign guardian, corporate guardian, nonprofit corporate guardian, preneed guardian, professional guardian, surrogate, and public guardian.

⁶ Section 744.331(6)(b), F.S.

form of assistance be chosen in each situation that least interferes with the legal capacity of someone to act on his or her behalf.⁷

Guardianship Proceedings

A guardianship proceeding is initiated in circuit court when an adult files a petition to determine incapacity and alleges specifically the factual information on which the petitioner believes the incapacity is based.⁸ Within 5 days after the petition is filed, the court must appoint a three member examining committee⁹ to examine the allegedly incapacitated person to determine his or her incapacity. The members have 15 days¹⁰ after their appointment to submit a written report to the court which sets an adjudicatory hearing to be held within 14 days¹¹ after the examining members' reports are filed. If the court finds on the basis of clear and convincing evidence that the person is incapacitated, the court must enter a written order determining the incapacity, but only with respect to those rights specified in the order.¹²

Powers and Duties of a Guardian

A guardian has a fiduciary relationship with a ward and is bound to act in good faith and trust on the ward's behalf. The guardian may not use that relationship for private gain except for the reimbursement of fees and expenses provided by law.¹³ The guardian of an incapacitated person may only exercise the rights that have been removed from the ward and delegated to the guardian. In addition to performing all duties required of him or her by law, a guardian is required to file an initial guardianship report and an annual guardianship report, implement the guardianship plan, and at the termination of the guardianship, deliver the property of the ward to the person lawfully entitled to the property.¹⁴ If the guardian breaches the fiduciary duty owed to the ward, the court is obligated to take the steps necessary to protect the ward and the ward's assets.¹⁵

Responsibilities of the Clerk of Court and Judicial Review

The clerk of the circuit court, as custodian of the guardianship files, must review each initial and annual guardianship report, which is later reviewed by the circuit court. The court retains jurisdiction over all guardianships and must review the appropriateness and extent of a guardianship annually.¹⁶

⁷ Section 744.1012, F.S.

⁸ Section 744.3201, F.S.

⁹ One member must be a psychiatrist or other physician and the remaining members must be a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology, or other person who has special skill, training, or education to advise the court in the form of an expert opinion.

¹⁰ Section 744.331(3), F.S.

¹¹ Section 744.331(5), F.S.

¹² Section 744.331(6), F.S.

¹³ Section 744.446, F.S.

¹⁴ Section 744.361, F.S.

¹⁵ Section 744.446, F.S.

¹⁶ Sections 744.368 and 744.372, F.S.

Termination of a Guardianship

The relationship between a guardian and ward is terminated when a ward is restored to capacity, the guardian has been unable to find the ward after a diligent search, or for a guardian of the property, when the property subject to the guardianship has been exhausted.¹⁷ The relationship is also terminated upon the death of the guardian or ward, by resignation¹⁸ or removal of the guardian,¹⁹ or by a change or domicile to a foreign jurisdiction.²⁰

Resolution of Disputes Involving Guardianships

Disputes often arise in guardianship matters and involve issues such as visitation, care plans, the ward's range of choices, medical care, whether less restrictive options are available to the ward, property issues, and financial decisions. These issues are litigated, often at great expense to the ward, and burden court calendars.

Court Monitors and Emergency Court Monitors

A court is authorized under the guardianship chapter to appoint a court monitor over a matter under its jurisdiction, when an interested person inquires or upon its own motion. The order of appointment is served upon the guardian, the ward, and other interested persons as the court decides. The monitor serves to investigate, seek information, examine documents, or interview the ward and report his or her findings to the court in a report. The report is also served on the guardian, the ward, and any other person as the court decides. If the monitor's report indicates that the court needs to take action to protect the ward's interest, the court, after a hearing with notice, enters any necessary order to protect the ward or his or her estate. A court monitor may not be a family member or someone with a personal interest in the proceedings but may be allowed a reasonable fee for his or her services from the ward's property.²¹

Similarly, a court may appoint a court monitor on an emergency basis without notice. To do so, the court must find that there appears to be imminent danger that the physical or mental health or safety of the ward will be impaired, or the ward's property is in danger of being wasted or lost unless immediate action is taken. The emergency court monitor's authority expires 60 days after appointment or upon a finding of no probable cause, whichever occurs first, but may be extended for an additional 30 days upon a showing that the emergency condition still exists. The monitor has 15 days to file a report of findings and recommendation to the court after his or her appointment. As with a court monitor, the emergency monitor may be allowed a reasonable fee that is paid from the ward's property.²²

Guardian and Attorney Fees and Expenses in Guardianship Proceedings

Section 744.108, F.S., establishes that a guardian or attorney who has rendered services to the ward or the guardian on the ward's behalf is entitled to reasonable fees for those services and

¹⁷ Section 744.521, F.S.

¹⁸ Section 744.467, F.S.

¹⁹ Section 744.474, F.S.

²⁰ Section 744.524, F.S.

²¹ Section 744.107, F.S.

²² Section 744.1075, F.S.

reimbursement for those costs. The court is given a list of factors to consider in awarding those fees. It is not clear whether s. 744.108(8), F.S., covers all requests for attorney fees or is limited to only fees for the guardian's attorney. It is also unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney.

Claims of Minors

Section 744.3025(1)(a), F.S., provides that a court may appoint a guardian ad litem before approving a settlement of a claim for a minor when the gross settlement exceeds \$15,000. The statute does not specify criteria for the court to rely upon in determining whether there is a need for the appointment of a guardian ad litem.

Emergency Temporary Guardianship

The process of appointing a guardian may take up to 34 days or longer, upon a showing of good cause. The statutes, however, provide a more timely remedy through an additional type of guardianship in an emergency situation. A court may appoint an emergency temporary guardian²³ for an allegedly incapacitated person upon a finding that there appears to be an imminent danger that:

- The physical or mental health or safety of the person will be seriously impaired; or
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

Under those circumstances, a court may appoint an emergency temporary guardian after the filing of a petition for determination of incapacity and before the appointment of a guardian. The court must appoint counsel to represent the alleged incapacitated person during the proceedings. Further, the court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed when the order determining incapacity is entered.²⁴

The emergency temporary guardian's authority expires 90 days after the appointment or when a guardian is appointed, whichever occurs first. The authority may be extended for 90 additional days upon a showing that the emergency conditions continue to exist.²⁵ The emergency temporary guardian's authority and responsibility begin when the letters of emergency temporary guardian are issued. He or she must file a final report no later than 30 days after the emergency temporary guardianship expires²⁶ and the final report must be served on the successor guardian and the ward.²⁷

Advance Directives

An "advance directive" is a written document or oral statement that is witnessed in which a person states his or her desires regarding health care and includes, but is not limited to, the

²³ Section 744.3031(1), F.S.

²⁴ Section 744.3031(2), F.S.

²⁵ Section 744.3031(3), F.S.

²⁶ Section 744.3031(7) and (8)(a), F.S.

²⁷ Section 744.3031(8)(d), F.S.

designation of a health care surrogate, a living will, or an anatomical gift.²⁸ An advance directive permits a competent adult to express his or her wishes regarding decisions relating to his or her own health, particularly the right to choose or refuse medical treatment.

Considerations When Appointing a Guardian

The statutes provide a list of factors that a court must consider when appointing a guardian.²⁹ The court must give preference to a person who:

- Is related by blood or marriage;
- Has educational, professional, or business experience that is relevant to the services needed for the ward;
- Has the capacity to manage the ward's financial resources; or
- Has the ability to meet the law's requirements and unique needs of the case at hand.

The court must also consider:

- The wishes expressed by the incapacitated person as to who the guardian should be;
- The preferences of a minor who is over the age of 14 years as to who the guardian should be;
- Any person designated as a guardian in a will under which the ward is a beneficiary.

The court shall appoint the standby guardian or preneed guardian, unless that is contrary to the best interests of the ward.³⁰

Guardianship Plans and Reports

For a court to monitor and supervise a guardian's compliance, the guardian must file reports and plans for review. A guardian of the person must file an annual plan which updates information about the ward's condition, specifying the ward's needs and how those needs should be met in the upcoming year.³¹ If the court requires calendar year planning, the plan must be filed by April 1 of that plan year. If not, the plan must be filed within 90 days after the anniversary month that the letters of guardianship were filed.³² The approved report authorizes the guardian the necessary power to act within the terms of the plan and limits the powers of the guardian to those terms.³³

Restoration to Capacity

An incapacitated person retains the right to be restored to capacity at the earliest possible time.³⁴ The procedure for restoration is described in s. 744.464, F.S. Any interested person or the ward may file a suggestion of capacity stating that the ward is currently capable of exercising some or all or the rights which were removed. The statute is silent on what the evidentiary standard is that

²⁸ Section 765.101, F.S.

²⁹ Section 744.312, F.S.

³⁰ Section 744.312(4), F.S.

³¹ Section 744.3675, F.S.

³² Section 744.367(1), F.S.

³³ Section 744.369(8), F.S.

³⁴ Section 744.3215(1)(c), F.S.

is used to determine restoration of capacity. Clear guidance is needed in the statute to remove this uncertainty.

III. Effect of Proposed Changes:

Suspension of a Power of Attorney (Sections 1, 2, and 12)

This bill creates s. 744.3203, F.S., to address the suspension of a power of attorney when the incapacity of the principal is alleged. When someone files a petition to determine incapacity but before the order is entered, the alleged incapacitated person's power of attorney is suspended when the petitioner files a motion stating that a power of attorney should be suspended or modified for any of the following reasons:

- The agent's decision are not consistent with the alleged incapacitated person's known desires;
- The power of attorney is invalid;
- The agent has not discharged his or her duties or incapacity or illness renders him or her incapable of discharging those duties; or
- The agent has abused powers.

It is not grounds to suspend a power of attorney if a dispute exists between the agent and the petitioner and the matter is appropriately resolved in a different forum or a legal proceeding other than a guardianship proceeding.

The petitioner's motion must identify one of the four grounds listed above and allege specific statements of fact demonstrating that there are grounds to justify the suspension of the power of attorney. The petitioner must sign the petition and declare that he or she has read the motion and that the facts stated in it are true.

The court must schedule an expedited hearing for the motion when the agent files a response. The court order must set forth what powers the agent is permitted to exercise, if any, pending the outcome of the petition to determine the principal's incapacity. The intent appears to be that, in an emergency situation, a specific power can be reinstated without a hearing and without notice to all interested persons.

Sections 709.2109(3) and 709.2119(2), F.S., are amended to conform to the changes created by s. 744.3203, F.S.

Resolution of Disputes Involving Guardianships (Section 3)

This bill creates a new section of law which permits a court, upon its own motion or that of an interested party, to refer a guardianship matter to mediation or alternative dispute resolution. The court must find that mediation or alternative dispute resolution is in the best interests of an alleged incapacitated person, ward, or minor to order the proceeding.

Alternative dispute resolution is defined as a procedure for settling disputes by processes other than litigation. This often involves arbitration or mediation.³⁵ Mediation is defined as a process in which a neutral third person or panel considers the parties' facts and arguments and renders a decision which may or may not be binding.³⁶

Court Monitors and Emergency Court Monitors (Sections 4 and 5)

The bill provides that a court may appoint the office of criminal conflict and civil regional counsel to serve as a court monitor or emergency court monitor if a ward is indigent.

Guardian and Attorney Fees and Expenses in Guardianship Proceedings (Section 6)

This bill amends s. 744.108, F.S., to clarify that attorneys for the ward, whether court appointed or otherwise, are entitled to compensation from the guardianship estate. Language is created to clarify that expert testimony is not necessary to establish compensation for the guardian or the guardian's attorney. This change will benefit wards in many instances by eliminating charges for expert witness fees.

Claims of Minors (Section 7)

The bill amends s. 744.3025(1)(a), F.S., to provide that a court may appoint a guardian ad litem only if the court believes a guardian ad litem is necessary to protect the minor's interest in a claim that exceeds \$15,000. A new subsection (3) is created and states that the settlement of a claim under this section is subject to the confidentiality provisions of the guardianship chapter.³⁷

Emergency Temporary Guardian (Section 8)

Notice Provisions

The bill amends s. 744.3031, F.S., to provide that a court may appoint an emergency temporary guardian after a petition for determination of incapacity has been held, but only after that hearing is duly noticed. The notice of filing of a petition for appointment of an emergency temporary guardian and notice of any hearing on that petition must be served on the alleged incapacitated person and his or her attorney at least 24 hours before a hearing is held unless the petitioner demonstrates that substantial harm will occur if the 24-hour notice is given.

Length of Time a Guardian May Serve

The current statute limits an emergency temporary guardian's authority to 90 days, but this bill limits the authority to 60 days. Current law provides that the emergency temporary guardian's authority may be extended for 90 days, but this bill limits an extension to 60 days and requires that a hearing be held first to demonstrate that the emergency conditions still exist.

³⁵ BLACK'S LAW DICTIONARY 78 (7th ed. 1999).

³⁶ Section 44.1011(2), F.S.

³⁷ This language links this bill to SB 360 which creates a public records exemption to protect the confidentiality of records relating to the settlement of a claim on behalf of a minor or ward.

Filing of a Final Report

Currently, an emergency temporary guardian must file a final report within 30 days after the emergency temporary guardianship expires.³⁸ Under this bill, a court may not authorize final payment for the emergency temporary guardian's fee or the fees of his or her attorney until the final report is filed. This bill provides that, if the final report is not timely filed, the court shall issue an order to show cause to the emergency temporary guardian to appear and explain why no further action should be taken against him or her by the court. The court's order must specify the time and place of the hearing within a reasonable time after service of the order to allow the guardian to prepare a defense. Prior to the hearing, the court may:

- Suspend the emergency temporary guardian if he or she has become a successor guardian;
- Appoint a guardian ad litem; or
- Issue any other appropriate order to protect the physical or mental health or safety or the property of the ward.

A copy of the order must be transmitted to all parties when it is issued.

After the hearing on the order to show cause, the court may impose sanctions on the emergency temporary guardian or take any other action authorized by law including:

- Entering a judgment of contempt;
- Ordering an accounting;
- Freezing assets;
- Referring the case to local law enforcement agencies or the state attorney;
- Filing an abuse, neglect, or exploitation complaint with the Department of Children and Families; and
- Initiating proceedings to remove the emergency temporary guardian.

Not For Profit Corporation as Guardian (Section 9)

This bill amends s. 744.309, F.S., to resolve an inconsistency in the statutes which allows a nonprofit entity to register as a professional guardian, but also requires a guardian to be a human. Under this amended language, a nonprofit charitable corporation is expressly authorized to serve as a guardian.

Advance Directives (Section 10)

This bill amends s. 744.3115, F.S., to provide that, in circumstances in which the ward executed any advance directive before his or her incapacity, the court must specify in the order and letters of guardianship what authority the guardian may exercise over the ward regarding health care decisions and what authority, if any, the surrogate shall continue to exercise over the ward regarding health care decisions. Any order revoking or modifying the authority of the surrogate must be supported by specific written findings of fact. If the court determines that the guardian will be responsible for making health care decisions for the ward, the guardian will assume the surrogate's responsibilities. These changes are designed to strengthen a person's choice regarding who should make medical decisions on his or her behalf.

³⁸ Section 744.3031(8), F.S.

Considerations When Appointing a Guardian (Section 11)

This bill amends the existing group of factors a court must consider when determining who to appoint as a guardian for an incapacitated person. The court must now also consider the wishes of close relatives if the person cannot express a preference.

Unless a standby or preneed guardian is appointed, a court:

- Must use a rotation system to appoint a guardian or support its order with written findings of fact;
- May not give preference to a person based solely on the fact that he or she was appointed to serve as an emergency temporary guardian; and
- May not appoint as the permanent guardian a professional guardian who served as an emergency temporary guardian.

The final two objections above only apply if an interested person objects to the appointment of the guardian. The court may waive these restrictions if special requirements of the guardianship require that the court appoint a guardian with special talents or specific prior experience but the court must note those findings.

Letters of Guardianship (Section 13)

This section provides that letters of guardianship for all guardianships, not just limited guardianships, must specify the authority of a guardian with respect to a ward's advance directive. In a sense, this is a conforming change to reflect the amendment made to s. 744.3115, F.S., relating to advance directives.

Abuse, Neglect, or Exploitation by a Guardian (Section 14)

The bill creates a code of conduct or ethical standards for guardians and requires a person to report abuse, neglect, or exploitation of a ward by a guardian to the Department of Children and Families.

Powers and Duties of a Guardian (Section 15)

The bill amends s. 744.361(1), F.S., to confirm that a guardian of an incapacitated person is a fiduciary who may exercise only those rights removed from the ward and delegated to the guardian. That section is further amended to provide that a guardian:

- Shall act within the scope of the authority granted and as provided by law;
- Shall act in good faith;
- May not act in a manner contrary to the ward's best interests; and
- Shall use certain special skills or expertise, if any, when acting on the ward's behalf.

The bill also requires that a guardian over the property keep clear, distinct, and accurate records of the property.

Additional responsibilities of a guardian of a ward's person are enumerated. A professional guardian must also assess the nature and extent of visitation and communication with the ward's family and friends during a personal visit.

Annual Guardianship Reports (Section 16)

Existing law allows annual guardianship plans to be filed well after the plan year has begun. The changes under this bill require guardianship plans to be filed in advance.

Judicial Review of Guardianship Reports (Section 17)

The bill amends this section to provide that a guardian may continue to act under the authority of the last approved guardianship report until the next year's report is approved.

Petition for Interim Judicial Review (Section 18)

The bill amends this section to provide that at any time, an interested person may petition the court for review that the guardian is acting in a manner contrary to the power and duties of a guardian or is denying visitation between the ward and his or her relatives.

Restoration to Capacity (Section 19)

The bill amends s. 744.464(3), F.S., to establish a "preponderance of the evidence" burden of proof for the restoration of all or some of the ward's rights and requires the court to make specific findings of fact. The bill also provides that the ward has the burden of proving that the restoration of capacity is warranted. A new provision is added stating that a court must give priority to any suggestion of capacity and must advance the cause on the calendar.³⁹

Effective Date (Section 20 and 21)

The bill takes effect upon becoming law and the amendments made in the bill apply to all proceedings pending when the bill becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁹ Section 744.464(4), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 744.3203(3), F.S., suspension of a power of attorney before an incapacity determination, could be drafted more precisely for clarity. The intent appears to be that, in an emergency situation, a specific power can be reinstated without a hearing and notice being served on all interested persons. Perhaps an amendment could be developed to clarify the meaning of this subsection.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 709.2109, 709.2119, 744.1065, 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309, 744.3115, 744.312, 744.3203, 744.345, 744.359, 744.361, 744.367, 744.369, 744.3715, and 744.464.

This bill creates the following sections of the Florida Statutes: 744.1065, 744.3203, and 744.359.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 10, 2015:

The committee substitute differs from the original bill in the following ways:

- A power of attorney may be suspended automatically during guardianship proceedings but only if the petitioner specifically requests the suspension and states facts under oath supporting the suspension.
- Courts may refer guardianship matters to mediation or alternative dispute resolution.
- Courts may appoint the office of criminal conflict counsel as court monitors and emergency court monitors for indigent wards.

- Attorneys for the ward, whether court appointed or otherwise, are entitled to compensation from the guardianship estate.
- Expert testimony is not necessary to establish compensation for the guardian or the guardian's attorney.
- If a court has already appointed a guardian to represent a minor, an additional appointment of a guardian ad litem is not necessary to represent a minor's interest in the settlement of a claim.
- Advance notice is not necessary to the alleged incapacitated person and his or her attorney before appointing an emergency temporary guardian if a petitioner demonstrates that substantial harm will occur if notice is given.
- A nonprofit charitable corporation is expressly authorized to serve as a guardian.
- If a court modifies the authority of a health care surrogate in an advance directive, the modification must be based on findings of fact.
- The factors a court must consider in determining who to appoint as guardian are revised. A court is discouraged from appointing as a permanent guardian a professional guardian who has served as an emergency temporary guardian.
- A code of conduct or ethical standards for guardians is established. A person is required to report abuse, neglect, or exploitation of a ward by a guardian to the Department of Children and Families.
- Guardianship plans are required to be filed in advance of the plan year.
- Family members of wards are authorized to challenge a decision by a guardian which denies visitation to family members.
- The results of a court-ordered medical exam after a suggestion of capacity is filed is evidence that may be used for determining capacity or restoring rights. Courts must give priority to scheduling restoration of capacity proceedings.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

Appropriations Subcommittee on Criminal and Civil Justice (Soto)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 709.2109, Florida
Statutes, is amended to read:

709.2109 Termination or suspension of power of attorney or
agent's authority.—

(3) If any person initiates judicial proceedings to
determine the principal's incapacity or for the appointment of a



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11 guardian advocate, the authority granted under the power of
12 attorney is suspended until the petition is dismissed or
13 withdrawn or the court enters an order authorizing the agent to
14 exercise one or more powers granted under the power of attorney.
15 However, if the agent named in the power of attorney is the
16 principal's parent, spouse, child, or grandchild, the authority
17 under the power of attorney is not suspended unless a verified
18 motion in accordance with s. 744.3203 is also filed.

19 (a) If an emergency arises after initiation of proceedings
20 to determine incapacity and before adjudication regarding the
21 principal's capacity, the agent may petition the court in which
22 the proceeding is pending for authorization to exercise a power
23 granted under the power of attorney. The petition must set forth
24 the nature of the emergency, the property or matter involved,
25 and the power to be exercised by the agent.

26 (b) Notwithstanding the provisions of this section, unless
27 otherwise ordered by the court, a proceeding to determine
28 incapacity does not affect the authority of the agent to make
29 health care decisions for the principal, including, but not
30 limited to, those provided in chapter 765. If the principal has
31 executed a health care advance directive designating a health
32 care surrogate, the terms of the directive control if the
33 directive and the power of attorney are in conflict unless the
34 power of attorney is later executed and expressly states
35 otherwise.

36 Section 2. Subsection (5) is added to section 744.107,
37 Florida Statutes, to read:

38 744.107 Court monitors.—

39 (5) The court may appoint the office of criminal conflict



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40 and civil regional counsel as monitor if the ward is indigent.

41 Section 3. Subsection (6) is added to section 744.1075,
42 Florida Statutes, to read:

43 744.1075 Emergency court monitor.-

44 (6) The court may appoint the office of criminal conflict
45 and civil regional counsel as monitor if the ward is indigent.

46 Section 4. Subsections (5) and (8) of section 744.108,
47 Florida Statutes, are amended, and subsection (9) is added to
48 that section, to read:

49 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
50 and expenses.-

51 (5) All petitions for guardian ~~guardian's~~ and attorney
52 ~~attorney's~~ fees and expenses must be accompanied by an itemized
53 description of the services performed for the fees and expenses
54 sought to be recovered.

55 (8) When court proceedings are instituted to review or
56 determine a guardian's or an attorney's fees under subsection
57 (2), such proceedings are part of the guardianship
58 administration process and the costs, including costs and
59 attorney fees for the guardian's attorney, an attorney appointed
60 under s. 744.331(2), or an attorney who has rendered services to
61 the ward, shall be determined by the court and paid from the
62 assets of the guardianship estate unless the court finds the
63 requested compensation under subsection (2) to be substantially
64 unreasonable.

65 (9) The court may determine that a request for compensation
66 by the guardian, the guardian's attorney, a person employed by
67 the guardian, an attorney appointed under s. 744.331(2), or an
68 attorney who has rendered services to the ward, is reasonable



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69 without receiving expert testimony. A person or party may offer
70 expert testimony for or against a request for compensation after
71 giving notice to interested persons. Reasonable expert witness
72 fees shall be awarded by the court and paid from the assets of
73 the guardianship estate using the standards in subsection (8).

74 Section 5. Section 744.3025, Florida Statutes, is amended
75 to read:

76 744.3025 Claims of minors.—

77 (1) (a) The court may appoint a guardian ad litem to
78 represent the minor's interest before approving a settlement of
79 the minor's portion of the claim in a any case in which a minor
80 has a claim for personal injury, property damage, wrongful
81 death, or other cause of action in which the gross settlement of
82 the claim exceeds \$15,000 if the court believes a guardian ad
83 litem is necessary to protect the minor's interest.

84 (b) Except as provided in paragraph (e), the court shall
85 appoint a guardian ad litem to represent the minor's interest
86 before approving a settlement of the minor's claim in a any case
87 in which the gross settlement involving a minor equals or
88 exceeds \$50,000.

89 (c) The appointment of the guardian ad litem must be
90 without the necessity of bond or notice.

91 (d) The duty of the guardian ad litem is to protect the
92 minor's interests as described in the Florida Probate Rules.

93 (e) A court need not appoint a guardian ad litem for the
94 minor if a guardian of the minor has previously been appointed
95 and that guardian has no potential adverse interest to the
96 minor. ~~A court may appoint a guardian ad litem if the court~~
97 ~~believes a guardian ad litem is necessary to protect the~~



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98 ~~interests of the minor.~~

99 (2) Unless waived, the court shall award reasonable fees
100 and costs to the guardian ad litem to be paid out of the gross
101 proceeds of the settlement.

102 (3) A settlement of a claim pursuant to this section is
103 subject to the confidentiality provisions of this chapter.

104 Section 6. Subsections (2) through (8) of section 744.3031,
105 Florida Statutes, are renumbered as subsections (3) through (9),
106 respectively, and a new subsection (2) is added to that section,
107 and present subsection (8) of that section is amended, to read:

108 744.3031 Emergency temporary guardianship.-

109 (2) Notice of filing of the petition for appointment of an
110 emergency temporary guardian and a hearing on the petition must
111 be served on the alleged incapacitated person and on the alleged
112 incapacitated person's attorney at least 24 hours before the
113 hearing on the petition is commenced, unless the petitioner
114 demonstrates that substantial harm to the alleged incapacitated
115 person would occur if the 24-hour notice is given.

116 (9)-(8)(a) An emergency temporary guardian shall file a
117 final report no later than 30 days after the expiration of the
118 emergency temporary guardianship.

119 (b) A court may not authorize any final payment of the
120 emergency temporary guardian fees or the fees of his or her
121 attorney until the final report is filed.

122 (c)1. If the final report is not timely filed, the court
123 shall issue to the emergency temporary guardian an order to show
124 cause which requires the emergency temporary guardian to appear
125 before the court and explain why the court should not take
126 further action. The order must specify the time and place of the



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127 hearing within a reasonable time after service of the order to
128 allow for the preparation of a defense.

129 2. At any time before the hearing on the order to show
130 cause, the court may suspend the emergency temporary guardian if
131 he or she has become a successor guardian, appoint a guardian ad
132 litem, or issue any other appropriate order to protect the
133 physical or mental health, safety, or property of the ward. A
134 copy of any such order shall be transmitted by the court or
135 under its direction to all parties at the time of entry of the
136 order or injunction.

137 3. After the hearing on the order to show cause, the court
138 may impose sanctions on the emergency temporary guardian or take
139 any other action authorized by law, including, but not limited
140 to, entering a judgment of contempt; ordering an accounting;
141 freezing assets; referring the case to local law enforcement
142 agencies or the state attorney; filing an abuse, neglect, or
143 exploitation complaint with the Department of Children and
144 Families; and initiating proceedings to remove the emergency
145 temporary guardian if he or she has become a successor guardian.

146 (d) ~~(b)~~ If an emergency temporary guardian is a guardian for
147 the property, the final report must consist of a verified
148 inventory of the property, as provided in s. 744.365, as of the
149 date the letters of emergency temporary guardianship were
150 issued, a final accounting that gives a full and correct account
151 of the receipts and disbursements of all the property of the
152 ward over which the guardian had control, and a statement of the
153 property of the ward on hand at the end of the emergency
154 temporary guardianship. If the emergency temporary guardian
155 becomes the successor guardian of the property, the final report



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156 must satisfy the requirements of the initial guardianship report
157 for the guardian of the property as provided in s. 744.362.

158 (e)~~(e)~~ If the emergency temporary guardian is a guardian of
159 the person, the final report must summarize the activities of
160 the temporary guardian with regard to residential placement,
161 medical condition, mental health and rehabilitative services,
162 and the social condition of the ward to the extent of the
163 authority granted to the temporary guardian in the letters of
164 guardianship. If the emergency temporary guardian becomes the
165 successor guardian of the person, the report must satisfy the
166 requirements of the initial report for a guardian of the person
167 as stated in s. 744.362.

168 (f)~~(d)~~ A copy of the final report of the emergency
169 temporary guardianship shall be served on the successor guardian
170 and the ward.

171 Section 7. Subsection (7) is added to section 744.309,
172 Florida Statutes, to read:

173 744.309 Who may be appointed guardian of a resident ward.-

174 (7) FOR-PROFIT CORPORATE GUARDIAN.-A for-profit corporate
175 guardian existing under the laws of this state is qualified to
176 act as guardian of a ward if the entity is qualified to do
177 business in the state, is wholly owned by the person who is the
178 circuit's public guardian in the circuit where the corporate
179 guardian is appointed, and has met the registration requirements
180 of s. 744.1083, provided that the for-profit corporate guardian:

181 (a) Posts and maintains a blanket fiduciary bond of at
182 least \$250,000 with the clerk of the circuit court in the county
183 in which the corporate guardian has its principal place of
184 business. The corporate guardian shall provide proof of the



185 fiduciary bond to the clerks of each additional circuit court in
186 which he or she is serving as a guardian. The bond must cover
187 all wards for whom the corporation has been appointed as a
188 guardian at any given time. The liability of the provider of the
189 bond is limited to the face value of the bond, regardless of the
190 number of wards for whom the corporation is acting as a
191 guardian. The terms of the bond must cover the acts or omissions
192 of each agent or employee of the corporation who has direct
193 contact with the ward or access to the assets of the
194 guardianship. The bond must be payable to the Governor and his
195 or her successors in office and be conditioned on the faithful
196 performance of all duties of a guardian under this chapter. The
197 bond is in lieu of and not in addition to the bond required
198 under s. 744.1085 but is in addition to any bonds required under
199 s. 744.351. The expenses incurred to satisfy the bonding
200 requirements of this section may not be paid with the assets of
201 any ward; or

202 (b) Maintains a liability insurance policy that covers any
203 losses sustained by the guardianship caused by errors,
204 omissions, or any intentional misconduct committed by the
205 corporation's officers or agents. The policy must cover all
206 wards for whom the corporation is acting as a guardian agent for
207 losses up to \$250,000. The terms of the policy must cover acts
208 or omissions of each agent or employee of the corporation who
209 has direct contact with the principal or access to the assets of
210 the guardianship. The corporate guardian shall provide proof of
211 the fiduciary bond to the clerk of each additional circuit court
212 in which he or she is serving as a guardian. A for-profit
213 corporation appointed as guardian before July 1, 2015, is also



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214 qualified to serve as a guardian in the particular guardianships
215 in which the corporation has already been appointed as guardian.

216 Section 8. Section 744.3115, Florida Statutes, is amended
217 to read:

218 744.3115 Advance directives for health care.—In each
219 proceeding in which a guardian is appointed under this chapter,
220 the court shall determine whether the ward, prior to incapacity,
221 has executed any valid advance directive under chapter 765. If
222 any advance directive exists, the court shall specify in its
223 order and letters of guardianship what authority, if any, the
224 guardian shall exercise over the ward with regard to health care
225 decisions and what authority, if any, the surrogate shall
226 continue to exercise over the ward with regard to health care
227 decisions surrogate. Pursuant to the grounds listed in s.
228 765.105, the court, upon its own motion, may, with notice to the
229 surrogate and any other appropriate parties, modify or revoke
230 the authority of the surrogate to make health care decisions for
231 the ward. Any order revoking or modifying the authority of the
232 surrogate must be supported by specific written findings of
233 fact. If the court order provides that the guardian is
234 responsible for making health care decisions for the ward, the
235 guardian shall assume the responsibilities of the surrogate
236 which are provided in s. 765.205. For purposes of this section,
237 the term "health care decision" has the same meaning as in s.
238 765.101.

239 Section 9. Section 744.312, Florida Statutes, is reordered
240 and amended to read:

241 744.312 Considerations in appointment of guardian.—

242 (1)(4) If the person designated is qualified to serve



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243 pursuant to s. 744.309, the court shall appoint any standby
244 guardian or preneed guardian, unless the court determines that
245 appointing such person is contrary to the best interests of the
246 ward.

247 (2)~~(1)~~ If a guardian cannot be appointed under subsection
248 (1) ~~Subject to the provisions of subsection (4)~~, the court may
249 appoint any person who is fit and proper and qualified to act as
250 guardian, whether related to the ward or not.

251 ~~(2)~~ The court shall give preference to the appointment of a
252 person who:

253 (a) Is related by blood or marriage to the ward;

254 (b) Has educational, professional, or business experience
255 relevant to the nature of the services sought to be provided;

256 (c) Has the capacity to manage the financial resources
257 involved; or

258 (d) Has the ability to meet the requirements of the law and
259 the unique needs of the individual case.

260 (3) The court shall also:

261 (a) Consider the wishes expressed by an incapacitated
262 person as to who shall be appointed guardian.~~†~~

263 (b) Consider the preference of a minor who is age 14 or
264 over as to who should be appointed guardian.~~†~~

265 (c) Consider any person designated as guardian in any will
266 in which the ward is a beneficiary.

267 (d) Consider the wishes of the ward's next of kin, when the
268 ward cannot express a preference.

269 (4) Except when a standby guardian or a preneed guardian is
270 appointed by the court:

271 (a) In each case when a court appoints a professional



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272 guardian and does not use a rotation system for such
273 appointment, the court must make specific findings of fact
274 stating why the person was selected as guardian in the
275 particular matter involved. The findings must reference each of
276 the factors listed in subsections (2) and (3).

277 (b) An emergency temporary guardian who is a professional
278 guardian may not be appointed as the permanent guardian of a
279 ward unless one of the next of kin of the alleged incapacitated
280 person or the ward requests that the professional guardian be
281 appointed as permanent guardian. The court may waive the
282 limitations of this paragraph if the special requirements of the
283 guardianship demand that the court appoint a guardian because he
284 or she has special talent or specific prior experience. The
285 court must make specific findings of fact that justify a finding
286 that there are special requirements requiring an appointment
287 without reference to this limitation.

288 (5) The court may not give preference to the appointment of
289 a person under subsection (2) based solely on the fact that such
290 person was appointed by the court to serve as an emergency
291 temporary guardian.

292 Section 10. Section 744.3203, Florida Statutes, is created
293 to read:

294 744.3203 Suspension of power of attorney before incapacity
295 determination.—

296 (1) At any time during proceedings to determine incapacity
297 but before the entry of an order determining incapacity, the
298 authority granted under an alleged incapacitated person's power
299 of attorney to a parent, spouse, child, or grandchild is
300 suspended when the petitioner files a motion stating that a



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301 specific power of attorney should be suspended for any of the
302 following grounds:

303 (a) The agent's decisions are not in accord with the
304 alleged incapacitated person's known desires.

305 (b) The power of attorney is invalid.

306 (c) The agent has failed to discharge his or her duties or
307 incapacity or illness renders the agent incapable of discharging
308 duties.

309 (d) The agent has abused powers.

310 (e) There is a danger that the property of the alleged
311 incapacitated person may be wasted, misappropriated, or lost
312 unless the authority under the power of attorney is suspended.

313
314 Grounds for suspending a power of attorney do not include the
315 existence of a dispute between the agent and the petitioner
316 which is more appropriate for resolution in some other forum or
317 a legal proceeding other than a guardianship proceeding.

318 (2) The motion must:

319 (a) Identify one or more of the grounds in subsection (1);

320 (b) Include specific statements of fact showing that
321 grounds exist to justify the relief sought; and

322 (c) Include the following statement: "Under penalties of
323 perjury, I declare that I have read the foregoing motion and
324 that the facts stated in it are true to the best of my knowledge
325 and belief," followed by the signature of the petitioner.

326 (3) Upon the filing of a response to the motion by the
327 agent under the power of attorney, the court shall schedule the
328 motion for an expedited hearing. Unless an emergency arises and
329 the agent's response sets forth the nature of the emergency, the



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330 property or matter involved, and the power to be exercised by
331 the agent, notice must be given to all interested persons, the
332 alleged incapacitated person, and the alleged incapacitated
333 person's attorney. The court order following the hearing must
334 set forth what powers the agent is permitted to exercise, if
335 any, pending the outcome of the petition to determine
336 incapacity.

337 (4) In addition to any other remedy authorized by law, a
338 court may award reasonable attorney fees and costs to an agent
339 who successfully challenges the suspension of the power of
340 attorney if the petitioner's motion was made in bad faith.

341 (5) The suspension of authority granted to persons other
342 than a parent, spouse, child, or grandchild shall be as provided
343 in s. 709.2109.

344 Section 11. Subsection (6) and paragraph (c) of subsection
345 (7) of section 744.331, Florida Statutes, are amended to read:

346 744.331 Procedures to determine incapacity.-

347 (6) ORDER DETERMINING INCAPACITY.-If, after making findings
348 of fact on the basis of clear and convincing evidence, the court
349 finds that a person is incapacitated with respect to the
350 exercise of a particular right, or all rights, the court shall
351 enter a written order determining such incapacity. In
352 determining incapacity, the court shall consider the person's
353 unique needs and abilities and may only remove those rights that
354 the court finds the person does not have the capacity to
355 exercise. A person is determined to be incapacitated only with
356 respect to those rights specified in the order.

357 (a) The court shall make the following findings:

358 1. The exact nature and scope of the person's incapacities;



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359 2. The exact areas in which the person lacks capacity to
360 make informed decisions about care and treatment services or to
361 meet the essential requirements for her or his physical or
362 mental health or safety;

363 3. The specific legal disabilities to which the person is
364 subject; and

365 4. The specific rights that the person is incapable of
366 exercising.

367 (b) When an order determines that a person is incapable of
368 exercising delegable rights, the court must consider and find
369 whether there is an alternative to guardianship that will
370 sufficiently address the problems of the incapacitated person. A
371 ~~guardian must be appointed to exercise the incapacitated~~
372 ~~person's delegable rights unless the court finds there is an~~
373 ~~alternative.~~ A guardian may not be appointed if the court finds
374 there is an alternative to guardianship which will sufficiently
375 address the problems of the incapacitated person. If the court
376 finds there is not an alternative to guardianship that
377 sufficiently addresses the problems of the incapacitated person,
378 a guardian must be appointed to exercise the incapacitated
379 person's delegable rights.

380 (c) In determining that a person is totally incapacitated,
381 the order must contain findings of fact demonstrating that the
382 individual is totally without capacity to care for herself or
383 himself or her or his property.

384 (d) An order adjudicating a person to be incapacitated
385 constitutes proof of such incapacity until further order of the
386 court.

387 (e) After the order determining that the person is



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388 incapacitated has been filed with the clerk, it must be served
389 on the incapacitated person. The person is deemed incapacitated
390 only to the extent of the findings of the court. The filing of
391 the order is notice of the incapacity. An incapacitated person
392 retains all rights not specifically removed by the court.

393 (f) Upon the filing of a verified statement by an
394 interested person stating:

395 1. That he or she has a good faith belief that the alleged
396 incapacitated person's trust, trust amendment, or durable power
397 of attorney is invalid; and

398 2. A reasonable factual basis for that belief,

399
400 the trust, trust amendment, or durable power of attorney shall
401 not be deemed to be an alternative to the appointment of a
402 guardian. The appointment of a guardian does not limit the
403 court's power to determine that certain authority granted by a
404 durable power of attorney is to remain exercisable by the agent
405 ~~attorney in fact~~.

406 (7) FEES.—

407 (c) If the petition is dismissed or denied:~~7~~

408 1. The fees of the examining committee shall be paid upon
409 court order as expert witness fees under s. 29.004(6).

410 2. Costs and attorney ~~attorney's~~ fees of the proceeding may
411 be assessed against the petitioner if the court finds the
412 petition to have been filed in bad faith. The petitioner shall
413 also reimburse the state courts system for any amounts paid
414 under subparagraph 1. upon such a finding.

415 Section 12. Subsection (4) of section 744.344, Florida
416 Statutes, is amended to read:



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417 744.344 Order of appointment.—

418 (4) If a petition for the appointment of a guardian has not
419 been filed or ruled upon at the time of the hearing on the
420 petition to determine capacity, the court may appoint an
421 emergency temporary guardian in the manner and for the purposes
422 specified in s. 744.3031.

423 Section 13. Section 744.345, Florida Statutes, is amended
424 to read:

425 744.345 Letters of guardianship.—Letters of guardianship
426 shall be issued to the guardian and shall specify whether the
427 guardianship pertains to the person, or the property, or both,
428 of the ward. The letters must state whether the guardianship is
429 plenary or limited, and, if limited, the letters must state the
430 powers and duties of the guardian. ~~If the guardianship is~~
431 ~~limited,~~ The letters shall state whether or not and to what
432 extent the guardian is authorized to act on behalf of the ward
433 with regard to any advance directive previously executed by the
434 ward.

435 Section 14. Section 744.359, Florida Statutes, is created
436 to read:

437 744.359 Abuse, neglect, or exploitation by a guardian.—

438 (1) A guardian may not abuse, neglect, or exploit a ward.

439 (2) A guardian has committed exploitation when the

440 guardian:

441 (a) Commits fraud in obtaining appointment as a guardian;

442 (b) Abuses his or her powers; or

443 (c) Wastes, embezzles, or intentionally mismanages the
444 assets of the ward.

445 (3) A person who believes that a guardian is abusing,



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446 neglecting, or exploiting a ward shall report the incident to
447 the central abuse hotline of the Department of Children and
448 Families.

449 (4) This section shall be interpreted in conformity with s.
450 825.103.

451 Section 15. Section 744.361, Florida Statutes, is amended
452 to read:

453 744.361 Powers and duties of guardian.—

454 (1) The guardian of an incapacitated person is a fiduciary
455 and may exercise only those rights that have been removed from
456 the ward and delegated to the guardian. The guardian of a minor
457 shall exercise the powers of a plenary guardian.

458 (2) The guardian shall act within the scope of the
459 authority granted by the court and as provided by law.

460 (3) The guardian shall act in good faith.

461 (4) A guardian may not act in a manner that is contrary to
462 the ward's best interests under the circumstances.

463 (5) A guardian who has special skills or expertise, or is
464 appointed in reliance upon the guardian's representation that
465 the guardian has special skills or expertise, shall use those
466 special skills or expertise when acting on behalf of the ward.

467 (6)~~(2)~~ The guardian shall file an initial guardianship
468 report in accordance with s. 744.362.

469 (7)~~(3)~~ The guardian shall file a guardianship report
470 annually in accordance with s. 744.367.

471 (8)~~(4)~~ The guardian of the person shall implement the
472 guardianship plan.

473 (9)~~(5)~~ When two or more guardians have been appointed, the
474 guardians shall consult with each other.



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475 (10)~~(6)~~ A guardian who is given authority over any property
476 of the ward shall:

477 (a) Protect and preserve the property and invest it
478 prudently as provided in chapter 518, apply it as provided in s.
479 744.397, and keep clear, distinct, and accurate records of the
480 administration of the ward's property ~~account for it faithfully.~~

481 (b) Perform all other duties required of him or her by law.

482 (c) At the termination of the guardianship, deliver the
483 property of the ward to the person lawfully entitled to it.

484 (11)~~(7)~~ The guardian shall observe the standards in dealing
485 with the guardianship property that would be observed by a
486 prudent person dealing with the property of another, ~~and, if the~~
487 ~~guardian has special skills or is named guardian on the basis of~~
488 ~~representations of special skills or expertise, he or she is~~
489 ~~under a duty to use those skills.~~

490 (12)~~(8)~~ The guardian, if authorized by the court, shall
491 take possession of all of the ward's property and of the rents,
492 income, issues, and profits from it, whether accruing before or
493 after the guardian's appointment, and of the proceeds arising
494 from the sale, lease, or mortgage of the property or of any
495 part. All of the property and the rents, income, issues, and
496 profits from it are assets in the hands of the guardian for the
497 payment of debts, taxes, claims, charges, and expenses of the
498 guardianship and for the care, support, maintenance, and
499 education of the ward or the ward's dependents, as provided for
500 under the terms of the guardianship plan or by law.

501 (13) Recognizing that every individual has unique needs and
502 abilities, a guardian who is given authority over a ward's
503 person shall, as appropriate under the circumstances:



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504 (a) Consider the expressed desires of the ward as known by
505 the guardian when making decisions that affect the ward.

506 (b) Allow the ward to maintain contact with family and
507 friends unless the guardian believes that such contact may cause
508 harm to the ward.

509 (c) Not restrict the physical liberty of the ward more than
510 reasonably necessary to protect the ward or another person from
511 serious physical injury, illness, or disease.

512 (d) Assist the ward in developing or regaining his or her
513 own capacity, if medically possible.

514 (e) Notify the court if the guardian believes that the ward
515 has regained capacity and that one or more of the rights that
516 have been removed should be restored to the ward.

517 (f) To the extent applicable, make provision for the
518 medical, mental, rehabilitative, or personal care services for
519 the welfare of the ward.

520 (g) To the extent applicable, acquire a clear understanding
521 of the risks and benefits of a recommended course of health care
522 treatment before making a health care decision.

523 (h) Evaluate the ward's medical and health care options,
524 financial resources, and desires when making residential
525 decisions that are best suited for the current needs of the
526 ward.

527 (i) Advocate on behalf of the ward in institutional and
528 other residential settings and regarding access to home and
529 community-based services.

530 (j) Acquire an understanding of the available residential
531 options and give priority to home and other community-based
532 services and settings when not inconsistent with the person's



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533 goals, needs, and preferences.

534 ~~(14)(9)~~ A professional guardian must ensure that each of
535 the guardian's wards is personally visited by the guardian or
536 one of the guardian's professional staff at least once each
537 calendar quarter. During the personal visit, the guardian or the
538 guardian's professional staff person shall assess:

539 (a) The ward's physical appearance and condition.

540 (b) The appropriateness of the ward's current living
541 situation.

542 (c) The need for any additional services and the necessity
543 for continuation of existing services, taking into consideration
544 all aspects of social, psychological, educational, direct
545 service, health, and personal care needs.

546 (d) The nature and extent of visitation and communication
547 with the ward's family and friends.

548
549 This subsection does not apply to a professional guardian who
550 has been appointed only as guardian of the property.

551 Section 16. Subsection (1) of section 744.367, Florida
552 Statutes, is amended to read:

553 744.367 Duty to file annual guardianship report.—

554 (1) Unless the court requires filing on a calendar-year
555 basis, each guardian of the person shall file with the court an
556 annual guardianship plan at least 60 days, but no more than
557 within 90 days, before ~~after~~ the last day of the anniversary
558 month that the letters of guardianship were signed, and the plan
559 must cover the coming fiscal year, ending on the last day in
560 such anniversary month. If the court requires calendar-year
561 filing, the guardianship plan for the forthcoming calendar year



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562 must be filed on or after September 1 but no later than December
563 1 of the current year ~~before April 1 of each year.~~

564 Section 17. Subsection (8) of section 744.369, Florida
565 Statutes, is amended to read:

566 744.369 Judicial review of guardianship reports.—

567 (8) The approved report constitutes the authority for the
568 guardian to act in the forthcoming year. The powers of the
569 guardian are limited by the terms of the report. The annual
570 report may not grant additional authority to the guardian
571 without a hearing, as provided for in s. 744.331, to determine
572 that the ward is incapacitated to act in that matter. Unless the
573 court orders otherwise, the guardian may continue to act under
574 authority of the last-approved report until the forthcoming
575 year's report is approved.

576 Section 18. Subsection (1) of section 744.3715, Florida
577 Statutes, is amended to read:

578 744.3715 Petition for interim judicial review.—

579 (1) At any time, any interested person, including the ward,
580 may petition the court for review alleging that the guardian is
581 not complying with the guardianship plan, ~~or~~ is exceeding his or
582 her authority under the guardianship plan, is acting in a manner
583 contrary to s. 744.361, is denying visitation between the ward
584 and his or her relatives in violation of s. 744.361(13), or ~~and~~
585 ~~the guardian~~ is not acting in the best interest of the ward. The
586 petition for review must state the nature of the objection to
587 the guardian's action or proposed action. Upon the filing of any
588 such petition, the court shall review the petition and act upon
589 it expeditiously.

590 Section 19. Paragraphs (a) and (b) of subsection (3) of



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591 section 744.464, Florida Statutes, are amended, and subsection
592 (4) is added to that section, to read:

593 744.464 Restoration to capacity.—

594 (3) ORDER OF RESTORATION.—

595 (a) If no objections are filed, and the court is satisfied
596 that with the medical examination establishes by a preponderance
597 of the evidence that restoration of all or some of the ward's
598 rights is appropriate, the court shall enter an order of
599 restoration of capacity, restoring all or some of the rights
600 which were removed from the ward in accordance with those
601 findings. ~~The order must be issued within 30 days after the~~
602 ~~medical report is filed.~~

603 (b) At the conclusion of a hearing, conducted pursuant to
604 s. 744.1095, the court shall make specific findings of fact and,
605 based on a preponderance of the evidence, enter an order either
606 denying the suggestion of capacity or restoring all or some of
607 the rights which were removed from the ward. The ward has the
608 burden of proving by a preponderance of the evidence that the
609 restoration of capacity is warranted.

610 (4) TIMELINESS OF HEARING.—The court shall give priority to
611 any suggestion of capacity and shall advance the cause on the
612 calendar.

613 Section 20. Sections 709.2109 and 744.3203, Florida
614 Statutes, as created by this act, apply to all proceedings filed
615 on or after July 1, 2015. The amendments made by this act to ss.
616 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,
617 744.3115, 744.312, 744.331, 744.344, 744.345, 744.359, 744.361,
618 744.367, 744.369, 744.3715, and 744.464, Florida Statutes, apply
619 to all proceedings pending on July 1, 2015.



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620 Section 21. This act shall take effect July 1, 2015.

621

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

623 And the title is amended as follows:

624 Delete everything before the enacting clause

625 and insert:

626 A bill to be entitled

627 An act relating to guardianship proceedings; amending
628 s. 709.2109, F.S.; requiring the filing of a motion
629 before termination or suspension of a power of
630 attorney in proceedings to determine a principal's
631 incapacity or for appointment of a guardian advocate
632 under certain circumstances; amending ss. 744.107 and
633 744.1075, F.S.; authorizing a court to appoint the
634 office of criminal conflict and civil regional counsel
635 as a court monitor in guardianship proceedings;
636 amending s. 744.108, F.S.; providing that fees and
637 costs incurred by an attorney who has rendered
638 services to a ward in compensation proceedings are
639 payable from guardianship assets; providing that
640 expert testimony is not required in proceedings to
641 determine compensation for an attorney or guardian;
642 requiring a person offering expert testimony to
643 provide notice to interested persons; providing that
644 expert witness fees are recoverable by the prevailing
645 interested person; amending s. 744.3025, F.S.;

646 providing that a court may appoint a guardian ad litem
647 to represent a minor if necessary to protect the
648 minor's interest in a settlement; providing that a



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649 settlement of a minor's claim is subject to certain
650 confidentiality provisions; amending s. 744.3031,
651 F.S.; requiring notification of an alleged
652 incapacitated person and such person's attorney of a
653 petition for appointment of an emergency temporary
654 guardian before a hearing on the petition commences;
655 prohibiting the final payment of the emergency
656 temporary guardian fees and his or her attorney fees
657 until the final report is filed; requiring a court to
658 issue an order to show cause to an emergency temporary
659 guardian who fails to timely file his or her final
660 report; authorizing a court to take certain actions to
661 protect the ward before a hearing on an order to show
662 cause; requiring a copy of such order to be
663 transmitted to certain parties; authorizing the court
664 to impose sanctions on the emergency temporary
665 guardian or take certain other actions after a show
666 cause hearing; amending s. 744.309, F.S.; providing
667 that certain for-profit corporations may act as
668 guardian of a person; providing conditions; requiring
669 the posting and maintenance of a fiduciary bond;
670 limiting liability; requiring the corporation to
671 maintain certain insurance coverage; providing for
672 certain grandfathered guardianships; amending s.
673 744.3115, F.S.; directing the court to specify
674 authority for health care decisions with respect to a
675 ward's advance directive; amending s. 744.312, F.S.;
676 prohibiting a court from giving preference to the
677 appointment of certain persons as guardians; providing



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678 requirements for the appointment of professional
679 guardians; amending s. 744.3203, F.S.; providing
680 grounds for filing a motion for suspension of a power
681 of attorney before determination of incapacity;
682 providing criteria for such motion; requiring a
683 hearing under certain conditions; providing for the
684 award of attorney fees and costs; amending s. 744.331,
685 F.S.; directing the court to consider certain factors
686 when determining incapacity; requiring that the
687 examining committee be paid from state funds as court-
688 appointed expert witnesses if a petition for
689 incapacity is dismissed; requiring that a petitioner
690 reimburse the state for such expert witness fees if
691 the court finds the petition to have been filed in bad
692 faith; amending s. 744.344, F.S.; providing conditions
693 under which the court is authorized to appoint an
694 emergency temporary guardian; amending s. 744.345,
695 F.S.; revising provisions relating to letters of
696 guardianship; creating s. 744.359, F.S.; prohibiting
697 abuse, neglect, or exploitation of a ward by a
698 guardian; requiring reporting thereof to the
699 Department of Children and Families central abuse
700 hotline; providing for interpretation; amending s.
701 744.361, F.S.; providing additional powers and duties
702 of a guardian; amending s. 744.367, F.S.; revising the
703 period during which a guardian must file an annual
704 guardianship plan with the court; amending s. 744.369,
705 F.S.; providing for the continuance of a guardian's
706 authority to act under an expired annual report under



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707 certain circumstances; amending s. 744.3715, F.S.;

708 providing that an interested party may petition the

709 court regarding a guardian's failure to comply with

710 the duties of a guardian; amending s. 744.464, F.S.;

711 establishing the burden of proof for determining

712 restoration of capacity of a ward in pending

713 guardianship cases; requiring a court to advance such

714 cases on the calendar; providing applicability;

715 providing an effective date.

By the Committee on Judiciary; and Senators Diaz de la Portilla
and Detert

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1 A bill to be entitled
2 An act relating to guardianship proceedings; amending
3 s. 709.2109, F.S.; revising the conditions under which
4 an agent's power of attorney is terminated or
5 suspended or continues; amending s. 709.2119, F.S.;
6 revising the contents of an affidavit by an agent to a
7 third person; creating s. 744.1065, F.S.; authorizing
8 a court to refer guardianship matters to mediation or
9 alternative dispute resolution under certain
10 circumstances; amending ss. 744.107 and 744.1075,
11 F.S.; authorizing a court to appoint the office of
12 criminal conflict and civil regional counsel as a
13 court monitor in guardianship proceedings under
14 certain circumstances; amending s. 744.108, F.S.;
15 providing that fees and costs incurred by specified
16 attorneys in compensation proceedings are payable from
17 the assets of the guardianship estate; providing that
18 expert testimony is not required in proceedings to
19 determine compensation for an attorney or guardian;
20 providing that expert witness fees are payable from
21 the assets of the guardianship estate under certain
22 circumstances; amending s. 744.3025, F.S.; clarifying
23 the circumstances under which a court may appoint a
24 guardian ad litem to represent a minor; clarifying the
25 circumstances under which a court must appoint a
26 guardian ad litem; providing that a settlement of a
27 minor's claim is subject to certain confidentiality
28 provisions; amending s. 744.3031, F.S.; requiring that
29 a duly noticed hearing be held before the appointment

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30 of an emergency temporary guardian; requiring a notice
31 of filing of a petition for appointment of an
32 emergency temporary guardian and a notice for any
33 hearing on the petition to be served on certain
34 persons before a hearing on the petition commences;
35 revising the period for which an emergency temporary
36 guardian may be appointed; prohibiting the final
37 payment of the emergency temporary guardian fees and
38 his or her attorney fees until the final report is
39 filed; requiring a court to issue an order to show
40 cause to an emergency temporary guardian who fails to
41 timely file his or her final report; authorizing a
42 court to take certain actions to protect the ward
43 before a hearing on an order to show cause; requiring
44 a copy of such order to be transmitted to certain
45 parties; authorizing the court to impose sanctions on
46 the emergency temporary guardian or take certain other
47 actions after a show cause hearing; amending s.
48 744.309, F.S.; providing that certain corporations not
49 for profit may act as guardians of a ward; amending s.
50 744.3115, F.S.; requiring the court to specify
51 authority for health care decisions with respect to a
52 ward's advance directive; requiring a court order
53 revoking or modifying the authority of a health care
54 surrogate to be supported by written findings of fact;
55 amending s. 744.312, F.S.; requiring a court, in
56 determining whom to appoint as a guardian, to consider
57 the wishes of the close relatives of the incapacitated
58 person under certain circumstances; limiting the

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59 authority of a court to appoint guardians under
60 certain circumstances; authorizing the court to waive
61 the limitations under certain circumstances;
62 prohibiting the court from appointing a professional
63 guardian as a permanent guardian under certain
64 circumstances; creating s. 744.3203, F.S.; providing
65 for the suspension of a power of attorney during
66 guardianship proceedings under certain circumstances;
67 requiring an expedited hearing on the motion to
68 suspend a power of attorney under certain
69 circumstances; authorizing a court to award reasonable
70 attorney fees and costs to an agent who challenges the
71 suspension of the power of attorney under certain
72 circumstances; amending s. 744.345, F.S.; revising the
73 circumstances under which letters of guardianship must
74 describe the extent to which a guardian is authorized
75 to act on behalf of the ward with regard to an advance
76 directive; creating s. 744.359, F.S.; prohibiting
77 abuse, neglect, or exploitation of a ward by a
78 guardian; requiring the report of abuse, neglect, or
79 exploitation to the Department of Children and
80 Families central abuse hotline; amending s. 744.361,
81 F.S.; revising the powers and duties of a guardian;
82 amending s. 744.367, F.S.; revising the period during
83 which a guardian must file an annual guardianship plan
84 with the court; amending s. 744.369, F.S.; providing
85 for the continuance of a guardian's authority to act
86 under a last approved annual report under certain
87 circumstances; amending s. 744.3715, F.S.; providing

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88 an additional circumstance under which an interested
89 person may petition the court regarding a guardian's
90 failure to comply with the duties of a guardian;
91 amending s. 744.464, F.S.; establishing the burden of
92 proof for determining restoration of capacity of a
93 ward in pending guardianship cases; requiring the
94 court to make findings of fact in its determination to
95 restore or deny capacity; providing that the ward has
96 the burden of proving by a preponderance of the
97 evidence; requiring a court to advance such cases on
98 the calendar; providing applicability; providing an
99 effective date.

100
101 Be It Enacted by the Legislature of the State of Florida:

102
103 Section 1. Subsection (3) of section 709.2109, Florida
104 Statutes, is amended to read:

105 709.2109 Termination or suspension of power of attorney or
106 agent's authority.-

107 (3) (a) If a power of attorney is suspended during any
108 ~~person initiates~~ judicial proceedings to determine the
109 principal's incapacity or for the appointment of a guardian
110 advocate, the authority granted under the power of attorney is
111 suspended until the petition is dismissed or withdrawn or the
112 court enters an order authorizing the agent to exercise one or
113 more powers granted under the power of attorney.

114 ~~(a) If an emergency arises after initiation of proceedings~~
115 ~~to determine incapacity and before adjudication regarding the~~
116 ~~principal's capacity, the agent may petition the court in which~~

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117 ~~the proceeding is pending for authorization to exercise a power~~
118 ~~granted under the power of attorney. The petition must set forth~~
119 ~~the nature of the emergency, the property or matter involved,~~
120 ~~and the power to be exercised by the agent.~~

121 (b) Notwithstanding the provisions of this section, unless
122 otherwise ordered by the court, a proceeding to determine
123 incapacity does not affect the authority of the agent to make
124 health care decisions for the principal, including, but not
125 limited to, those provided in chapter 765. If the principal has
126 executed a health care advance directive designating a health
127 care surrogate, the terms of the directive control if the
128 directive and the power of attorney are in conflict unless the
129 power of attorney is later executed and expressly states
130 otherwise.

131 Section 2. Paragraphs (a) and (c) of subsection (2) of
132 section 709.2119, Florida Statutes, are amended, and subsection
133 (3) of that section is republished, to read:

134 709.2119 Acceptance of and reliance upon power of
135 attorney.—

136 (2) A third person may require:

137 (a) An agent to execute an affidavit stating where the
138 principal is domiciled; that the principal is not deceased; that
139 there has been no revocation, or partial or complete termination
140 by adjudication of incapacity or by the occurrence of an event
141 referenced in the power of attorney; that the power of attorney
142 is not under a suspension as the result ~~there has been no~~
143 ~~suspension by initiation~~ of proceedings to determine incapacity,
144 or to appoint a guardian, of the principal; that the agent's
145 authority has not been terminated by the filing of an action for

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146 dissolution or annulment of marriage or legal separation of the
147 agent and principal; and, if the affiant is a successor agent,
148 the reasons for the unavailability of the predecessor agents, if
149 any, at the time the authority is exercised.

150 (c) A written affidavit executed by the agent under this
151 subsection may, but need not, be in the following form:

152
153 STATE OF.....
154 COUNTY OF.....

155
156 Before me, the undersigned authority, personally appeared
157 ... (agent)... ("Affiant"), who swore or affirmed that:

- 158 1. Affiant is the agent named in the Power of Attorney
159 executed by ... (principal)... ("Principal") on ... (date)...
- 160 2. This Power of Attorney is currently exercisable by
161 Affiant. The principal is domiciled in ... (insert name of state,
162 territory, or foreign country)...
- 163 3. To the best of Affiant's knowledge after diligent search
164 and inquiry:
 - 165 a. The Principal is not deceased;
 - 166 b. Affiant's authority for the specific transaction has not
167 been suspended ~~during by initiation of~~ proceedings to determine
168 incapacity or to appoint a guardian or a guardian advocate;
 - 169 c. Affiant's authority has not been terminated by the
170 filing of an action for dissolution or annulment of Affiant's
171 marriage to the principal, or their legal separation; and
 - 172 d. There has been no revocation, or partial or complete
173 termination, of the power of attorney or of Affiant's authority.
- 174 4. Affiant is acting within the scope of authority granted

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175 in the power of attorney.
 176 5. Affiant is the successor to ...(insert name of
 177 predecessor agent)..., who has resigned, died, become
 178 incapacitated, is no longer qualified to serve, has declined to
 179 serve as agent, or is otherwise unable to act, if applicable.
 180 6. Affiant agrees not to exercise any powers granted by the
 181 Power of Attorney if Affiant attains knowledge that the power of
 182 attorney has been revoked, has been partially or completely
 183 terminated or suspended, or is no longer valid because of the
 184 death or adjudication of incapacity of the Principal.
 185
 186
 187 ... (Affiant) ...
 188
 189 Sworn to (or affirmed) and subscribed before me this ...
 190 day of ...(month)..., ...(year)..., by ...(name of person making
 191 statement)...
 192
 193 ...(Signature of Notary Public-State of Florida)...
 194
 195 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 196
 197 Personally Known OR Produced Identification
 198 ...(Type of Identification Produced)...
 199 (3) A third person who is asked to accept a power of
 200 attorney that appears to be executed in accordance with s.
 201 709.2105 may in good faith request, and rely upon, without
 202 further investigation:
 203 (a) A certified English translation of the power of

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204 attorney if the power of attorney contains, in whole or in part,
 205 language other than English;
 206 (b) An opinion of counsel as to any matter of law
 207 concerning the power of attorney if the third person making the
 208 request provides in a writing or other record the reason for the
 209 request; or
 210 (c) The affidavit described in subsection (2).
 211 Section 3. Section 744.1065, Florida Statutes, is created
 212 to read:
 213 744.1065 Mediation; alternative dispute resolution.—At any
 214 time, the court may, upon its own motion or the motion of an
 215 interested person, refer a matter under the jurisdiction of this
 216 chapter to mediation or alternative dispute resolution if the
 217 court finds that mediation or alternative dispute resolution is
 218 in the best interests of the alleged incapacitated person, ward,
 219 or minor.
 220 Section 4. Subsection (5) is added to section 744.107,
 221 Florida Statutes, to read:
 222 744.107 Court monitors.—
 223 (5) The court may appoint the office of criminal conflict
 224 and civil regional counsel as monitor if the ward is indigent.
 225 Section 5. Subsection (6) is added to section 744.1075,
 226 Florida Statutes, to read:
 227 744.1075 Emergency court monitor.—
 228 (6) The court may appoint the office of criminal conflict
 229 and civil regional counsel as monitor if the ward is indigent.
 230 Section 6. Subsections (5) and (8) of section 744.108,
 231 Florida Statutes, are amended, and subsection (9) is added to
 232 that section, to read:

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233 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
234 and expenses.-

235 (5) All petitions for guardian ~~guardian's~~ and attorney
236 ~~attorney's~~ fees and expenses must be accompanied by an itemized
237 description of the services performed for the fees and expenses
238 sought to be recovered.

239 (8) When court proceedings are instituted to review or
240 determine guardian ~~a guardian's~~ or attorney ~~an attorney's~~ fees
241 under subsection (2), such proceedings are part of the
242 guardianship administration process and the costs, including
243 costs and attorney fees for the guardian's attorney, an attorney
244 appointed under s. 744.331(2), or an attorney who has rendered
245 services to the ward, shall be determined by the court and paid
246 from the assets of the guardianship estate unless the court
247 finds the requested compensation under subsection (2) to be
248 substantially unreasonable.

249 (9) With respect to a request for compensation by the
250 guardian, the guardian's attorney, a person employed by the
251 guardian, an attorney appointed under s. 744.331(2), or an
252 attorney who has rendered services to the ward, the court may
253 determine the compensation to be reasonable without receiving
254 expert testimony. A person or party may offer expert testimony
255 for or against a request for compensation after giving notice to
256 interested persons. If expert testimony is offered, the court
257 shall award reasonable expert witness fees to the prevailing
258 interested person, which must be paid from the assets of the
259 guardianship estate.

260 Section 7. Section 744.3025, Florida Statutes, is amended
261 to read:

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262 744.3025 Claims of minors.-

263 (1) (a) The court may appoint a guardian ad litem to
264 represent the minor's interest before approving a settlement of
265 the minor's portion of the claim in a any case in which a minor
266 has a claim for personal injury, property damage, wrongful
267 death, or other cause of action in which the gross settlement of
268 the claim exceeds \$15,000 if the court believes a guardian ad
269 litem is necessary to protect the minor's interest.

270 (b) Except as provided in paragraph (e), the court shall
271 appoint a guardian ad litem to represent the minor's interest
272 before approving a settlement of the minor's claim in a any case
273 in which the gross settlement involving a minor equals or
274 exceeds \$50,000.

275 (c) The appointment of the guardian ad litem must be
276 without the necessity of bond or notice.

277 (d) The duty of the guardian ad litem is to protect the
278 minor's interests as described in the Florida Probate Rules.

279 (e) A court need not appoint a guardian ad litem for the
280 minor if a guardian of the minor has previously been appointed
281 and that guardian has no potential adverse interest to the
282 minor. ~~A court may appoint a guardian ad litem if the court~~
283 ~~believes a guardian ad litem is necessary to protect the~~
284 ~~interests of the minor.~~

285 (2) Unless waived, the court shall award reasonable fees
286 and costs to the guardian ad litem to be paid out of the gross
287 proceeds of the settlement.

288 (3) A settlement of a claim pursuant to this section is
289 subject to the confidentiality provisions of this chapter.

290 Section 8. Section 744.3031, Florida Statutes, is amended

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291 to read:

292 744.3031 Emergency temporary guardianship.—

293 (1) A court, prior to appointment of a guardian but after a
 294 petition for determination of incapacity has been filed pursuant
 295 to this chapter, and after a duly noticed hearing has been held,
 296 may appoint an emergency temporary guardian for the person or
 297 property, or both, of an alleged incapacitated person. The court
 298 must specifically find that there appears to be imminent danger
 299 that the physical or mental health or safety of the person will
 300 be seriously impaired or that the person's property is in danger
 301 of being wasted, misappropriated, or lost unless immediate
 302 action is taken. The subject of the proceeding or any adult
 303 interested in the welfare of that person may apply to the court
 304 in which the proceeding is pending for the emergency appointment
 305 of a temporary guardian. The powers and duties of the emergency
 306 temporary guardian must be specifically enumerated by court
 307 order. The court shall appoint counsel to represent the alleged
 308 incapacitated person during any such summary proceedings, and
 309 such appointed counsel may request that the proceeding be
 310 recorded and transcribed.

311 (2) The court may appoint an emergency temporary guardian
 312 on its own motion if no petition for appointment of guardian has
 313 been filed at the time of entry of an order determining
 314 incapacity.

315 (3) Notice of filing of a petition for appointment of an
 316 emergency temporary guardian and notice of any hearing on the
 317 petition must be served on the alleged incapacitated person and
 318 on the alleged incapacitated person's attorney at least 24 hours
 319 before a hearing is held on the petition unless the petitioner

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320 demonstrates that substantial harm to the alleged incapacitated
 321 person will occur if the 24-hour notice is given.

322 ~~(4)-(3)~~ The authority of an emergency temporary guardian
 323 expires ~~60~~ 90 days after the date of appointment or when a
 324 guardian is appointed, whichever occurs first. The authority of
 325 the emergency temporary guardian may be extended for an
 326 additional ~~60~~ 90 days after a hearing is held and upon a showing
 327 that the emergency conditions still exist.

328 ~~(5)-(4)~~ The court may issue an injunction, restraining
 329 order, or other appropriate writ to protect the physical or
 330 mental health or safety of the person who is the ward of the
 331 emergency temporary guardianship.

332 ~~(6)-(5)~~ The emergency temporary guardian shall take an oath
 333 to faithfully perform the duties of a guardian before letters of
 334 emergency temporary guardianship are issued.

335 ~~(7)-(6)~~ The court may require that, before exercising
 336 authority as guardian, the emergency temporary guardian of the
 337 property ~~may be required to~~ file a bond in accordance with s.
 338 744.351.

339 ~~(8)-(7)~~ An emergency temporary guardian's authority and
 340 responsibility begins upon issuance of letters of emergency
 341 temporary guardianship in accordance with s. 744.345.

342 ~~(9)-(8)~~ (a) An emergency temporary guardian shall file a
 343 final report no later than 30 days after the expiration of the
 344 emergency temporary guardianship.

345 (b) A court may not authorize any final payment of the
 346 emergency temporary guardian fees or the fees of his or her
 347 attorney until the final report is filed.

348 (c)1. If the final report is not timely filed, the court

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349 shall issue to the emergency temporary guardian an order to show
 350 cause which requires the emergency temporary guardian to appear
 351 before the court and explain why the court should not take
 352 further action. The order must specify the time and place of the
 353 hearing within a reasonable time after service of the order to
 354 allow for the preparation of a defense.

355 2. At any time before the hearing on the order to show
 356 cause, the court may suspend the emergency temporary guardian if
 357 he or she has become a successor guardian, appoint a guardian ad
 358 litem, or issue any other appropriate order to protect the
 359 physical or mental health, safety, or property of the ward. A
 360 copy of any such order shall be transmitted by the court or
 361 under its direction to all parties at the time of entry of the
 362 order or injunction.

363 3. After the hearing on the order to show cause, the court
 364 may impose sanctions on the emergency temporary guardian or take
 365 any other action authorized by law, including, but not limited
 366 to, entering a judgment of contempt; ordering an accounting;
 367 freezing assets; referring the case to local law enforcement
 368 agencies or the state attorney; filing an abuse, neglect, or
 369 exploitation complaint with the Department of Children and
 370 Families; and initiating proceedings to remove the emergency
 371 temporary guardian if he or she has become a successor guardian.

372 (d) (b) If an emergency temporary guardian is a guardian for
 373 the property, the final report must consist of a verified
 374 inventory of the property, as provided in s. 744.365, as of the
 375 date the letters of emergency temporary guardianship were
 376 issued, a final accounting that gives a full and correct account
 377 of the receipts and disbursements of all the property of the

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378 ward over which the guardian had control, and a statement of the
 379 property of the ward on hand at the end of the emergency
 380 temporary guardianship. If the emergency temporary guardian
 381 becomes the successor guardian of the property, the final report
 382 must satisfy the requirements of the initial guardianship report
 383 for the guardian of the property as provided in s. 744.362.

384 (e) (e) If the emergency temporary guardian is a guardian of
 385 the person, the final report must summarize the activities of
 386 the temporary guardian with regard to residential placement,
 387 medical condition, mental health and rehabilitative services,
 388 and the social condition of the ward to the extent of the
 389 authority granted to the temporary guardian in the letters of
 390 guardianship. If the emergency temporary guardian becomes the
 391 successor guardian of the person, the report must satisfy the
 392 requirements of the initial report for a guardian of the person
 393 as stated in s. 744.362.

394 (f) (d) A copy of the final report of the emergency
 395 temporary guardianship shall be served on the successor guardian
 396 and the ward.

397 Section 9. Subsection (1) of section 744.309, Florida
 398 Statutes, is amended to read:

399 744.309 Who may be appointed guardian of a resident ward.—

400 (1) RESIDENT.—

401 (a) Any resident of this state who is sui juris and is 18
 402 years of age or older is qualified to act as guardian of a ward.

403 (b) A corporation not for profit incorporated pursuant to
 404 chapter 617 is qualified to act as guardian of a ward if the
 405 corporation is a charitable organization that is exempt from
 406 taxation under s. 501(c)(3) of the Internal Revenue Code and the

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407 corporation is registered as a professional guardian pursuant to
 408 s. 744.1083.

409 ~~(c) A justice or No judge may not shall~~ act as guardian
 410 ~~unless after this law becomes effective, except when~~ he or she
 411 is related to the ward by blood, marriage, or adoption, or has
 412 maintained a close relationship with the ward or the ward's
 413 family, and serves without compensation.

414 Section 10. Section 744.3115, Florida Statutes, is amended
 415 to read:

416 744.3115 Advance directives for health care.—In each
 417 proceeding in which a guardian is appointed under this chapter,
 418 the court shall determine whether the ward, prior to incapacity,
 419 has executed any valid advance directive under chapter 765. If
 420 any advance directive exists, the court shall specify in its
 421 order and letters of guardianship what authority, if any, the
 422 guardian shall exercise over the ward with regard to health care
 423 decisions and what authority, if any, the surrogate shall
 424 continue to exercise over the ward with regard to health care
 425 decisions surrogate. Pursuant to the grounds listed in s.
 426 765.105, the court, upon its own motion, may, with notice to the
 427 surrogate and any other appropriate parties, modify or revoke
 428 the authority of the surrogate to make health care decisions for
 429 the ward. Any order revoking or modifying the authority of the
 430 surrogate must be supported by specific written findings of
 431 fact. If the court order provides that the guardian is
 432 responsible for making health care decisions for the ward, the
 433 guardian shall assume the responsibilities of the surrogate
 434 which are provided in s. 765.205. For purposes of this section,
 435 the term "health care decision" has the same meaning as in s.

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436 765.101.

437 Section 11. Section 744.312, Florida Statutes, is reordered
 438 and amended to read:

439 744.312 Considerations in appointment of guardian.—

440 ~~(2)(1)~~ If a guardian cannot be appointed pursuant to
 441 subsection (1) Subject to the provisions of subsection (4), the
 442 court may appoint any person who is fit and proper and qualified
 443 to act as guardian, whether related to the ward or not.

444 ~~(2)~~ The court shall give preference to the appointment of a
 445 person who:

- 446 (a) Is related by blood or marriage to the ward;
- 447 (b) Has educational, professional, or business experience
- 448 relevant to the nature of the services sought to be provided;
- 449 (c) Has the capacity to manage the financial resources
- 450 involved; or
- 451 (d) Has the ability to meet the requirements of the law and
- 452 the unique needs of the individual case.

453 (3) The court shall also consider all of the following:

- 454 (a) ~~Consider~~ The wishes expressed by an incapacitated
- 455 person as to who shall be appointed guardian.†
- 456 (b) ~~Consider~~ The preference of a minor who is at least age
- 457 14 years of age or over as to who should be appointed guardian.†
- 458 (c) ~~Consider~~ Any person designated as guardian in any will
- 459 in which the ward is a beneficiary.
- 460 (d) The wishes of close relatives of the incapacitated
- 461 person if the person cannot express a preference.

462 (4) Unless a court appoints a standby or preneed guardian,
 463 the court:

- 464 (a) Must use a rotation system for the appointment of the

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465 guardian or support its order appointing a guardian with written
 466 findings of fact for each factor in subsections (2) and (3).

467 (b) May not give preference to the appointment of a person
 468 under subsection (2) solely based on the fact that the person
 469 was appointed by the court to serve as an emergency temporary
 470 guardian.

471 (c) May not appoint as the permanent guardian a
 472 professional guardian who served as an emergency temporary
 473 guardian for the incapacitated person.

474 (5) The limitations in paragraphs (4)(b) and (c) apply only
 475 if an interested person objects to the appointment of the
 476 guardian. However, the court may waive the limitations if the
 477 special requirements of the guardianship demand that the court
 478 appoint a guardian who has a special talent or specific prior
 479 experience. The court must make specific findings of fact which
 480 justify such special requirements, which require an appointment
 481 without reference to the limitations in paragraphs (4)(b) and
 482 (c).

483 (1)(4) If the person designated is ~~qualified to serve~~
 484 pursuant to s. 744.309, The court shall appoint as guardian any
 485 standby guardian or preneed guardian who is qualified as
 486 guardian under s. 744.309, unless the court determines that
 487 appointing ~~the such~~ person is contrary to the best interests of
 488 the ward.

489 Section 12. Section 744.3203, Florida Statutes, is created
 490 to read:

491 744.3203 Suspension of power of attorney before incapacity
 492 determination.-

493 (1) At any time during proceedings to determine incapacity

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494 but before the entry of an order determining incapacity, an
 495 alleged incapacitated person's power of attorney is suspended
 496 when the petitioner files a motion stating that a specific power
 497 of attorney should be suspended or modified for any of the
 498 following grounds:

499 (a) The agent's decisions are not in accord with the
 500 alleged incapacitated person's known desires.

501 (b) The power of attorney is invalid.

502 (c) The agent has failed to discharge duties, or incapacity
 503 or illness renders the agent incapable of discharging duties.

504 (d) The agent has abused powers.

505
 506 Grounds for suspending a power of attorney do not include the
 507 existence of a dispute between the agent and the petitioner
 508 which is more appropriate for resolution in some other forum or
 509 a legal proceeding other than a guardianship proceeding.

510 (2) The motion must:

511 (a) Identify one or more of the grounds in subsection (1);

512 (b) Include specific statements of fact showing that
 513 grounds exist to justify the relief sought; and

514 (c) Include the following statement: "Under penalties of
 515 perjury, I declare that I have read the foregoing motion and
 516 that the facts stated in it are true," followed by the signature
 517 of the petitioner.

518 (3) Upon the filing of a response to the motion by the
 519 agent under the power of attorney, the court shall schedule the
 520 motion for an expedited hearing. Unless an emergency has arisen
 521 and the agent's response sets forth the nature of the emergency,
 522 the property or matter involved, and the power to be exercised

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523 by the agent, notice must be given to all interested persons,
 524 the alleged incapacitated person, and the alleged incapacitated
 525 person's attorney. The court order following the hearing must
 526 set forth what powers the agent is permitted to exercise, if
 527 any, pending the outcome of the petition to determine
 528 incapacity.

529 (4) In addition to any other remedy authorized by law, a
 530 court may award reasonable attorney fees and costs to an agent
 531 who successfully challenges the suspension of the power of
 532 attorney if the petitioner's motion contains false or incomplete
 533 statements, was made in bad faith, or fails to contain
 534 sufficient factual allegations.

535 Section 13. Section 744.345, Florida Statutes, is amended
 536 to read:

537 744.345 Letters of guardianship.—Letters of guardianship
 538 shall be issued to the guardian and shall specify whether the
 539 guardianship pertains to the person, or the property, or both,
 540 of the ward. The letters must state whether the guardianship is
 541 plenary or limited, and, if limited, the letters must state the
 542 powers and duties of the guardian. ~~If the guardianship is~~
 543 ~~limited,~~ The letters shall state whether or not and to what
 544 extent the guardian is authorized to act on behalf of the ward
 545 with regard to any advance directive previously executed by the
 546 ward.

547 Section 14. Section 744.359, Florida Statutes, is created
 548 to read:

549 744.359 Abuse, neglect, or exploitation by a guardian.—
 550 (1) A guardian may not abuse, neglect, or exploit a ward.
 551 (2) A guardian commits exploitation when the guardian:

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552 (a) Commits fraud in obtaining appointment as a guardian.

553 (b) Abuses his or her powers.

554 (c) Wastes, embezzles, or intentionally mismanages the
 555 assets of the ward.

556 (3) A person who believes that a guardian is abusing,
 557 neglecting, or exploiting a ward, including criminal
 558 exploitation of a ward as prohibited in s. 825.103, shall report
 559 the conduct to the central abuse hotline of the Department of
 560 Children and Families.

561 Section 15. Section 744.361, Florida Statutes, is amended
 562 to read:

563 744.361 Powers and duties of guardian.—

564 (1) The guardian of an incapacitated person is a fiduciary
 565 and may exercise only those rights that have been removed from
 566 the ward and delegated to the guardian. The guardian of a minor
 567 shall exercise the powers of a plenary guardian.

568 (2) The guardian shall act within the scope of the
 569 authority granted by the court and as provided by law.

570 (3) The guardian shall act in good faith.

571 (4) The guardian may not act in a manner that is contrary
 572 to the ward's best interests under the circumstances.

573 (5) A guardian who has special skills or expertise, or is
 574 appointed in reliance upon the guardian's representation that
 575 the guardian has special skills or expertise, shall use those
 576 special skills or expertise when acting on behalf of the ward.

577 ~~(6)(2)~~ The guardian shall file an initial guardianship
 578 report in accordance with s. 744.362.

579 ~~(7)(3)~~ The guardian shall file a guardianship report
 580 annually in accordance with s. 744.367.

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581 (8)~~(4)~~ The guardian of the person shall implement the
582 guardianship plan.

583 (9)~~(5)~~ When two or more guardians have been appointed, the
584 guardians shall consult with each other.

585 (10)~~(6)~~ A guardian who is given authority over any property
586 of the ward shall:

587 (a) Protect and preserve the property and invest it
588 prudently as provided in chapter 518, apply it as provided in s.
589 744.397, and keep clear, distinct, and accurate records of the
590 administration of the ward's property account for it faithfully.

591 (b) Perform all other duties required of him or her by law.

592 (c) At the termination of the guardianship, deliver the
593 property of the ward to the person lawfully entitled to it.

594 (11)~~(7)~~ The guardian shall observe the standards in dealing
595 with the guardianship property that would be observed by a
596 prudent person dealing with the property of another, ~~and, if the~~
597 ~~guardian has special skills or is named guardian on the basis of~~
598 ~~representations of special skills or expertise, he or she is~~
599 ~~under a duty to use those skills.~~

600 (12)~~(8)~~ The guardian, if authorized by the court, shall
601 take possession of all of the ward's property and of the rents,
602 income, issues, and profits from it, whether accruing before or
603 after the guardian's appointment, and of the proceeds arising
604 from the sale, lease, or mortgage of the property or of any
605 part. All of the property and the rents, income, issues, and
606 profits from it are assets in the hands of the guardian for the
607 payment of debts, taxes, claims, charges, and expenses of the
608 guardianship and for the care, support, maintenance, and
609 education of the ward or the ward's dependents, as provided for

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610 under the terms of the guardianship plan or by law.

611 (13) Recognizing that every individual has unique needs and
612 abilities, a guardian who is given authority over a ward's
613 person shall, as appropriate under the circumstances:

614 (a) Consider the expressed desires of the ward as known by
615 the guardian when making decisions that affect the ward.

616 (b) Allow the ward to maintain contact with family and
617 friends unless the guardian believes that such contact may cause
618 harm to the ward.

619 (c) Not restrict the physical liberty of the ward more than
620 reasonably necessary to protect the ward or another person from
621 serious physical injury, illness, or disease.

622 (d) Assist the ward in developing or regaining his or her
623 own capacity, if medically possible.

624 (e) Notify the court if the guardian believes that the ward
625 has regained capacity and that one or more of the rights that
626 have been removed should be restored to the ward.

627 (f) To the extent applicable, make provision for the
628 medical, mental, rehabilitative, or personal care services for
629 the welfare of the ward.

630 (g) To the extent applicable, acquire a clear understanding
631 of the risks and benefits of a recommended course of health care
632 treatment before making a health care decision.

633 (h) Evaluate the ward's medical and health care options,
634 financial resources, and desires when making residential
635 decisions that are best suited for the current needs of the
636 ward.

637 (i) Advocate on behalf of the ward in institutional and
638 other residential settings and regarding access to home and

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639 community-based services.

640 (j) Acquire an understanding of the available residential
 641 options and give priority to home and other community-based
 642 services and settings when not inconsistent with the person's
 643 goals, needs, and preferences.

644 (14)(9) A professional guardian must ensure that each of
 645 the guardian's wards is personally visited by the guardian or
 646 one of the guardian's professional staff at least once each
 647 calendar quarter. During the personal visit, the guardian or the
 648 guardian's professional staff person shall assess:

649 (a) The ward's physical appearance and condition.

650 (b) The appropriateness of the ward's current living
 651 situation.

652 (c) The need for any additional services and the necessity
 653 for continuation of existing services, taking into consideration
 654 all aspects of social, psychological, educational, direct
 655 service, health, and personal care needs.

656 (d) The nature and extent of visitation and communication
 657 with the ward's family and friends.

658

659 This subsection does not apply to a professional guardian who
 660 has been appointed only as guardian of the property.

661 Section 16. Subsection (1) of section 744.367, Florida
 662 Statutes, is amended to read:

663 744.367 Duty to file annual guardianship report.—

664 (1) Unless the court requires filing on a calendar-year
 665 basis, each guardian of the person shall file with the court an
 666 annual guardianship plan at least 60 days, but no more than
 667 within 90 days, before ~~after~~ the last day of the anniversary

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668 month that the letters of guardianship were signed, and the plan
 669 must cover the coming fiscal year, ending on the last day in
 670 such anniversary month. If the court requires calendar-year
 671 filing, the guardianship plan for the forthcoming calendar year
 672 must be filed on or after September 1, but no later than
 673 December 1, of the current year ~~before April 1 of each year.~~

674 Section 17. Subsection (8) of section 744.369, Florida
 675 Statutes, is amended to read:

676 744.369 Judicial review of guardianship reports.—

677 (8) The approved report constitutes the authority for the
 678 guardian to act in the forthcoming year. The powers of the
 679 guardian are limited by the terms of the report. The annual
 680 report may not grant additional authority to the guardian
 681 without a hearing, as provided for in s. 744.331, to determine
 682 that the ward is incapacitated to act in that matter. Unless the
 683 court orders otherwise, the guardian may continue to act under
 684 authority of the last approved report until the forthcoming
 685 year's report is approved.

686 Section 18. Subsection (1) of section 744.3715, Florida
 687 Statutes, is amended to read:

688 744.3715 Petition for interim judicial review.—

689 (1) At any time, any interested person, including the ward,
 690 may petition the court for review alleging that the guardian is
 691 not complying with the guardianship plan, ~~or~~ is exceeding his or
 692 her authority under the guardianship plan, is acting in manner
 693 contrary to s. 744.361, is denying visitation between the ward
 694 and his or her relatives in violation of s. 744.361(13), or ~~and~~
 695 the guardian is not acting in the best interest of the ward. The
 696 petition for review must state the nature of the objection to

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697 the guardian's action or proposed action. Upon the filing of any
698 such petition, the court shall review the petition and act upon
699 it expeditiously.

700 Section 19. Paragraphs (a) and (b) of subsection (3) of
701 section 744.464, Florida Statutes, are amended, and subsection
702 (4) is added to that section, to read:

703 744.464 Restoration to capacity.—

704 (3) ORDER OF RESTORATION.—

705 (a) If no objections are filed, and the court is satisfied
706 that with the medical examination establishes by a preponderance
707 of the evidence that restoration of all or some of the ward's
708 rights is appropriate, the court shall enter an order of
709 restoration of capacity, restoring all or some of the rights
710 that which were removed from the ward in accordance with those
711 findings. The order must be issued within 30 days after the
712 medical report is filed.

713 (b) At the conclusion of a hearing, conducted pursuant to
714 s. 744.1095, the court shall make specific findings of fact and,
715 based on a preponderance of the evidence, enter an order either
716 denying the suggestion of capacity or restoring all or some of
717 the rights that which were removed from the ward. The ward has
718 the burden of proving by a preponderance of the evidence that
719 the restoration of capacity is warranted.

720 (4) TIMELINESS OF HEARING.—The court shall give priority to
721 any suggestion of capacity and shall advance the cause on the
722 calendar.

723 Section 20. The amendments made by this act apply to all
724 proceedings pending on the effective date of this act.

725 Section 21. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 13, 2015

The Honorable Joe Negron
Chairman
Subcommittee on Criminal and Civil Justice Appropriations

Via Email

Dear Chairman Negron:

C/S SB 318 recently passed the Judiciary Committee and is now in Criminal and Civil Justice Appropriations.

I would appreciate it if you would agenda the bill at the next available opportunity.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Mr. Tim Sadberry, Staff Director;
Ms. Michelle Sanders, Committee Administrative Assistant
Mr. Tom Cibula, Judiciary Staff Director

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 684

INTRODUCER: Senator Grimsley

SUBJECT: Convenience Businesses

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 684 revises the Convenience Business Security Act. With one exception, the bill removes the current exemption of certain family-owned and operated convenience businesses from enhanced security provisions required under the law. The bill repeals administrative fees associated with the approval of a mandated safety training curriculum, and repeals the requirement that the safety-training curriculum be submitted biennially for re-approval. The bill also deletes obsolete language.

The fiscal in part of this bill is indeterminate, but likely minimal. See Section V.

This bill is effective July 1, 2015.

II. Present Situation:

Convenience Business Security Act¹

In 1990, the Legislature passed the Convenience Business Security Act (the act) to deter violent crime and provide uniform, statewide protection for employees and patrons at late night convenience businesses. However, the definition of “convenience business” in the act expressly states that it does not include businesses at which the owner or a member of the owner’s family

¹ Sections 812.1701-812.175, F.S. A “convenience business” is defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between the hours of 11 p.m. and 5 a.m. A convenience business does not include a business that is primarily a restaurant, a business that has at least five employees on the premises between 11 p.m. and 5 a.m., a business that has at least 10,000 square feet of retail for space, or a business in which the owner or a member of the owner’s family work between the hours of 11 p.m. and 5 a.m.

works during the hours between 11 p.m. and 5 a.m.² The provisions of the act are enforced by the Department of Legal Affairs (Office of Attorney General).³

Minimum Security Standards

The act requires a convenience business to utilize the following minimum standards:⁴

- A security camera system that is capable of recording and retrieving an image to assist in offender identification and apprehension;
- A drop safe or management device for restricted access to cash receipts;
- A lighted parking lot;
- A conspicuous notice at the entrance that states that the cash register contains \$50 or less;
- Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area;
- Height markers at the entrance of the convenience business that display height measures;
- A cash management policy that limits cash on hand between 11 p.m. and 5 a.m.;
- Window tinting that allows for identification of all persons in the sales transaction area from outside the business; and
- A silent alarm.⁵

Enhanced Security Standards⁶

The act requires any convenience business at which a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment has occurred to comply with additional security measures. These security measures must be provided at all times between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises;
- Installing a transparent security enclosure for use by employees;
- Providing a security guard on the premises; or
- Locking the premises and transacting business through an indirect pass-through window.

After complying with these provisions for 24 months with no additional occurrence of the type of crimes indicated above, a business may file a notice of exemption from the enhanced security measures with the Office of Attorney General.

² Section 812.171, F.S.

³ Section 812.175(4), F.S., authorizes the Office of Attorney General to enter into agreements with local governments to assist in the enforcement of the act.

⁴ See Office of Attorney General Pam Bondi, *Convenience Business Security Act – Helping to Create Safer Florida Convenience Businesses* (rev. Aug. 2010), available at [http://www.fcpti.com/fcpti.nsf/pics/01029BCED8A92DD0852578BD0062499E/\\$file/2011_Revised_Convenience_Store_Bro.pdf](http://www.fcpti.com/fcpti.nsf/pics/01029BCED8A92DD0852578BD0062499E/$file/2011_Revised_Convenience_Store_Bro.pdf) (last visited March 30, 2015). See also s. 812.173(1)-(3), F.S.

⁵ Pursuant to s. 812.173(3), F.S., a business may apply for an exemption to the silent alarm requirement with the Office of Attorney General. The application for exemption must be in writing and must be accompanied by a \$25 administrative fee for each store for which the exemption is requested.

⁶ Section 812.173, F.S.

Training Requirements⁷

The act requires all employees of a convenience business to receive robbery deterrence and safety training within 60 days of employment. The convenience business must submit a proposed training curriculum to the Office of Attorney General for review and approval. The training curriculum must be submitted biennially for re-approval. The statute provides for submission of an administrative fee not of no more than \$100 for the original and renewal approvals, but no fee is currently charged.

Enforcement⁸

The Office of Attorney General enforces the provisions of the act. Upon finding a violation, the convenience business is provided with a notice and has 30 days to cure the violation. If the convenience business fails to correct the violation within 30 days, it may be subject to a civil fine of up to \$5,000. If the violation is determined to be a threat to health, safety, and public welfare, the Office of Attorney General is authorized to pursue an injunction against the convenience business.

III. Effect of Proposed Changes:

Section 1 amends s. 812.171, F.S., to repeal language that specifically excludes a business in which the owner or members of the owner's family work during the hours between 11 p.m. and 5 a.m., from the definition of "convenience business" that applies throughout the Convenience Business Security Act. This has the effect of requiring those convenience businesses to meet all of the minimum security standards of the act, unless otherwise exempted.

Section 2 amends s. 812.172(5), F.S., relating to the requirement for convenience businesses to maintain specified enhanced security measures required in s. 812.173(4), F.S., if certain violent crimes have occurred at the business.⁹ The amendment adds language to continue current law that exempts convenience businesses at which the owner or members of the owner's family work during the hours between 11 p.m. and 5 a.m. from this requirement. The language is added to retain the current exemption from the requirement for enhanced security measures that would otherwise be lost because of the change in section 1 to the definition of "convenience business."

This section of the bill also deletes an obsolete provision that required the Office of Attorney General to provide notice to any business that required the additional security measures as of the date the act became law in 1992.

Section 3 amends s. 812.174, F.S., to delete obsolete language and to repeal the requirement for a convenience business to resubmit a safety training curriculum to the Office of Attorney General biennially. The bill also repeals authorization for the department to charge

⁷ Section 812.174, F.S.

⁸ Section 812.175, F.S.

⁹ See s. 812.173(4), F.S. Under this provision, if a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping occur in connection with the operation of the business, the business must employ one of the following security measures between 11 p.m. and 5 a.m.: (1) have at least two employees on the premises; (2) provide a secured, transparent, polycarbonate safety enclosure; (3) have a security officer on the premises; or (4) lock the premises and conduct business through an indirect pass-through.

administrative fees associated with original submission and review of the safety training curriculum.

In addition, deletion of the family business exception from the definition of “convenience business” in Section 1 of the bill means that the requirement for new employees to receive robbery deterrence and safety training will apply to convenience businesses at which the owner or a member of the owner’s family works during the hours between 11 p.m. and 5 a.m. Such businesses are currently exempt from this training requirement.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 684 will affect convenience businesses at which the owner or a member of the owner’s family works during the hours between 11 p.m. and 5 a.m. to the extent that the business must make modifications to comply with security measures required by the act.

C. Government Sector Impact:

The fiscal impact of this bill is indeterminate but likely minimal. The Office of Attorney General does not currently collect the administrative fees for original and biennial review of training curriculum that are repealed by the bill. However, the bill’s repeal of the requirement for biennial submission of training curriculum re-approval may have a positive fiscal impact due to the reduction of costs incurred by the Office of Attorney General that may be attributed to that process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.171, 812.173, and 812.174.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Grimsley

21-01093-15

2015684__

1 A bill to be entitled
 2 An act relating to convenience businesses; amending s.
 3 812.171, F.S.; revising the term "convenience
 4 business"; amending s. 812.173, F.S.; conforming a
 5 provision to a change made by the act; amending s.
 6 812.174, F.S.; deleting an obsolete provision;
 7 removing the requirement that a curriculum be
 8 submitted for reapproval biennially with a specified
 9 administrative fee; removing a requirement that
 10 specified curriculum be subject to reapproval 2 years
 11 from initial approval and biennially thereafter;
 12 making technical changes; providing an effective date.

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

15
 16 Section 1. Section 812.171, Florida Statutes, is amended to
 17 read:

18 812.171 Definition.—As used in this act, the term
 19 "convenience business" means any place of business that is
 20 primarily engaged in the retail sale of groceries, or both
 21 groceries and gasoline, and that is open for business at any
 22 time between the hours of 11 p.m. and 5 a.m. The term
 23 "convenience business" does not include:

- 24 (1) A business that is solely or primarily a restaurant.
 25 (2) A business that always has at least five employees on
 26 the premises after 11 p.m. and before 5 a.m.
 27 (3) A business that has at least 10,000 square feet of
 28 retail floor space.
 29

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-01093-15

2015684__

30 ~~The term "convenience business" does not include any business in~~
 31 ~~which the owner or members of his or her family work between the~~
 32 ~~hours of 11 p.m. and 5 a.m.~~

33 Section 2. Subsection (5) of section 812.173, Florida
 34 Statutes, is amended to read:

35 812.173 Convenience business security.—

36 (5) For purposes of this section, subsection (4) does not
 37 apply to a convenience business in which the owner or the
 38 members of the owner's family work between the hours of 11 p.m.
 39 and 5 a.m. A Any convenience business that was required by law
 40 to implement ~~implemented~~ any of the security measures specified
 41 ~~set forth~~ in paragraphs (4)(a)-(e) and has maintained those said
 42 measures as required by the Department of Legal Affairs without
 43 any occurrence ~~or incidence~~ of the crimes specified in
 44 identified by subsection (4) for a period of at least no less
 45 ~~than~~ 24 months immediately preceding the filing of a notice of
 46 exemption, may file with the department a notice of exemption
 47 from these enhanced security measures. ~~In no event shall~~ This
 48 exemption may not be interpreted as precluding to preclude full
 49 compliance with the security measures specified set forth in
 50 subsection (4) should any occurrence ~~or incidence~~ of the crimes
 51 specified in that subsection identified by subsection (4) cause
 52 that subsection (4) to be statutorily applicable. ~~As of the date~~
 53 ~~this act becomes law, the Department of Legal Affairs will~~
 54 ~~provide notice to any convenience business to which a subsection~~
 55 ~~(4) incident has previously occurred. In no event shall~~ The
 56 state or the Department of Legal Affairs does not incur any
 57 liability for the regulation and enforcement of this act.

58 Section 3. Section 812.174, Florida Statutes, is amended to

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-01093-15

2015684__

59 read:

60 812.174 Training of employees.-

61 (1) The owner or principal operator of a convenience
62 business ~~or convenience businesses~~ shall provide proper robbery
63 deterrence and safety training by an approved curriculum to its
64 retail employees within 60 days after ~~of~~ employment. ~~Existing~~
65 ~~retail employees shall receive training within 6 months of April~~
66 ~~8, 1992.~~

67 (2) A proposed curriculum shall be submitted in writing to
68 the Attorney General, who ~~with an administrative fee not to~~
69 ~~exceed \$100. The Attorney General~~ shall review and approve or
70 disapprove the curriculum in writing within 60 days after
71 receipt. The state does not incur liability ~~shall have no~~
72 ~~liability~~ for approving or disapproving a training curriculum
73 under this section. Approval shall be given to a curriculum that
74 ~~which~~ trains and familiarizes retail employees with the security
75 principles, devices, and measures required by s. 812.173.
76 Disapproval of a curriculum is ~~shall be~~ subject to the
77 ~~provisions of~~ chapter 120.

78 (3) ~~A~~ ~~No~~ person is not ~~shall be~~ liable for ordinary
79 negligence if he or she implements ~~due to implementing~~ an
80 approved curriculum and if the training is ~~is~~ was actually
81 provided. ~~A curriculum shall be submitted for reapproval~~
82 ~~biennially with an administrative fee not to exceed \$100. Any~~
83 ~~curriculum approved by the Attorney General since September 1990~~
84 ~~shall be subject to reapproval 2 years from the anniversary of~~
85 ~~initial approval and biennially thereafter.~~

86 Section 4. This act shall take effect July 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 746

INTRODUCER: Criminal Justice Committee and Senator Lee and others

SUBJECT: Diabetes Awareness Training for Law Enforcement Officers

DATE: April 1, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 746 requires the Florida Department of Law Enforcement (FDLE) to establish an online continued employment training component relating to diabetic emergencies. This component must include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.

The FDLE indicates that the bill has no fiscal impact.

The bill has an effective date of October 1, 2015.

II. Present Situation:

The Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement (FDLE) establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers. Currently, every prospective officer must meet the minimum qualifications outlined in s. 943.13, F.S., successfully complete a CJSTC-developed basic recruit training program, and pass a statewide certification examination in order to receive their certification.

The CJSTC establishes basic skills training on a number of specific topics (e.g., domestic violence, interpersonal skills relating to diverse populations, and victim's assistance and rights).¹ Basic skills training on diabetic emergencies is not specially required by current Florida law but the FDLE states that the topics described in the bill are taught in the basic recruit training program.²

In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. Law enforcement officers receive periodic CJSTC-approved training or education at the rate of 40 hours every 4 years. The CJSTC establishes continued employment training relating to specific topics (e.g., community policing, sexual offender and victim investigations, and interpersonal skills relating to diverse populations).³ This training counts toward the 40 hours of required instruction for continued employment. Current Florida law does not specifically require continued employment training relating to diabetic emergencies.

III. Effect of Proposed Changes:

The bill creates s. 943.1726, F.S., which requires the Florida Department of Law Enforcement (FDLE) to establish an online continued employment training component relating to diabetic emergencies. This component must include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer as required under s. 943.135, F.S.

The act may be cited as the "Arthur Green, Jr., Act."

The bill takes effect on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹ Sections 943.171, 943.175, and 943.172, F.S.

² Analysis of SB 746 (February 9, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). The instruction includes learning modules on identifying signs and symptoms of a diabetic emergency, identifying treatment for a patient with a diabetic emergency, and identifying medical conditions with clues that may mimic alcohol or drug impairment to determine if a DUI investigation is warranted. *Id.*

³ Sections 943.1729, 943.17295, and 943.1758, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.1726 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 16, 2015:

- Requires the Florida Department of Law Enforcement to establish an online continued employment training component relating to diabetic emergencies.
- Requires that this component include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency.
- Provides that completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.
- Provides that the bill takes effect on October 1, 2015.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Lee,
Thompson, Soto, and Latvala

591-02335-15

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A bill to be entitled

An act relating to diabetes awareness training for law enforcement officers; providing a short title; creating s. 943.1726, F.S.; requiring the Department of Law Enforcement to establish an online continued employment training component relating to diabetic emergencies; specifying topics to be included in the instruction; providing that completion of the training may count towards continued employment instruction requirements; providing an effective date.

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

Section 1. This act may be cited as the "Arthur Green, Jr., Act."

Section 2. Section 943.1726, Florida Statutes, is created to read:

943.1726 Continued employment training relating to diabetic emergencies.—The department shall establish an online continued employment training component relating to diabetic emergencies. Instruction shall include, but need not be limited to, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer as required under s. 943.135.

Section 3. This act shall take effect October 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General
Government
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE

24th District

March 17, 2015

The Honorable Joe Negron
Senate Appropriations Subcommittee on Criminal and Civil Justice, Chair
412 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399

Dear Chair Negron,

I respectfully request that SB 746 related to *Diabetes Awareness Training for Law Enforcement Officers*, be placed on the Senate Appropriations Subcommittee on Criminal and Civil Justice agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Tom Lee".

Tom Lee
Senator, District 24

Cc: Tim Sadberry, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1016

INTRODUCER: Senator Abruzzo

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1016 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog for the former handler or adopter who incurs the costs.

Recurring funds in the amount of \$300,000 is appropriated to the Florida Department of Law Enforcement (department) from the General Revenue Fund to fund the program for Fiscal Year 2015-2016. The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with FDLE.

This bill is effective July 1, 2015.

II. Present Situation:

Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations. Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology.¹

Just one example of a law enforcement dog's invaluable service is Koda, who worked with the Leon County Sheriff's Office. K9 Koda was shot and killed in January 2013 as he attempted to immobilize a subject following a vehicle pursuit. Deputies pursued a vehicle several blocks until the vehicle crashed into a ditch. The subject continued to flee on foot and then opened fire on K9 Koda and the deputies. Two deputies returned fire and wounded the subject before taking him

¹ <http://brevardsheriff.com/home/commands-services/operational-services/k-9-unit> (last visited March 17, 2015); www.softiredk9fund.com and <http://www.wsvn.com/story/27320793/student-launches-retired-k-9-donation-fund> (last visited March 17, 2015).

into custody. It was later determined that the subject was wanted on warrants for attempted first degree murder, aggravated battery with a deadly weapon, and discharging a firearm from a vehicle.²

III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the Florida Department of Law Enforcement (department). The program is funded from the General Revenue Fund with the sum of \$300,000, recurring funds, beginning in Fiscal Year 2015-2016. The funds will be appropriated to the department's Operating Trust Fund. The department will hold the funds in a separate depository account for the corporation under contract with the department to administer the program. The corporation will be the disbursing authority for funds held by the department for the program's benefit.

The department is given rulemaking authority to implement the provisions in the bill.

The program will provide up to \$1,500 to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian for care provided in Florida for reimbursement to occur. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined by the bill as a dog that has received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association.³ The dog must have been in the service of or employed by a law enforcement agency in this state for the purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

The bill defines "law enforcement agency" as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

The bill adopts the term "veterinarian" from s. 474.202, F.S. Subsection (11) of s. 474.202, F.S., defines "veterinarian" as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of ch. 474, F.S.⁴ The bill refers to s. 474.202,

² Read more: <http://www.odmp.org/k9/1497-k9-koda#ixzz2vrveuHYu>

³ www.npca.net (last visited March 26, 2014). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) which is a 501(c)(3) non-profit organization dedicated to the training and certification of Florida's Law Enforcement Canine Teams according to the website, <http://www.flecak9.com/>. Additionally, the department provides a 400 hour K-9 Team training course and proficiency exam.

⁴ (9) "Practice of veterinary medicine" means diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

F.S., in defining “veterinary care” as a veterinary medical service provided by a veterinarian licensed to practice under ch. 474, F.S.⁵ The bill also lists the following veterinary services:

- Annual wellness examinations,
- Vaccines,
- Internal and external parasite prevention treatments,
- Testing and treatment of illnesses and diseases,
- Medications,
- Emergency care and surgeries,
- Care provided in specialties of veterinary medicine such as veterinary oncology, and
- Euthanasia and cremation services.

The department is directed to contract with a not-for-profit corporation to administer and manage the program. The corporation must be organized under ch. 617, F.S.⁶

The department must contract with a not-for-profit corporation that:

- Is dedicated to the protection and care of retired law enforcement dogs.
- Holds tax-exempt status under the Internal Revenue code as a s. 501(c)(3) organization.⁷
- Has held tax-exempt status for at least five years.
- Agrees to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrates the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with the bill.
- Receives administrative fees, including salaries and benefits, not to exceed 10 percent of appropriated funds.

Funds held in the separate depository account for the corporation administering the program must revert to the department if the contract between the corporation and the department expires or is terminated. All unexpended funds will be certified forward on July 1 of each year. The fund balance for the program may not exceed \$400,000.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

The provisions in the bill become effective July 1, 2015.

⁵ (13) “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine. s. 474.202, F.S.

⁶ “Corporation not for profit” means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter. s. 617.01401(5), F.S.

⁷ Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. 26 U.S.C.A. s. 501(c)(3).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 1016 has an annual fiscal impact of \$300,000 to the General Revenue fund and that amount is appropriated annually to the department beginning in Fiscal Year 2015-2016. The Executive Office of the Governor must certify forward all unexpended funds; however, the fund balance for the program may not exceed \$400,000.

The department suggests that the corporation should not have the ability to disburse funds directly from a State Treasury account. Alternatively, the department suggests a specific cash advance be provided under the contract between the department and the corporation and subsequent reimbursement payments be provided to the corporation to ensure sufficient cash on hand to operate the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.69 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



405188

LEGISLATIVE ACTION

Senate

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House

Appropriations Subcommittee on Criminal and Civil Justice
(Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 118 - 141

and insert:

(7) ADMINISTRATIVE FEES.-The corporation not for profit must receive administrative fees, including salaries and benefits, of up to 10 percent of appropriated funds.

(8) RULEMAKING AUTHORITY.-The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.



405188

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

12 And the title is amended as follows:

13 Delete lines 17 - 24

14 and insert:

15 reimbursement is sought; providing for administrative
16 fees; authorizing the department to adopt rules;
17 providing an appropriation; providing an effective
18 date.

By Senator Abruzzo

25-00322A-15

20151016__

1 A bill to be entitled
 2 An act relating to care for retired law enforcement
 3 dogs; creating s. 943.69, F.S.; providing a short
 4 title; defining terms; providing legislative findings;
 5 creating the Care for Retired Law Enforcement Dogs
 6 Program within the Department of Law Enforcement;
 7 requiring the department to contract with a
 8 corporation not for profit to administer and manage
 9 the program; providing requirements for the
 10 corporation not for profit; providing requirements for
 11 the disbursement of funds for the veterinary care of
 12 eligible retired law enforcement dogs; placing an
 13 annual cap on the amount of funds available for the
 14 care of an eligible retired law enforcement dog;
 15 prohibiting a former handler or adopter from receiving
 16 reimbursement if funds are depleted for the year such
 17 reimbursement is sought; providing for the deposit of
 18 program funds; providing for the reversion of funds to
 19 the department under certain circumstances;
 20 authorizing the carryforward of unexpended
 21 appropriations for use in the program up to certain
 22 limits; authorizing the department to adopt rules and
 23 forms; providing an appropriation; providing an
 24 effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Section 943.69, Florida Statutes, is created to
 29 read:

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00322A-15

20151016__

30 943.69 Care for Retired Law Enforcement Dogs Program.—
 31 (1) SHORT TITLE.—This section may be cited as the “Care for
 32 Retired Law Enforcement Dogs Program Act.”
 33 (2) DEFINITIONS.—As used in this section, the term:
 34 (a) “Law enforcement agency” means a lawfully established
 35 state or local public agency having primary responsibility for
 36 the prevention and detection of crime or the enforcement of the
 37 penal, traffic, highway, regulatory, game, immigration, postal,
 38 customs, or controlled substance laws.
 39 (b) “Retired law enforcement dog” means a dog that was
 40 previously in the service of or employed by a law enforcement
 41 agency in this state for the principal purpose of aiding in the
 42 detection of criminal activity, enforcement of laws, or
 43 apprehension of offenders and that received certification in
 44 obedience and apprehension work from a certifying organization
 45 such as the National Police Canine Association or other
 46 certifying organization.
 47 (c) “Veterinarian” has the same meaning as provided in s.
 48 474.202.
 49 (d) “Veterinary care” means a veterinary medical service
 50 specified in s. 474.202 which is provided by a veterinarian
 51 licensed under chapter 474. The term includes annual wellness
 52 examinations, vaccines, internal and external parasite
 53 prevention treatments, testing and treatment of illnesses and
 54 diseases, medications, emergency care and surgeries, specialty
 55 care such as veterinary oncology, euthanasia, and cremation.
 56 (3) LEGISLATIVE FINDINGS.—The Legislature finds that:
 57 (a) Law enforcement dogs have become an integral part of
 58 many law enforcement efforts statewide, including the

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59 apprehension of suspects through tracking and searching,
 60 evidence location, drug and bomb detection, and search and
 61 rescue operations;
 62 (b) Law enforcement agencies agree that the use of law
 63 enforcement dogs is an extremely cost-effective means of crime
 64 control and that these dogs possess skills and abilities that
 65 frequently exceed those of existing technology;
 66 (c) The service of law enforcement dogs is often dangerous
 67 and can expose them to injury at a rate higher than that of
 68 nonservice dogs; and
 69 (d) Law enforcement dogs provide significant contributions
 70 to the residents of this state.
 71 (4) ESTABLISHMENT OF PROGRAM.-The Care for Retired Law
 72 Enforcement Dogs Program is created within the Department of Law
 73 Enforcement to provide a stable funding source for veterinary
 74 care provided to these dogs.
 75 (5) ADMINISTRATION.-The Department of Law Enforcement shall
 76 contract with a corporation not for profit organized under
 77 chapter 617 to administer and manage the Care for Retired Law
 78 Enforcement Dogs Program. Notwithstanding the competitive sealed
 79 bid procedures required under chapter 287, the department shall
 80 enter into a contract with a corporation not for profit that:
 81 (a) Is dedicated to the protection or care of retired law
 82 enforcement dogs;
 83 (b) Is exempt from taxation under s. 501(a) of the Internal
 84 Revenue Code as an organization described in s. 501(c)(3) of
 85 that code;
 86 (c) Has maintained such tax-exempt status for at least 5
 87 years;

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88 (d) Agrees to be subject to review and audit at the
 89 discretion of the Auditor General in order to ensure accurate
 90 accounting and disbursement of state funds; and
 91 (e) Demonstrates the ability to effectively and efficiently
 92 disseminate information and to assist former handlers and
 93 adopters of retired law enforcement dogs in complying with this
 94 section.
 95 (6) FUNDING.-
 96 (a) The corporation not for profit shall be the disbursing
 97 authority for funds appropriated by the Legislature to the
 98 department for the Care for Retired Law Enforcement Dogs
 99 Program. These funds shall be disbursed upon receipt of:
 100 1. Valid documentation from the law enforcement agency from
 101 which the dog retired which verifies that the dog was in the
 102 service of or employed by such agency; and
 103 2. A valid invoice from a veterinarian for veterinary care
 104 provided in this state to a retired law enforcement dog which is
 105 submitted by the former handler or adopter of a retired law
 106 enforcement dog.
 107 (b) Annual disbursements to a former handler or adopter to
 108 reimburse him or her for the cost of care provided to a retired
 109 law enforcement dog may not exceed \$1,500 per dog. A former
 110 handler or adopter of a retired law enforcement dog may not
 111 accumulate unused funds from a current year for use in a future
 112 year.
 113 (c) A former handler or adopter of a retired law
 114 enforcement dog who seeks reimbursement for veterinary services
 115 may not receive reimbursement if funds appropriated for the Care
 116 for Retired Law Enforcement Dogs Program are depleted in the

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117 year for which the reimbursement is sought.

118 (d) Funds appropriated for the Care for Retired Law
119 Enforcement Dogs Program shall be held in a separate depository
120 account in the Operating Trust Fund of the department in the
121 name of the corporation not for profit and are subject to the
122 provisions of the corporation's contract with the department.
123 The contract must provide that:

124 1. The corporation not for profit must receive
125 administrative fees, including salaries and benefits, of up to
126 10 percent of appropriated funds; and

127 2. Any funds held in the separate depository account in the
128 name of the corporation not for profit must revert to the
129 department upon expiration or termination of the contract.

130 (e) Notwithstanding s. 216.301, and pursuant to s. 216.351,
131 on July 1 of each year, the Executive Office of the Governor
132 shall certify forward all unexpended funds appropriated pursuant
133 to this section. However, the fund balance for the Care for
134 Retired Law Enforcement Dogs Program may not exceed \$400,000.

135 (7) RULEMAKING AUTHORITY.-The department shall adopt rules
136 pursuant to ss. 120.536(1) and 120.54 to implement this section.

137 Section 2. For the 2015-2016 fiscal year, and each fiscal
138 year thereafter, the sum of \$300,000 in recurring funds is
139 appropriated from the General Revenue Fund to the Department of
140 Law Enforcement for the purpose of implementing the Care for
141 Retired Law Enforcement Dogs Program.

142 Section 3. This act shall take effect July 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1170

INTRODUCER: Senator Bradley

SUBJECT: Problem-solving Courts

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1170 authorizes cases in a veterans' court or a mental health court to be transferred between counties in the same manner current law authorizes the transfer of drug court cases. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts.

Under existing law, drug courts, veterans' courts, and mental health courts enable qualifying defendants to participate in pretrial or post-adjudication diversion programs. Although each court type has a similar function, only drug courts are authorized to transfer a case from one county having a drug court program to another county having a drug court program.

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs. As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

The bill designates drug courts, veterans' courts, and mental health courts as problem-solving courts.

This bill does not have a discernable fiscal impact.

The bill takes effect July 1, 2015.

II. Present Situation:

Transfer of Criminal Cases Between Counties

Florida law authorizes the transfer of a criminal case between counties in instances in which:

- An indictment or information is pending in one county and a defendant is arrested or held in another county, if the defendant requests in writing to plea guilty or nolo contendere, waive trial in the county in which the warrant was issued, and consent to disposition of the case in another county. The prosecutor of the court in which the indictment or information is pending must also consent to the transfer.¹
- An indictment or information is not pending and a defendant is arrested on a warrant issued upon a complaint in a county other than the county of arrest and requests in writing that he or she wishes to plea guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and consent to disposition of the case in the county in which the defendant was arrested. The prosecuting attorney must also consent to the transfer.
- A defendant is eligible to participate in a drug court treatment program as part of a pretrial intervention program. Additionally, the drug court must consent and the following conditions must be met:
 - The authorized representatives of the drug court programs consult about the transfer;
 - The trial court accepts a plea from the defendant of nolo contendere and enters a transfer order² for the clerk to transfer the case to the county which has accepted the defendant into its drug court program; and
 - Once the transfer takes place, the clerk must schedule a hearing before the drug court for the defendant to begin the drug court program.³

If a case is transferred to a county where the defendant successfully completes a drug court program, the court that received the transfer will dispose of the case by dismissing the criminal charges.⁴ If the court finds that the defendant failed to successfully complete the program, the court may order the defendant to continue education and treatment including through substance-abuse treatment or jail-based treatment programs, or authorize the prosecution of the criminal charges.⁵

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are

¹ The formal charging document in a criminal case is known as an indictment or an information. Indictments are returned by a grand jury and presented to the court, and an information is made by a prosecutor in the absence of an indictment by the grand jury. BLACK'S LAW DICTIONARY (10th ed. 2014).

² The transfer order must include all documents relating to the case, including the probable cause affidavit, charging documents, witness statements, the defendant's written consent to abide by all rules of the drug court program, and the defendant's contact information. Section 910.035(5)(c), F.S.

³ Section 910.035(1), (2), and (5), F.S.

⁴ Section 948.08(6)(c), F.S.

⁵ *Id.*

charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.⁶

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.⁷

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The defendant does not have the right to a public defender unless the offender is subject to incarceration if convicted.⁸ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.⁹

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁰

Veterans Programs and Courts for Criminal Offenders

The Use of Veterans' Courts Nationally

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military.¹¹ More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."¹²

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.¹³

⁶ A misdemeanor is punishable by up to 1 year term in a county jail and a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a) through (d), F.S.

⁷ Section 948.08 (2), F.S.

⁸ Section 948.08(3) and (4), F.S.

⁹ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁰ Section 948.08(1), F.S.

¹¹ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

¹² *Id.*

¹³ *Id.*

Veterans' Courts in Florida Law

The 2012 Florida Legislature placed into law the “T. Patt Maney Veterans’ Treatment Intervention Act.”¹⁴ The law:

- Recognizes veterans’ courts;
- Requires courts to hold a pre-sentencing hearing if a combat veteran alleges military-related injury, to determine if the defendant suffers from certain conditions, such as post-traumatic stress disorder, a traumatic brain injury, or substance abuse due to military service;
- Establishes pretrial and post-adjudication intervention programs for combat veterans having pending criminal charges or convictions; and
- Enables counties to establish programs to divert eligible defendants who are veterans into treatment programs.

Veterans’ Courts

The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers who are convicted of criminal offenses.¹⁵ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁶

As of January 2015, 21 veterans’ courts in 20 counties operate in Florida.¹⁷ Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts.¹⁸ Fifty-two percent of the participants faced felony charges, mainly third-degree felonies.¹⁹ Sixty-two percent of the participants in state-funded veterans’ courts between July 2013 and October 2014 had a dual diagnosis of mental health issues and substance abuse.

Pre-trial Intervention Programs

To be eligible to participate in diversion programs, veterans can be charged with misdemeanors²⁰ or felonies²¹. However, veterans must not be charged with a disqualifying felony offense. Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;

¹⁴ Senate Bill 138 (ch. 2012-159, Laws of Fla.).

¹⁵ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁶ The authority for Veterans’ Courts Programs is in ch. 394, F.S., which addresses mental health. Section 394.47891, F.S.

¹⁷ Office of Program Policy Analysis & Government Accountability, *supra* note 11 at 2 and 8. Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate in Fiscal Year 2014-15. Other counties having veterans’ courts are Brevard, Broward, Collier, Hillsborough, Indian River, Lake, Lee, Marion, Osceola, Palm Beach, Seminole, St. Lucie, and Volusia counties. Volusia County maintains two veterans’ courts.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

²⁰ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans’ treatment intervention program.

²¹ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans’ treatment intervention programs.

- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.²²

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.²³

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

Post-adjudication Treatment Programs

Veterans and servicemembers²⁴ on probation or community control who committed a crime on or after July 1, 2012, and who suffer from military-related mental illness, traumatic brain injury, or substance abuse may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²⁵

²² Section 948.06(8)(c), F.S.

²³ Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²⁴ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. (Section 250.01(19), F.S.)

²⁵ Section 948.21, F.S.

Mental Health Courts

Florida law does not recognize the specialty court of a mental health court.

III. Effect of Proposed Changes:

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis, and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs.

As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

The bill establishes the term "problem-solving court" to apply to the specialty courts of drug courts, veterans' courts, and mental health courts.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires consent from a receiving county prior to transfer. Therefore, a county does not have to accept transfer of a problem-solving court case and provide services.

For this reason, the bill does not appear to create a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1170 may facilitate a person's participation in a veterans' court program or mental health court program by allowing a defendant to participate in a program in his or her home county instead of the county where a crime occurred.

C. Government Sector Impact:

Although the original legislation creating veterans' courts in 2012 included an appropriation, this bill does not.

The Office of the State Courts Administrator (OSCA) expects no judicial or court workload impact from this bill as cases would be transferred and no net additional cases would be generated. Additional orders of transfer and completion of necessary paperwork resulting from the bill may have a minimal fiscal impact on expenditures.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 910.035 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁶ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015); on file with the Senate Judiciary Committee.



231456

LEGISLATIVE ACTION

Senate

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House

Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 910.035, Florida
Statutes, is amended to read:

910.035 Transfer from county for plea, and sentence, or
participation in a problem-solving court.-

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.-

(a) For purposes of this subsection, the term "problem-



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11 solving court” means a drug court pursuant to s. 948.01, s.
12 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans’ court
13 pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
14 a mental health court.

15 (b) Any person eligible for participation in a problem-
16 solving ~~drug~~ court shall, upon request by the person or a court,
17 ~~treatment program pursuant to s. 948.08(6) may be eligible to~~
18 have the case transferred to a county other than that in which
19 the charge arose if the person agrees to the transfer, ~~the drug~~
20 ~~court program agrees and if the following conditions are met:~~

21 ~~(a) the authorized representative of the trial ~~drug~~ court~~
22 ~~consults program of the county requesting to transfer the case~~
23 ~~shall consult~~ with the authorized representative of the problem-
24 solving ~~drug~~ court ~~program~~ in the county to which transfer is
25 desired, and both representatives agree to the transfer.

26 (c) ~~(b)~~ If all parties agree to the transfer as required by
27 paragraph (b), approval for transfer is received from all
28 ~~parties,~~ the trial court shall ~~accept a plea of nolo contendere~~
29 ~~and~~ enter a transfer order directing the clerk to transfer the
30 case to the county which has accepted the defendant into its
31 problem-solving ~~drug~~ court ~~program~~.

32 (d)1. ~~(c)~~ When transferring a pretrial problem-solving court
33 case, the transfer order shall include a copy of the probable
34 cause affidavit; any charging documents in the case; all
35 reports, witness statements, test results, evidence lists, and
36 other documents in the case; the defendant’s mailing address and
37 telephone ~~phone~~ number; and the defendant’s written consent to
38 abide by the rules and procedures of the receiving county’s
39 problem-solving ~~drug~~ court ~~program~~.



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40 2. When transferring a postadjudicatory problem-solving
41 court case, the transfer order shall include a copy of the
42 charging documents in the case; the final disposition; all
43 reports, test results, and other documents in the case; the
44 defendant's mailing address and telephone number; and the
45 defendant's written consent to abide by the rules and procedures
46 of the receiving county's problem-solving court.

47 (e)~~(d)~~ After the transfer takes place, the receiving clerk
48 shall set the matter for a hearing before the problem-solving
49 drug court in the receiving jurisdiction to program judge and
50 ~~the court shall~~ ensure the defendant's entry into the problem-
51 solving drug court program.

52 (f)~~(e)~~ Upon successful completion of the problem-solving
53 drug court program, the jurisdiction to which the case has been
54 transferred shall dispose of the case ~~pursuant to s. 948.08(6).~~
55 If the defendant does not complete the problem-solving drug
56 court program successfully, the jurisdiction to which the case
57 has been transferred shall dispose of the case within the
58 guidelines of the Criminal Punishment Code.

59 Section 2. This act shall take effect July 1, 2015.

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

61 And the title is amended as follows:

62 Delete everything before the enacting clause
63 and insert:

64 A bill to be entitled
65 An act relating to defendants in specialized courts;
66 amending s. 910.035, F.S.; providing a definition;
67 requiring a trial court to transfer certain criminal
68 cases involving participants in specified programs to



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another jurisdiction having such a program under
certain conditions; providing an effective date.

By Senator Bradley

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A bill to be entitled

An act relating to problem-solving courts; amending s. 910.035, F.S.; defining the term "problem-solving court"; authorizing a person eligible for participation in a problem-solving court to transfer his or her case to another county's problem-solving court under certain circumstances; making technical changes; providing an effective date.

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

Section 1. Section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea and sentence or participation in a problem-solving court.-

(1) INDICTMENT OR INFORMATION PENDING.—A defendant arrested or held in a county other than that in which an indictment or information is pending against him or her may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the indictment or information is pending, and to consent to disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction for the county in which the

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defendant is held, and the prosecution shall continue in that county upon the information or indictment originally filed. In the event a fine is imposed upon the defendant in that county, two-thirds thereof shall be returned to the county in which the indictment or information was originally filed.

(2) INDICTMENT OR INFORMATION NOT PENDING.—A defendant arrested on a warrant issued upon a complaint in a county other than the county of arrest may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, and upon the filing of an information or the return of an indictment, the clerk of the court from which the warrant was issued shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction in the county in which the defendant was arrested, and the prosecution shall continue in that county upon the information or indictment originally filed.

(3) EFFECT OF NOT GUILTY PLEA.—If, after the proceeding has been transferred pursuant to subsection (1) or subsection (2), the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he or she wishes to plead guilty or nolo contendere shall not be used against the defendant.

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59 (4) APPEARANCE IN RESPONSE TO A SUMMONS.—For the purpose of
60 initiating a transfer under this section, a person who appears
61 in response to a summons shall be treated as if he or she had
62 been arrested on a warrant in the county of such appearance.

63 (5) TRANSFERS FOR PARTICIPATION IN A PROBLEM-SOLVING
64 COURT.—For purposes of this subsection, the term “problem-
65 solving court” means a drug court pursuant to s. 948.01, s.
66 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans’ court
67 pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
68 a mental health court. ~~A~~ Any person eligible for participation
69 in a problem-solving drug court treatment program pursuant to s.
70 948.08(6) may be eligible to have the case transferred to a
71 county other than that in which the charge arose if the problem-
72 solving drug court program agrees and these procedures ~~if the~~
73 ~~following conditions~~ are met:

74 (a) The authorized representative of the problem-solving
75 drug court program of the county requesting to transfer the case
76 shall consult with the authorized representative of the problem-
77 solving drug court program in the county to which transfer is
78 desired.

79 (b) If approval for transfer is received from all parties,
80 the trial court ~~must shall~~ accept, in the case of a pretrial
81 problem-solving court, a plea of nolo contendere and enter a
82 transfer order directing the clerk to transfer the case to the
83 county ~~that~~ which has accepted the defendant into its problem-
84 solving drug court program.

85 (c) The transfer order ~~must shall~~ include a copy of the
86 probable cause affidavit, in the case of a pre-trial problem-
87 solving court; any charging or sentencing documents in the case;

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88 all reports, witness statements, test results, evidence lists,
89 and other documents in the case; the defendant’s mailing address
90 and phone number; and the defendant’s written consent to abide
91 by the rules and procedures of the receiving county’s problem-
92 solving drug court program.

93 (d) After the transfer takes place, the clerk shall set the
94 matter for a hearing before the problem-solving drug court
95 program judge, and the court shall ensure the defendant’s entry
96 into the problem-solving drug court program.

97 (e) Upon successful completion of the problem-solving drug
98 court program, the jurisdiction to which the case has been
99 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
100 If the defendant does not complete the problem-solving drug
101 court program successfully, the jurisdiction to which the case
102 has been transferred shall dispose of the case within the
103 guidelines of the Criminal Punishment Code.

104 Section 2. This act shall take effect July 1, 2015.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 12, 2015

I respectfully request that **Senate Bill # 1170**, relating to Problem Saving Court, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1362

INTRODUCER: Senator Simmons

SUBJECT: Department of Legal Affairs

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Cibula	JU	Favorable
2.	Clodfelter	Sadberry	ACJ	Pre-meeting
3.			AP	

I. Summary:

SB 1362 makes changes to laws enforced by or governing the Department of Legal Affairs, also known as the Office of the Attorney General, including the Office of Statewide Prosecution.

The bill:

- Revises the list of offenses that are considered to be multi-circuit crimes that may be investigated and prosecuted by the Office of Statewide Prosecution to include kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling if commission of the offense was facilitated by or connected to use of the Internet.
- Provides authority to purchase promotional materials and basic refreshments for public training and information sessions.
- Allows the Medicaid Fraud unit to use a percentage of the recovered funds to fund investigations and enforcement actions.
- Updates references of federal consumer protection laws that are incorporated into the statutes.
- Revises Victim Assistance awards criteria to:
 - Provide for maximum lifetime amounts;
 - Expand definitions to broaden coverage for elderly persons or disabled adults who suffer a property loss; and
 - Provide for relocation assistance for human trafficking victims.
- Makes necessary conforming and technical changes.

The Department of Legal Affairs indicates that the bill does not have a fiscal impact on general revenue funds or trust fund revenues. Within existing funds, the bill apportions some revenues that are currently deposited in the department's Operating Trust Fund for use by the Medicaid

Fraud Control Unit and removes a requirement for reduction of awards for catastrophic loss under some circumstances.

This bill takes effect July 1, 2015.

II. Present Situation:

For discussion of the provisions of ss. 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199, F.S., that are amended and ss. 16.62 and 960.196, F.S., that are created by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Attorney General

Section 1: Section 16.56, F.S., creates the Office of Statewide Prosecution as a separate budget entity within the Department of Legal Affairs and provides for its authority and duties to investigate and prosecute specified offenses. In general, the Office of Statewide Prosecution has jurisdiction only when one of the specified offenses occurs in two or more judicial circuits as part of a related transaction or when the offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. However, all of the offenses except offenses in ch. 787, F.S. (kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling) are considered to be committed in every judicial circuit when they are facilitated by or connected to the use of the Internet.

The bill amends s. 16.56, F.S., to provide that offenses in ch. 787, F.S., are considered to be committed in every judicial circuit when the offense is facilitated by or connected to the use of the Internet.

Section 2 creates s. 16.62, F.S., to authorize the department to expend not more than \$20,000 annually to:

- Purchase and distribute promotional materials or items that serve to advance with dignity and integrity the goodwill of the state and the department; and
- Provide basic refreshments at official functions, seminars, or meetings of the department in which dignitaries or representatives from the federal government, other states, or nations, or other agencies are in attendance.

This authorization is in addition to any expenditures separately authorized by law.

Section 3 amends s. 409.9203, F.S., which relates to the department’s Medicaid Fraud Control Unit. The Medicaid Fraud Control Unit investigates violations s. 409.920, F.S., which prohibits Medicaid provider fraud. As part of the Medicaid fraud control program, s. 409.9203, F.S., provides for rewards to persons who report a violation of the state’s Medicaid fraud laws.

The Florida False Claims Act¹ provides for civil actions to address false claims against the state. These actions may be brought by the state or by a private person on behalf of the state.

¹ Sections 68.081-68.092, F.S.

Section 68.085, F.S., provides for the distribution of funds for actions brought under the False Claim Act. It also provides for the disposition of any funds that remain after required distributions are made: 90 percent of the remaining funds is deposited in the General Revenue Fund, and 10 percent is deposited into the department's Operating Trust Fund to reward persons who report and provide information relating to Medicaid fraud.

The bill amends s. 409.9203, F.S., to direct that half of the proceeds deposited into the Operating Trust Fund pursuant to s. 68.085, F.S., must be used by the Medicaid Fraud Control Unit to fund investigations of potential violations of the False Claims Acts. The other half is still allocated for payment of rewards to persons who report Medicaid fraud.

Consumer Protection

The Florida Deceptive and Unfair Trade Practices Act² provides for the protection of Florida's consumers. Section 501.203 provides that enforcement extends not only to violations of the act and related rules, but also to the following as they exist on July 1, 2013:

- Rules of the Federal Trade Commission (FTC);
- Standards of unfairness and deception set forth and interpreted by the FTC or the federal courts; and
- Any law, statute, rule regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

In addition, s. 501.204(1), F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Section 501.204(2), F.S., specifically directs that the interpretations of the FTC and federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act³ as of July 1, 2013, are to be given due consideration and great weight in construing the state law.

Sections 4 and 5 amend ss. 501.203 and 501.204, F.S., to update the date of federal law that may be used to protect Florida consumers from July 1, 2013, to July 1, 2015.

Victim Assistance

The provisions of ss. 960.01 - 960.28, F.S., are known as the "Florida Crimes Compensation Act." Section 960.03, F.S., provides for definitions, including the terms "crime" and "disabled adult." Victims who suffer personal physical injury or death as a direct result of a crime are eligible for awards.

Section 6 amends s. 960.03(3), F.S., to make the following changes to the definition of "crime" for purposes of the Florida Crimes Compensation Act:

- Adds "a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;"

² Sections 501.201 – 501.213, F.S.

³ This provision is codified as 15 U.S.C. s. 45(a)(1).

- Adds s. 316.027(2), F.S. (willful failure of a vehicle driver involved in a crash that results in injury to a person other than serious bodily injury to immediately stop at the scene and remain to give information and render aid);
- Adds s. 316.1935, F.S. (fleeing or attempting to elude a law enforcement officer);
- Clarifies that an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death is included in the definition only when another person's injury or death is intentionally inflicted through the use of the vehicle, boat, or aircraft.

In addition, the definition of "disabled adult" is expanded to include adults who suffer from mental illness or from one or more physical limitations that restrict the person's ability to perform the normal activities of daily living. The amendment also clarifies that the definition includes persons who have only one mental limitation that restricts their ability to perform the normal activities of daily living.

Section 7 amends s. 960.13, F.S., which provides for awards of compensation to victims of crime. The department is authorized to make an award only if it finds that:

- A crime was committed;
- The crime directly resulted in personal injury, psychiatric or psychological injury, or death to the victim or intervenor; and
- The crime was promptly reported to the proper authorities.

Any award, except an award for loss of support, must be reduced by the amount of any payments or services received or to be received from certain sources as a result of the injury or death. The amendment to s. 960.13(6), F.S., adds an exception for awards for catastrophic injury.

Section 8 amends s. 960.195, F.S., which provides for awards to elderly persons or disabled adults for property loss that causes a substantial diminution of their quality of life. The statute currently provides that department may award a maximum of \$500 when:

- There is proof that a criminal or delinquent act was committed,
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours,
- The victim cooperates with law enforcement authorities in the investigation,
- There is proof that the tangible personal property in question belonged to the claimant,
- The claimant did not contribute to the criminal or delinquent act,
- There is no other source of reimbursement or indemnification available to the claimant, and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.

This statute is amended to remove cooperation with law enforcement as an act that supports an award of compensation. Rather, the department is given authority to deny, reduce, or withdraw any award if it finds that a claimant or award recipient has not cooperated with the state attorney, all law enforcement agencies, and the department. The statute is also amended to limit the amount of the award for any claim to \$500, with a lifetime cap of \$1,000 in awards for all claims. In addition, the department is given flexibility to waive the requirement that the crime have been reported within 72 hours if it finds that the delay was justified by good cause.

Section 9 creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking. This new section authorizes the department to award a one-time payment of up to \$1,500 for any one claim and a lifetime maximum of \$3,000 to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense. For the victim to be awarded the compensation:

- There must be proof that a human trafficking offense⁴ was committed.
- The crime must be reported to the proper authorities and the claim must be filed within one year, or two years with good cause, after the date of the last human trafficking offense.⁵
 - A certified domestic violence or rape crisis center in the state must certify the victim's need to escape from an unsafe environment. The center must assert in its certification that the victim is cooperating with the proper authorities and must include documentation that the victim has developed a safety plan.
 - A state attorney, statewide prosecutor, or federal prosecutor may certify in writing that a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense in a case that exceeds the two-year requirement.

The department must deny relocation payments for a human trafficking claim if it has previously approved or paid out a domestic violence or sexual battery relocation claim under s. 960.198, F.S., or s. 960.199, F.S.

Section 10 amends s. 960.198, F.S., which provides authority for the department to award payments for relocation assistance to victims of domestic violence who need immediate assistance to escape from a domestic violence environment. The statute provides that relocation payments for domestic violence must be denied if the same victim already received a relocation award for the same incident as a sexual battery victim pursuant to s. 960.199, F.S. The amendment adds the same prohibition relating to prior relocation assistance awards for victims of human trafficking.

Section 11 amends s. 960.199, F.S., to remove references to relocation assistance for victims of human trafficking. The statute currently applies to relocation assistance for victims of sexual battery and human trafficking, but the bill creates s. 960.196, F.S., to specifically address human trafficking.

Section 12 provides that the act takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ See s. 787.06(3)(b), (d), (f), or (g), F.S.

⁵ *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 1362, if awards for victim assistance benefits are capped, citizens are limited in the amount of lifetime awards that they may receive.

C. Government Sector Impact:

The Department of Legal Affairs indicates that the bill will not affect general revenue funds or trust fund revenues. The exclusion of awards for “catastrophic loss” from types of awards that must be reduced by the amount of services received from certain sources will have “very limited impact” on the victim’s compensation fund. Also, the bill directs that half of the revenues currently deposited in the department’s Operating Trust Fund for making awards be used to fund investigations and prosecutions by the Medicaid Fraud Control Unit. Amounts awarded from the Operating Trust Fund have historically been significantly less than half of the amount that is deposited for this purpose.

VI. Technical Deficiencies:

Section 3 of the bill, which amends s. 409.9203, F.S., does not clearly express the apparent intent to equally split the funds that are deposited into the department’s Operating Trust Fund from funds remaining after distributions pursuant to the False Claims Act.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199.

The bill creates the following sections of the Florida Statutes: 16.62 and 960.196.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Simmons

10-00675B-15

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1 A bill to be entitled
 2 An act relating to the Department of Legal Affairs;
 3 amending s. 16.56, F.S.; revising the list of offenses
 4 that may be investigated and prosecuted by the Office
 5 of Statewide Prosecution; creating s. 16.62, F.S.;
 6 prohibiting the Department of Legal Affairs from
 7 expending more than a specified amount annually to
 8 purchase and distribute promotional materials or items
 9 that serve to advance the goodwill of this state and
 10 the department and to provide basic refreshments at
 11 specified functions, seminars, or meetings; amending
 12 s. 409.9203, F.S.; specifying the distribution of
 13 certain funds recovered in Medicaid fraud actions;
 14 amending s. 501.203, F.S.; revising the term
 15 "violation of this part"; amending s. 501.204, F.S.;
 16 revising legislative intent; amending s. 960.03, F.S.;
 17 revising the definition of the term "crime" for
 18 purposes of obtaining crime victim compensation from
 19 the department to include certain forcible felonies;
 20 revising provisions concerning acts involving the
 21 operation of a motor vehicle, boat, or aircraft;
 22 revising the definition of the term "disabled adult";
 23 correcting a cross-reference; amending s. 960.13,
 24 F.S.; exempting crime victim compensation awards for
 25 catastrophic injury from certain deductions; amending
 26 s. 960.195, F.S.; revising the maximum victim
 27 compensation amounts that the department may award to
 28 elderly persons or disabled adults who suffer a
 29 property loss that causes a substantial diminution in

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30 their quality of life in certain circumstances;
 31 revising the conditions under which elderly persons or
 32 disabled adults who suffer a property loss are
 33 eligible for an award; authorizing the department to
 34 deny, reduce, or withdraw a specified award upon
 35 finding that any claimant or award recipient has not
 36 duly cooperated with certain persons and entities;
 37 creating s. 960.196, F.S.; providing for relocation
 38 assistance for human trafficking victims; amending s.
 39 960.198, F.S.; prohibiting relocation assistance for a
 40 domestic violence claim if the victim has received
 41 previous relocation assistance for a human trafficking
 42 claim; amending s. 960.199, F.S.; deleting provisions
 43 relating to relocation assistance for human
 44 trafficking victims; providing an effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Paragraphs (a) and (b) of subsection (1) of
 49 section 16.56, Florida Statutes, are amended to read:

50 16.56 Office of Statewide Prosecution.—

51 (1) There is created in the Department of Legal Affairs an
 52 Office of Statewide Prosecution. The office shall be a separate
 53 "budget entity" as that term is defined in chapter 216. The
 54 office may:

55 (a) Investigate and prosecute the offenses of:

56 1. Bribery, burglary, criminal usury, extortion, gambling,
 57 kidnapping, larceny, murder, prostitution, perjury, robbery,
 58 carjacking, and home-invasion robbery;

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- 59 2. Any crime involving narcotic or other dangerous drugs;
 60 3. Any violation of ~~the provisions of~~ the Florida RICO
 61 (Racketeer Influenced and Corrupt Organization) Act, including
 62 any offense listed in the definition of racketeering activity in
 63 s. 895.02(1)(a), providing such listed offense is investigated
 64 in connection with a violation of s. 895.03 and is charged in a
 65 separate count of an information or indictment containing a
 66 count charging a violation of s. 895.03, the prosecution of
 67 which listed offense may continue independently if the
 68 prosecution of the violation of s. 895.03 is terminated for any
 69 reason;
 70 4. Any violation of ~~the provisions of~~ the Florida Anti-
 71 Fencing Act;
 72 5. Any violation of ~~the provisions of~~ the Florida Antitrust
 73 Act of 1980, as amended;
 74 6. Any crime involving, or resulting in, fraud or deceit
 75 upon any person;
 76 7. Any violation of s. 847.0135, relating to computer
 77 pornography and child exploitation prevention, or any offense
 78 related to a violation of s. 847.0135 or any violation of
 79 chapter 827 where the crime is facilitated by or connected to
 80 the use of the Internet or any device capable of electronic data
 81 storage or transmission;
 82 8. Any violation of ~~the provisions of~~ chapter 815;
 83 9. Any criminal violation of part I of chapter 499;
 84 10. Any violation of ~~the provisions of~~ the Florida Motor
 85 Fuel Tax Relief Act of 2004;
 86 11. Any criminal violation of s. 409.920 or s. 409.9201;
 87 12. Any crime involving voter registration, voting, or

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- 88 candidate or issue petition activities;
 89 13. Any criminal violation of the Florida Money Laundering
 90 Act;
 91 14. Any criminal violation of the Florida Securities and
 92 Investor Protection Act; or
 93 15. Any violation of ~~the provisions of~~ chapter 787, as well
 94 as any and all offenses related to a violation of ~~the provisions~~
 95 ~~of~~ chapter 787;
 96
 97 or any attempt, solicitation, or conspiracy to commit any of the
 98 crimes specifically enumerated above. The office shall have such
 99 power only when any such offense is occurring, or has occurred,
 100 in two or more judicial circuits as part of a related
 101 transaction, or when any such offense is connected with an
 102 organized criminal conspiracy affecting two or more judicial
 103 circuits. Informations or indictments charging such offenses
 104 shall contain general allegations stating the judicial circuits
 105 and counties in which crimes are alleged to have occurred or the
 106 judicial circuits and counties in which crimes affecting such
 107 circuits or counties are alleged to have been connected with an
 108 organized criminal conspiracy.
 109 (b) Investigate and prosecute any crime enumerated in
 110 paragraph (a) subparagraphs (a)1.-14. facilitated by or
 111 connected to the use of the Internet. Any such crime is a crime
 112 occurring in every judicial circuit within the state.
 113 Section 2. Section 16.62, Florida Statutes, is created to
 114 read:
 115 16.62 Authority of the Department of Legal Affairs to
 116 expend funds on promotional materials and goodwill.-In addition

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 117 to expenditures separately authorized by law, the Department of
 118 Legal Affairs may not expend more than \$20,000 annually to
 119 purchase and distribute promotional materials or items that
 120 serve to advance with dignity and integrity the goodwill of this
 121 state and the department and to provide basic refreshments at
 122 official functions, seminars, or meetings of the department in
 123 which dignitaries or representatives from the Federal
 124 Government, other states, or nations, or other agencies are in
 125 attendance.

126 Section 3. Subsection (5) is added to section 409.9203,
 127 Florida Statutes, to read:

128 409.9203 Rewards for reporting Medicaid fraud.—

129 (5) Notwithstanding s. 68.085(3), 10 percent of any
 130 remaining proceeds deposited into the Operating Trust Fund from
 131 an action based on a claim of funds from the state Medicaid
 132 program shall be allocated in the following manner:

133 (a) Fifty percent of such moneys shall be used to fund
 134 rewards for reporting Medicaid fraud pursuant to this section.

135 (b) The remaining 50 percent of such moneys shall be used
 136 by the Medicaid Fraud Control Unit to fund its investigations of
 137 potential violations of s. 68.082 and any related civil actions.

138 Section 4. Subsection (3) of section 501.203, Florida
 139 Statutes, is amended to read:

140 501.203 Definitions.—As used in this chapter, unless the
 141 context otherwise requires, the term:

142 (3) "Violation of this part" means any violation of this
 143 act or the rules adopted under this act and may be based upon
 144 any of the following as of July 1, 2015 ~~2013~~:

145 (a) Any rules promulgated pursuant to the Federal Trade

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 146 Commission Act, 15 U.S.C. ss. 41 et seq.;

147 (b) The standards of unfairness and deception set forth and
 148 interpreted by the Federal Trade Commission or the federal
 149 courts;

150 (c) Any law, statute, rule, regulation, or ordinance which
 151 proscribes unfair methods of competition, or unfair, deceptive,
 152 or unconscionable acts or practices.

153 Section 5. Section 501.204, Florida Statutes, is amended to
 154 read:

155 501.204 Unlawful acts and practices.—

156 (1) Unfair methods of competition, unconscionable acts or
 157 practices, and unfair or deceptive acts or practices in the
 158 conduct of any trade or commerce are hereby declared unlawful.

159 (2) It is the intent of the Legislature that, in construing
 160 subsection (1), due consideration and great weight shall be
 161 given to the interpretations of the Federal Trade Commission and
 162 the federal courts relating to s. 5(a)(1) of the Federal Trade
 163 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015 ~~2013~~.

164 Section 6. Subsections (3) and (6) of section 960.03,
 165 Florida Statutes, are amended to read:

166 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
 167 960.01-960.28, unless the context otherwise requires, the term:

168 (3) "Crime" means:

169 (a) A felony or misdemeanor offense committed by an adult
 170 or a juvenile which results in physical injury or death, a
 171 forcible felony committed by an adult or juvenile which directly
 172 results in psychiatric or psychological injury, or a felony or
 173 misdemeanor offense of child abuse committed by an adult or a
 174 juvenile which results in a mental injury, as defined in s.

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175 827.03, to a person younger than 18 years of age who was not
 176 physically injured by the criminal act. The mental injury to the
 177 minor must be verified by a psychologist licensed under chapter
 178 490, by a physician licensed in this state under chapter 458 or
 179 chapter 459 who has completed an accredited residency in
 180 psychiatry, or by a physician who has obtained certification as
 181 an expert witness pursuant to s. 458.3175. The term also
 182 includes a criminal act that is committed within this state but
 183 that falls exclusively within federal jurisdiction.

184 (b) A violation of s. 316.027(2), s. 316.193, s. 316.1935
 185 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s.
 186 860.13(1)(a) which results in physical injury or death.

187 (c) ~~however,~~ An act involving the operation of a motor
 188 vehicle, boat, or aircraft which results in another person's
 189 injury or death that is intentionally inflicted through the use
 190 of the vehicle, boat, or aircraft; however, no other act
 191 involving the operation of a motor vehicle, boat, or aircraft
 192 constitutes a crime for purposes of this chapter ~~does not~~
 193 constitute a crime for the purpose of this chapter unless the
 194 injury or death was intentionally inflicted through the use of
 195 the vehicle, boat, or aircraft.

196 (d) ~~(e)~~ A criminal act committed outside this state against
 197 a resident of this state which would have been compensable if it
 198 had occurred in this state and which occurred in a jurisdiction
 199 that does not have an eligible crime victim compensation program
 200 as the term is defined in the federal Victims of Crime Act of
 201 1984.

202 (e) ~~(d)~~ A violation of s. 827.071, s. 847.0135, s. 847.0137,
 203 or s. 847.0138, related to online sexual exploitation and child

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204 pornography.

205 (6) "Disabled adult" means a person 18 years of age or
 206 older who suffers from a condition of physical or mental
 207 incapacitation due to a developmental disability, ~~or~~ organic
 208 brain damage, or mental illness or who has one or more physical
 209 or mental limitations that restrict the person's ability to
 210 perform the normal activities of daily living.

211 Section 7. Subsection (6) of section 960.13, Florida
 212 Statutes, is amended to read:

213 960.13 Awards.—

214 (6) Any award made pursuant to this chapter, except an
 215 award for loss of support or catastrophic injury, shall be
 216 reduced by the amount of any payments or services received or to
 217 be received by the claimant as a result of the injury or death:

218 (a) From or on behalf of the person who committed the
 219 crime; provided, however, that a restitution award ordered by a
 220 court to be paid to the claimant by the person who committed the
 221 crime shall not reduce any award made pursuant to this chapter
 222 unless it appears to the department that the claimant will be
 223 unjustly enriched thereby.

224 (b) From any other public or private source or provider,
 225 including, but not limited to, an award of workers' compensation
 226 pursuant to chapter 440.

227 (c) From agencies mandated by other Florida statutes to
 228 provide or pay for services, except as provided in s. 960.28.

229 (d) From an emergency award under s. 960.12.

230 Section 8. Section 960.195, Florida Statutes, is amended to
 231 read:

232 960.195 Awards to elderly persons or disabled adults for

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233 property loss.-

234 (1) Notwithstanding the criteria in s. 960.13, for crime
 235 victim compensation awards, the department may award a maximum
 236 of \$500 on any one claim and a lifetime maximum of \$1,000 on all
 237 claims to elderly persons or disabled adults who suffer a
 238 property loss that causes a substantial diminution in their
 239 quality of life when:

240 (a)(1) There is proof that a criminal or delinquent act was
 241 committed;

242 (b)(2) The criminal or delinquent act is reported to law
 243 enforcement authorities within 72 hours, unless the department,
 244 for good cause shown, finds the delay to have been justified;

245 ~~(3) The victim cooperates with law enforcement authorities~~
 246 ~~in the investigation of the criminal or delinquent act;~~

247 (c)(4) There is proof that the tangible personal property
 248 in question belonged to the claimant;

249 (d)(5) The claimant did not contribute to the criminal or
 250 delinquent act;

251 (e)(6) There is no other source of reimbursement or
 252 indemnification available to the claimant; and

253 (f)(7) The claimant would not be able to replace the
 254 tangible personal property in question without incurring a
 255 serious financial hardship.

256 (2) The department may deny, reduce, or withdraw any award
 257 under subsection (1) upon finding that any claimant or award
 258 recipient has not duly cooperated with the state attorney, all
 259 law enforcement agencies, and the department.

260 Section 9. Section 960.196, Florida Statutes, is created to
 261 read:

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262 960.196 Relocation assistance for victims of human
 263 trafficking.-

264 (1) Notwithstanding the criteria specified in ss. 960.07(2)
 265 and 960.13 for crime victim compensation awards, the department
 266 may award a one-time payment of up to \$1,500 for any one claim
 267 and a lifetime maximum of \$3,000 to a victim of human
 268 trafficking who needs urgent assistance to escape from an unsafe
 269 environment directly related to the human trafficking offense.

270 (2) In order for an award to be granted to a victim for
 271 relocation assistance:

272 (a) There must be proof that a human trafficking offense,
 273 as described in s. 787.06(3)(b), (d), (f), or (g), was
 274 committed.

275 (b) The crime must be reported to the proper authorities
 276 and the claim must be filed within 1 year, or 2 years with good
 277 cause, after the date of the last human trafficking offense, as
 278 described in s. 787.06(3)(b), (d), (f), or (g). In a case that
 279 exceeds the 2-year requirement due to an active and ongoing
 280 investigation, a state attorney, statewide prosecutor, or
 281 federal prosecutor may certify in writing a human trafficking
 282 victim's need to relocate from an unsafe environment due to the
 283 threat of future violence which is directly related to the human
 284 trafficking offense.

285 (c) The victim's need must be certified by a certified
 286 domestic violence or rape crisis center in this state, except as
 287 provided in paragraph (b). The center's certification must
 288 assert that the victim is cooperating with the proper
 289 authorities and must include documentation that the victim has
 290 developed a safety plan.

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291 (3) Relocation payments for a human trafficking claim shall
 292 be denied if the department has previously approved or paid out
 293 a domestic violence or sexual battery relocation claim under s.
 294 960.198 or s. 960.199 to the same victim regarding the same
 295 incident.

296 Section 10. Subsection (3) of section 960.198, Florida
 297 Statutes, is amended to read:

298 960.198 Relocation assistance for victims of domestic
 299 violence.—

300 (3) Relocation payments for a domestic violence claim shall
 301 be denied if the department has previously approved or paid out
 302 a human trafficking or sexual battery relocation claim under s.
 303 960.196 or s. 960.199 to the same victim regarding the same
 304 incident.

305 Section 11. Section 960.199, Florida Statutes, is amended
 306 to read:

307 960.199 Relocation assistance for victims of sexual battery
 308 ~~or human trafficking.~~—

309 (1) The department may award a one-time payment of up to
 310 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a
 311 victim of sexual battery, as defined in s. 794.011, ~~or a victim~~
 312 ~~of human trafficking, as described in s. 787.06(3)(b), (d), (f),~~
 313 ~~or (g),~~ who needs relocation assistance.

314 (2) In order for an award to be granted to a victim for
 315 relocation assistance:

316 (a) There must be proof that a sexual battery offense ~~or~~
 317 ~~human trafficking offense, as described in s. 787.06(3)(b), (d),~~
 318 ~~(f), or (g),~~ was committed.

319 (b) The sexual battery offense ~~or human trafficking~~

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320 ~~offense, as defined in s. 787.06(3)(b), (d), (f), or (g),~~ must
 321 be reported to the proper authorities.

322 (c) The victim's need for assistance must be certified by a
 323 certified rape crisis center in this state ~~or by the state~~
 324 ~~attorney or statewide prosecutor having jurisdiction over the~~
 325 ~~offense. A victim of human trafficking's need for assistance may~~
 326 ~~also be certified by a certified domestic violence center in~~
 327 ~~this state.~~

328 (d) The center's certification must assert that the victim
 329 is cooperating with law enforcement officials, if applicable,
 330 and must include documentation that the victim has developed a
 331 safety plan. ~~If the victim seeking relocation assistance is a~~
 332 ~~victim of a human trafficking offense as described in s.~~
 333 ~~787.06(3)(b), (d), (f), or (g), the certified rape crisis~~
 334 ~~center's or certified domestic violence center's certification~~
 335 ~~must include, if applicable, approval of the state attorney or~~
 336 ~~statewide prosecutor attesting that the victim is cooperating~~
 337 ~~with law enforcement officials.~~

338 (e) The act of sexual battery ~~or human trafficking, as~~
 339 ~~described in s. 787.06(3)(b), (d), (f), or (g),~~ must be
 340 committed in the victim's place of residence or in a location
 341 that would lead the victim to reasonably fear for his or her
 342 continued safety in the place of residence.

343 (3) Relocation payments for a sexual battery ~~or human~~
 344 ~~trafficking~~ claim under this section shall be denied if the
 345 department has previously approved or paid out a human
 346 trafficking or domestic violence relocation claim under s.
 347 960.196 or s. 960.198 to the same victim regarding the same
 348 incident.

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349

Section 12. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 11, 2015

I respectfully request that **Senate Bill 1362**, relating to Department of Legal Affairs, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10