

<b>Tab 1</b> CS/SB 232 by CF, Detert; (Similar to CS/H 0403) Guardianship							
256734	A	S	RCS	JU, Simmons	Delete L.131:	12/01	06:54 PM
125352	A	S	RCS	JU, Simmons	btw L.431 - 432:	12/01	06:54 PM
<b>Tab 2</b> SB 7018 by CF; (Identical to H 0599) Child Welfare							
<b>Tab 3</b> SB 498 by Sobel; (Identical to H 4003) Repeal of a Prohibition on Cohabitation							
<b>Tab 4</b> SB 334 by Montford; (Compare to CS/CS/H 0091) Severe Injuries Caused by Dogs							
558638	D	S	RCS	JU, Simpson	Delete everything after	12/01	06:54 PM
<b>Tab 5</b> SB 720 by Hutson; (Similar to CS/H 0559) Self-storage Facilities							
138058	A	S	UNFAV	JU, Joyner	Delete L.31 - 64:	12/01	06:54 PM
<b>Tab 6</b> SB 142 by Ring (CO-INTRODUCERS) Joyner; (Identical to H 0291) Student Loans							
198794	D	S	RCS	JU, Ring	Delete everything after	12/01	06:54 PM
<b>Tab 7</b> CS/SB 308 by CJ, Benacquisto; (Similar to CS/CS/H 0131) Unattended Persons and Animals in Motor Vehicles							
221626	A	S	RCS	JU, Benacquisto	Delete L.21 - 37:	12/01	06:54 PM
<b>Tab 8</b> SB 390 by Simpson; (Compare to H 0273) Public Records/Public Agency Contract for Services							
453772	A	S	RCS	JU, Simpson	Delete L.101 - 118:	12/01	06:54 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Diaz de la Portilla, Chair**  
**Senator Ring, Vice Chair**

**MEETING DATE:** Tuesday, December 1, 2015  
**TIME:** 4:00—5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 232</b> Children, Families, and Elder Affairs / Detert (Similar CS/H 403)	Guardianship; Renaming the Statewide Public Guardianship Office to the Office of Public and Professional Guardians; revising the duties and responsibilities of the executive director for the Office of Public and Professional Guardians; providing that a guardian has standing to seek judicial review pursuant to specified provisions if his or her registration is denied, etc.  CF     10/08/2015 Fav/CS JU     12/01/2015 Fav/CS FP	Fav/CS Yeas 7 Nays 0
2	<b>SB 7018</b> Children, Families, and Elder Affairs (Identical H 599)	Child Welfare; Extending court jurisdiction to age 22 for young adults with disabilities in foster care; providing conditions under which a child may be returned home with an in-home safety plan; requiring specified intervention services and supports; requiring every child placed in out-of-home care to be referred within a certain time for a comprehensive behavioral health assessment; requiring lead agencies to ensure the availability of a full array of family support services, etc.  JU     12/01/2015 Favorable AHS AP	Favorable Yeas 7 Nays 0
3	<b>SB 498</b> Sobel (Identical H 4003)	Repeal of a Prohibition on Cohabitation; Deleting provisions prohibiting cohabitation by unmarried men and women, etc.  CJ     11/17/2015 Favorable JU     12/01/2015 Favorable RC	Favorable Yeas 7 Nays 0
4	<b>SB 334</b> Montford (Compare CS/CS/H 91)	Severe Injuries Caused by Dogs; Specifying circumstances under which a dog that has caused severe injury to a human may be returned to its owner rather than be destroyed, etc.  JU     12/01/2015 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, December 1, 2015, 4:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 720</b> Hutson (Similar H 559)	Self-storage Facilities; Providing that advertisement of a sale or disposition of property may be in any commercially reasonable manner; specifying when advertising may be considered to have been conducted in a commercially reasonable manner; providing that a self-storage facility owner is not required to have a license to post property for online sale; deleting a required alternative form of advertisement; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien, etc.  JU 12/01/2015 Favorable RI FP	Favorable Yeas 7 Nays 1
6	<b>SB 142</b> Ring (Identical H 291)	Student Loans; Requiring the Justice Administrative Commission and the Office of the Attorney General to implement a student loan assistance program to assist a career assistant state attorney, assistant public defender, assistant attorney general, or assistant statewide prosecutor in the repayment of eligible student loans; establishing requirements for the administration of the program; requiring the administering body to make payments based on the length of employment of the eligible career attorney and the availability of funds, etc.  JU 12/01/2015 Fav/CS ACJ AP	Fav/CS Yeas 8 Nays 0
7	<b>CS/SB 308</b> Criminal Justice / Benacquisto (Similar CS/CS/H 131, Compare CS/H 329, S 200)	Unattended Persons and Animals in Motor Vehicles; Providing definitions; providing immunity from civil liability for entry into a motor vehicle to remove a person or animal under certain circumstances; providing for applicability, etc.  CJ 11/17/2015 Fav/CS JU 12/01/2015 Fav/CS RC	Fav/CS Yeas 8 Nays 0
8	<b>SB 390</b> Simpson (Compare H 273)	Public Records/Public Agency Contract for Services; Requiring that a public agency contract for services include a statement providing the contact information of the public agency's custodian of records; revising required provisions in a public agency contract for services regarding a contractor's compliance with public records laws, etc.  GO 11/17/2015 Favorable JU 12/01/2015 Fav/CS FP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, December 1, 2015, 4:00—5:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

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**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 232

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Detert

SUBJECT: Guardianship

DATE: December 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 232 expands and renames the Statewide Public Guardianship Office within the Department of Elder Affairs (DOEA) as the Office of Public and Professional Guardians. In its new capacity, the office is given the additional responsibility of administering the regulation of professional guardians who have not previously been closely regulated by the state. The newly titled office remains housed within the DOEA.

The executive director of the new Office of Public and Professional Guardians remains an appointee of the Secretary of the DOEA, but with expanded responsibilities. The bill establishes the additional duties and responsibilities of the executive director and requires the annual registration of professional guardians.

The Office of Public and Professional Guardians is directed to adopt rules to establish standards of practice for public and professional guardians, receive and investigate complaints, establish procedures for disciplinary oversight, conduct hearings, specify penalties, and take administrative action pursuant to ch. 120, F.S.

## II. Present Situation:

### Guardianship

Guardianship is a concept whereby a “guardian” acts for another, called a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.<sup>1</sup> For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, in situations where an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is based on the determination of a court appointed examination committee.<sup>2</sup>

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.<sup>3</sup> A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.<sup>4</sup> The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.<sup>5</sup> In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

Section 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. A guardian must file with the court an initial guardianship report,<sup>6</sup> an annual guardianship report,<sup>7</sup> and an annual accounting of the ward’s property.<sup>8</sup> The reports provide evidence of the guardian’s faithful execution of his or her fiduciary duties.<sup>9</sup>

At the heart of a court’s interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., explicitly states that the “fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law.” In the event

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<sup>1</sup> See generally, Section 744.102(9), F.S.

<sup>2</sup> See generally, Section 744.102(12), F.S.

<sup>3</sup> *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

<sup>4</sup> *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

<sup>5</sup> *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

<sup>6</sup> Section 744.362, F.S.

<sup>7</sup> Section 744.367, F.S.

<sup>8</sup> Section 744.3678, F.S.

<sup>9</sup> Section 744.368(1), F.S.

of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.<sup>10</sup>

### **Professional Guardians**

In Florida, a "professional guardian" means any guardian who has, at any time, rendered services to three or more wards as their guardian.<sup>11</sup> A professional guardian must register annually with the Statewide Public Guardianship Office.<sup>12</sup> Currently, there are 465 professional guardians who are registered with the Statewide Public Guardianship Office.<sup>13</sup> Professional guardians must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.<sup>14</sup>

Professional guardians are subject to a level 2 background check,<sup>15</sup> an investigation of the guardian's credit history,<sup>16</sup> and are required to demonstrate competency to act as a professional guardian by taking an examination approved by the DOEA.<sup>17</sup> These requirements do not apply to a professional guardian or the employees of that professional guardian when that guardian is a:

- Trust company;
- State banking corporation;
- State savings association authorized and qualified to exercise fiduciary powers in this state; or
- National banking association or federal savings and loan association authorized and qualified to exercise fiduciary duties in this state.<sup>18</sup>

### **Public Guardianship Act**

The Public Guardianship Act is codified in s. 744.701, F.S. The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.<sup>19</sup> The executive director of the Statewide Public Guardianship Office, after consultation with the chief judge and other judges within the judicial circuit, may establish one or more offices of public guardian within a judicial circuit.<sup>20</sup> A public guardian may serve an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.<sup>21</sup> A person serving as a public guardian is considered a professional guardian

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<sup>10</sup> Section 744.446(4), F.S.

<sup>11</sup> Section 744.102(17), F.S.

<sup>12</sup> Section 744.1083(1) and (2), F.S.

<sup>13</sup> Children and Families, and Elder Affairs Committee staff telephone conversation with the Department of Elder Affairs on March 9, 2015.

<sup>14</sup> Section 744.1085(3), F.S.

<sup>15</sup> Section 744.1085(5), F.S.

<sup>16</sup> Section 744.1085(4), F.S.

<sup>17</sup> Section 744.1085(6), F.S.

<sup>18</sup> Section 744.1085(10), F.S.

<sup>19</sup> Ch. 99-277 Laws of Fla.

<sup>20</sup> Section 744.703(1), F.S.

<sup>21</sup> Section 744.704(1), F.S.

for purposes of regulation, education, and registration.<sup>22</sup> Public guardianship offices are located in all 20 judicial circuits in the state.<sup>23</sup>

### **Determining Incapacity**

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court. A petition may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the attorney for the alleged incapacitated person and served on all next of kin identified in the petition. The notice must include:

- The time and place for the court hearing to inquire into the capacity of the alleged incapacitated person;
- That an attorney has been appointed to represent that person; and
- That, if he or she is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on his or her behalf.<sup>24</sup>

In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.<sup>25</sup> The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.<sup>26</sup> When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.<sup>27</sup>

If a petition for appointment of a guardian has been filed, an order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.<sup>28</sup> If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.<sup>29</sup>

### **Court Proceedings**

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.<sup>30</sup> At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best

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<sup>22</sup> Section 744.102(17), F.S.

<sup>23</sup> Children, Families, and Elder Affairs Committee staff meeting with the Department of Elder Affairs on February 2, 2015.

<sup>24</sup> Section 744.331(1), F.S.

<sup>25</sup> Section 744.331(5)(c), F.S.

<sup>26</sup> Section 744.331(6), F.S.

<sup>27</sup> Section 744.331(6)(b), F.S.

<sup>28</sup> Section 744.344(3), F.S.

<sup>29</sup> Section 744.344(4), F.S.

<sup>30</sup> Section 744.372, F.S.



interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.<sup>31</sup>

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.<sup>32</sup> Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.<sup>33</sup>

A ward has the right to be restored to capacity at the earliest possible time.<sup>34</sup> The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed. Immediately upon the filing of the suggestion of capacity, the court must appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.<sup>35</sup> All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the court.<sup>36</sup> If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.<sup>37</sup> The level of proof required to show capacity is not presently spelled out in the statute.

In a study and work group report by the Florida Developmental Disabilities Council, dated February 28, 2014, Palm Beach County court personnel performed a limited review of a random sample of 76 guardianship files for persons over the age of 18. Among these, over two thirds were of persons having age-related disabilities. After reviewing those files, the senior auditor for the circuit "reported that there were no cases where the guardianship plan recommended the restoration of any rights" of the incapacitated persons.<sup>38</sup>

## Media Reports

Beginning on December 6, 2014, the Sarasota Herald Tribune published a series of articles titled "The Kindness of Strangers – Inside Elder Guardianship in Florida," which detailed abuses occurring in guardianships. The paper examined guardianship court case files and conducted interviews with wards, family, and friends in the system.<sup>39</sup> The paper concluded that "Florida has cobbled together an efficient way to identify and care for helpless elders, using the probate court system to place them under guardianship." However, critics say this system "often ignores basic individual rights" and most often "plays out in secret, with hearings and files typically closed to

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<sup>31</sup> Section 744.3715, F.S.

<sup>32</sup> Section 744.108(1), F.S.

<sup>33</sup> Section 744.108(8), F.S.

<sup>34</sup> Section 744.3215(1)(c), F.S.

<sup>35</sup> Section 744.464(2)(b), F.S.

<sup>36</sup> Section 744.464(2)(c),(d)

<sup>37</sup> Section 744.464(2)(e), F.S.

<sup>38</sup> Florida Developmental Disabilities Council, *Restoration of Capacity Study and Work Group Report*, February 28, 2014 available at <http://www.bing.com/search?q=restoration+of+capacity+study+and+work+group+report&src=IE-TopResult&FORM=IETRO2&conversationid=>.

<sup>39</sup> Barbara Peters Smith, *The Kindness of Strangers – Inside Elder Guardianship in Florida*, HERALD TRIBUNE (December 6, 2014), available at <http://extra.heraldtribune.com/2014/12/06/well-oiled-machine/>.

the public.”<sup>40</sup> The paper also concluded that “monitoring elders and tapping their assets is a growth business: In 2003, there were 23 registered professional guardians in Florida, according to the [DOEA]. Today there are more than 440 – an increase greater than 1,800 percent in 11 years.”<sup>41</sup>

### **2015 Legislation (HB 5)**

In the 2015 legislative session, the Legislature passed and the Governor later signed HB 5. The new statute allows for appointment of the office of criminal conflict and civil regional counsel as emergency court monitors, allows compensation for guardians and other certain individuals to be awarded by the court without receiving expert testimony, requires notice requirements for filing a petition for appointment of an emergency temporary guardian, adds for-profit corporate guardians existing under the laws of Florida as qualified to act as a guardian if certain requirements are met, and requires a court that does not use a rotation system for appointment of a professional guardian to make specific findings of fact stating why the person was selected as guardian in the particular guardianship case.

### **III. Effect of Proposed Changes:**

The bill renames the Statewide Public Guardianship Office and significantly expands its duties. The office is renamed the Office of Public and Professional Guardians and, as its name implies, now has oversight for both public and professional guardians. While public guardians, who provide services for indigent people, have been regulated by the state, professional guardians have not been as closely regulated.

This bill establishes the regulation and supervision of professional guardians by giving the DOEA the authority to discipline professional guardians for misconduct.

### **Legislative Intent (Section 4)**

The bill amends the legislative intent language in s. 744.1012, F.S., to express the Legislature’s intent that alternatives to guardianship and less restrictive means of assistance always be explored before an individual’s rights are removed through an adjudication of incapacity.

The legislative intent is amended to include the finding that private guardianship may be inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person and the person does not have adequate income or wealth for the compensation of the private guardian. The bill amends the legislative intent by establishing the Office of Public and Professional Guardians, to permit the establishment of public guardians to provide services for incapacitated persons when no private guardian is available. A public guardian must be provided only to those persons whose needs cannot be met through less restrictive means of intervention.

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

### **Office of Public and Professional Guardians (Section 8)**

The bill creates the Office of Public and Professional Guardians within the DOEA. The executive director of the Office of Public and Professional Guardians has oversight responsibilities over all public and professional guardians. The executive director must review the standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

The executive director's oversight responsibilities for professional guardians, include, but are not limited to:

- Establishing standards of practice for public and professional guardians;
- Reviewing and approving the standards and criteria for the education, registration, and certification of public and professional guardians in Florida;
- Developing a guardianship training program curriculum that may be offered to all public and private guardians;
- Developing and implementing a monitoring tool to use for periodic monitoring activities of professional guardians; however, this monitoring tool may not include a financial audit as required to be performed by the clerk of the circuit court under s. 744.368, F.S.;
- Developing procedures for the review of an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;
- Establishing disciplinary proceedings, conduct hearings, and take administrative action under ch. 120, F.S.

### **Regulation of Professional Guardians (Section 10)**

The bill provides that each professional guardian is required to demonstrate competency to act as a professional guardian by taking an examination approved by DOEA.

### **Discipline of Professional Guardians (Section 11)**

The bill creates s. 744.2004, F.S., and directs the Office of Public and Professional Guardians to establish standards and procedures in rule by October 1, 2016, with a draft of the standards and procedures to be provided to the Governor, the Legislature, and the department secretary for review by August 1, 2016, to:

- Review, and if appropriate, investigate allegations that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;
- Initiate an investigation no later than 10 business days after the Office receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Coordinate to the greatest extent possible with the clerks of the court to avoid duplication of duties;
- Establish disciplinary proceedings, conduct hearings, and take administrative action pursuant to ch. 120, F.S. Disciplinary actions may include, but are not limited to:
  - Requiring professional guardians to participate in additional educational courses;

- Imposing additional monitoring of the guardianships being served by the professional guardian; and
- Suspending and revoking the guardian's registration. If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.
- The court may only appoint a professional guardian that is registered by the department.

### **Grounds for Discipline, Penalties, and Enforcement (Section 12)**

The bill provides that the following acts by a professional guardian constitute grounds for disciplinary action:

- Making misleading, deceptive, or fraudulent representations relating to guardianship work.
- Violating rules governing guardians and guardianships.
- Being convicted or found guilty, or entering a plea, regardless of adjudication, of a crime related to the practice or ability to practice as a professional guardian.
- Failing to comply with the educational course requirements.
- Having a registration, license, or authority to practice in a regulated profession removed.
- Knowingly filing a false report or complaint with the office against another guardian.
- Attempting to secure or renew a registration or license by bribery, fraudulent misrepresentation, or through an undisclosed error made by the office.
- Failing to report someone who the professional guardian knows is violating ch. 744, F.S., relating to guardianship, or rules of the office.
- Failing to perform professional guardian obligations.
- Making or filing a report or record known to be false or not filing a required report or record or impeding someone's effort to do so.
- Using the position of guardian for inappropriate financial gain.
- Violating a lawful order or failing to comply with a lawfully issued subpoena by the office.
- Improperly interfering with an investigation, inspection, or disciplinary proceeding.
- Using the guardian relationship to engage certain people in sexual activity.
- Failing to report to the office in writing within 30 days after being convicted or found guilty or entering a plea to a crime.
- Being unable to function as a professional guardian due to certain impediments.
- Failing to post and maintain the necessary blanket fiduciary bond.
- Failing to maintain records for a reasonable time after the court closes a guardianship.
- Violating provisions of ch. 744, F.S., relating to guardianship, or any rules adopted pursuant to the chapter.

The bill also provides penalties that the office may impose for a violation of the above and that the office may establish disciplinary guidelines by rule.

When recommending penalties for violations, an administrative law judge must follow the disciplinary guidelines and state in writing any mitigating or aggravating circumstance upon which a recommended penalty is based if he or she recommends a penalty not provided in the guidelines. The office may impose a penalty other than ones stated in the disciplinary guidelines if a specific finding is made in the final order of mitigating or aggravating circumstances. The

office is also authorized to seek an injunction or writ of mandamus against someone who violates the chapter or pertinent rules. If the office revokes a professional guardian's registration, the revocation is permanent. If the office suspends or revokes a professional guardian's registration, the office must provide its determination to the appropriate court for any guardianship case in which the guardian is appointed.

### **Access to Records by the Office of Public and Professional Guardians (Section 20)**

Under current law, any confidential or exempt information provided to the Statewide Public Guardianship Office (renamed by the bill to the Office of Public and Professional Guardians) continues to be held confidential or exempt as otherwise provided by law. Current law also provides that all records relating to the medical, financial, or mental health of vulnerable adults as defined in ch. 415, F.S., persons with a developmental disability as defined in ch. 393, F.S., or persons with a mental illness as defined in ch. 394, F.S., are confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The bill provides the Office of Public and Professional Guardians access to records held by an agency or the court and its agencies which are necessary as part of an investigation of a guardian as a result of a complaint filed with the Office.

### **Joining Forces for Public Guardianship (Section 22)**

The bill provides that the purpose of the already existent Joining Forces for Public Guardianship matching grant program is to assist counties in establishing and funding community-supported public guardianship programs.

### **Credit and criminal investigations (Section 26)**

The Office of Public and Professional Guardians shall adopt rules by October 1, 2016, that detail the acceptable methods for completing an electronic fingerprint criminal history record check and for completing a credit investigation for professional guardians and each employee of a professional guardian who has a fiduciary responsibility to the ward.

### **Organizational Changes (Remaining Sections)**

The remaining sections of the bill make technical changes and relocate what is currently part II, Venue, to part I, General Provisions, retitles part II as Public and Professional Guardians and makes other conforming changes to carry out the intent of the act.

### **Effective Date (Section 37)**

The bill is effective upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

**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:**

Professional guardians may bear increased costs due to regulation by the Department of Elder Affairs.

**C. Government Sector Impact:**

The Department of Elder Affairs will see increased costs associated with regulating private guardians. The department would need budget and FTEs to perform the duties required by the bill. There would also be increased costs to the department's general counsel office as the professional guardians will be able to challenge decisions by the department under ch. 120, F.S. The department currently provides education to professional guardians statewide. There are approximately 456 such guardians that would be regulated under this bill. The number of wards represented by these guardians is unknown at this time and would need to be considered when estimating the cost of regulation.

The Office of the State Courts Administrator estimates that this bill will have little, if any, impact on the courts.<sup>42</sup> Clerks of courts will sometimes be required to provide audits to the office for purposes of investigation, which might result in a minimal increase in work to produce the court records.

The Office of the State Courts Administrator also noted that the revenues to the State Courts' trust funds generated from civil filing fees cannot be determined at this time

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<sup>42</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 232* (Dec. 1, 2016) (on file with the Senate Committee on Judiciary).

because the number of additional appellate cases produced by this bill is unknown. Similarly, the expenditures caused by appellate review cases cannot be accurately determined at this time.

**D. Other Constitutional Issues:**

Section 8 of the bill requires the executive director of the Office of Public and Professional Guardians to establish standards of practice by rule. The bill, however, does not give the office any further guidance on the issues that should be addressed by those standards of practice or how any such issue should be addressed. Accordingly, the Legislature may wish to revise the bill to add additional direction to guide the rulemaking process and ensure that the bill does not unlawfully delegate legislative authority in violation of Article II, s. 3 of the Florida Constitution.<sup>43, 44</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Public and Professional Guardians is directed to adopt rules concerning professional guardians to establish standards of practice, procedures for investigations and disciplinary oversight, including conducting hearings and taking administrative action pursuant to ch. 120, F.S.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.415, 400.148, 415.1102, 744.1012, 744.1083, 744.1085, 744.201, 744.202, 744.2025, 744.7021, 744.344, 744.703, 744.704, 744.705, 744.706, 744.707, 744.708, 744.709, 744.7081, 744.7082, 744.712, 744.713, 744.714, 744.715, 744.3135, 744.331, and 744.524.

This bill creates the following sections of the Florida Statutes: 744.2004 and 744.20041.

This bill repeals the following sections of the Florida Statutes: 744.701, 744.702, 744.7101, and 744.711.

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<sup>43</sup> Article II, s. 3 of the Florida Constitution states, “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

<sup>44</sup> See also *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). In *Cross Key Waterways*, the Florida Supreme Court explained that under the non-delegation doctrine established in Art. II, s. 3 of the Florida Constitution, fundamental and primary policy decisions must be made by the Legislature and the administration of legislative programs must be pursuant to minimal standards and guidelines.

**IX. Additional Information:**

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

**CS/CS by Judiciary on December 1, 2015:**

The committee substitute provides that a public guardian may also serve as a limited guardian or guardian advocate when the public guardian is the guardian of last resort.

A new section 12 enumerates grounds for disciplinary action against a professional guardian, penalties that may be imposed, the creation of disciplinary guidelines that must be followed by an administrative law judge and aggravating and mitigating circumstances to be considered. The Office of Public and Professional Guardians is authorized to file proceedings for violations of the chapter and if the office determines that a revocation of a professional guardian's registration is appropriate, the revocation is permanent. The office is authorized to adopt rules to administer the section.

**CS by Children, Families, and Elder Affairs on October 8, 2015:**

The committee substitute corrects a cross-reference.

- B. **Amendments:**

None.





256734

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment**

Delete line 131  
and insert:  
of intervention. A public guardian may also serve in the  
capacity of a limited guardian or guardian advocate under s.  
393.12 when the public guardian is the guardian of last resort  
as described in subsection (4).



125352

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 431 and 432  
insert:

Section 12. Section 744.20041, Florida Statutes, is created  
to read:

744.20041 Grounds for discipline; penalties; enforcement.-

(1) The following acts by a professional guardian shall  
constitute grounds for which the disciplinary actions specified  
in subsection (2) may be taken:

(a) Making misleading, deceptive, or fraudulent



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12 representations in or related to the practice of guardianship.

13 (b) Violating any rule governing guardians or guardianships  
14 adopted by the Office of Public and Professional Guardians.

15 (c) Being convicted or found guilty of, or entering a plea  
16 of guilty or nolo contendere to, regardless of adjudication, a  
17 crime in any jurisdiction which relates to the practice of or  
18 the ability to practice as a professional guardian.

19 (d) Failing to comply with the educational course  
20 requirements contained in s. 744.2003.

21 (e) Having a registration, a license, or the authority to  
22 practice a regulated profession revoked, suspended, or otherwise  
23 acted against, including the denial of registration or  
24 licensure, by the registering or licensing authority of any  
25 jurisdiction, including its agencies or subdivisions, for a  
26 violation under Florida law. The registering or licensing  
27 authority's acceptance of a relinquishment of registration or  
28 licensure, stipulation, consent order, or other settlement  
29 offered in response to or in anticipation of the filing of  
30 charges against the registration or license shall be construed  
31 as an action against the registration or license.

32 (f) Knowingly filing a false report or complaint with the  
33 Office of Public and Professional Guardians against another  
34 guardian.

35 (g) Attempting to obtain, obtaining, or renewing a  
36 registration or license to practice a profession by bribery, by  
37 fraudulent misrepresentation, or as a result of an error by the  
38 Office of Public and Professional Guardians which is known and  
39 not disclosed to the Office of Public and Professional  
40 Guardians.



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41 (h) Failing to report to the Office of Public and  
42 Professional Guardians any person who the professional guardian  
43 knows is in violation of this chapter or the rules of the Office  
44 of Public and Professional Guardians.

45 (i) Failing to perform any statutory or legal obligation  
46 placed upon a professional guardian.

47 (j) Making or filing a report or record that the  
48 professional guardian knows to be false, intentionally or  
49 negligently failing to file a report or record required by state  
50 or federal law, or willfully impeding or obstructing another  
51 person's attempt to do so. Such reports or records shall include  
52 only those that are signed in the guardian's capacity as a  
53 professional guardian.

54 (k) Using the position of guardian for the purpose of  
55 financial gain by a professional guardian or a third party,  
56 other than the funds awarded to the professional guardian by the  
57 court pursuant to s. 744.108.

58 (l) Violating a lawful order of the Office of Public and  
59 Professional Guardians or failing to comply with a lawfully  
60 issued subpoena of the Office of Public and Professional  
61 Guardians.

62 (m) Improperly interfering with an investigation or  
63 inspection authorized by statute or rule or with any  
64 disciplinary proceeding.

65 (n) Using the guardian relationship to engage or attempt to  
66 engage the ward, or an immediate family member or a  
67 representative of the ward, in verbal, written, electronic, or  
68 physical sexual activity.

69 (o) Failing to report to the Office of Public and



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70 Professional Guardians in writing within 30 days after being  
71 convicted or found guilty of, or entered a plea of nolo  
72 contendere to, regardless of adjudication, a crime in any  
73 jurisdiction.

74 (p) Being unable to perform the functions of a professional  
75 guardian with reasonable skill by reason of illness or use of  
76 alcohol, drugs, narcotics, chemicals, or any other type of  
77 substance or as a result of any mental or physical condition.

78 (q) Failing to post and maintain a blanket fiduciary bond  
79 pursuant to s. 744.1085.

80 (r) Failing to maintain all records pertaining to a  
81 guardianship for a reasonable time after the court has closed  
82 the guardianship matter.

83 (s) Violating any provision of this chapter or any rule  
84 adopted pursuant thereto.

85 (2) When the Office of Public and Professional Guardians  
86 finds a professional guardian guilty of violating subsection  
87 (1), it may enter an order imposing one or more of the following  
88 penalties:

89 (a) Refusal to register an applicant as a professional  
90 guardian.

91 (b) Suspension or permanent revocation of a professional  
92 guardian's registration.

93 (c) Issuance of a reprimand or letter of concern.

94 (d) Requirement that the professional guardian undergo  
95 treatment, attend continuing education courses, submit to  
96 reexamination, or satisfy any terms that are reasonably tailored  
97 to the violations found.

98 (e) Requirement that the professional guardian pay



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99 restitution of any funds obtained, disbursed, or obtained  
100 through a violation of any statute, rule, or other legal  
101 authority to a ward or the ward's estate, if applicable.

102 (f) Requirement that the professional guardian undergo  
103 remedial education.

104 (3) In determining what action is appropriate, the Office  
105 of Public and Professional Guardians must first consider what  
106 sanctions are necessary to safeguard wards and to protect the  
107 public. Only after those sanctions have been imposed may the  
108 Office of Public and Professional Guardians consider and include  
109 in the order requirements designed to mitigate the circumstances  
110 and rehabilitate the professional guardian.

111 (4) The Office of Public and Professional Guardians shall  
112 adopt by rule and periodically review the disciplinary  
113 guidelines applicable to each ground for disciplinary action  
114 that may be imposed by the Office of Public and Professional  
115 Guardians pursuant to this chapter.

116 (5) It is the intent of the Legislature that the  
117 disciplinary guidelines specify a meaningful range of designated  
118 penalties based upon the severity and repetition of specific  
119 offenses and that minor violations be distinguished from those  
120 which endanger the health, safety, or welfare of a ward or the  
121 public; that such guidelines provide reasonable and meaningful  
122 notice to the public of likely penalties that may be imposed for  
123 proscribed conduct; and that such penalties be consistently  
124 applied by the Office of Public and Professional Guardians.

125 (6) The Office of Public and Professional shall by rule  
126 designate possible mitigating and aggravating circumstances and  
127 the variation and range of penalties permitted for such



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128 circumstances.

129 (a) An administrative law judge, in recommending penalties  
130 in any recommended order, must follow the disciplinary  
131 guidelines established by the Office of Public and Professional  
132 Guardians and must state in writing any mitigating or  
133 aggravating circumstance upon which a recommended penalty is  
134 based if such circumstance causes the administrative law judge  
135 to recommend a penalty other than that provided in the  
136 disciplinary guidelines.

137 (b) The Office of Public and Professional Guardians may  
138 impose a penalty other than those provided for in the  
139 disciplinary guidelines upon a specific finding in the final  
140 order of mitigating or aggravating circumstances.

141 (7) In addition to, or in lieu of, any other remedy or  
142 criminal prosecution, the Office of Public and Professional  
143 Guardians may file a proceeding in the name of the state seeking  
144 issuance of an injunction or a writ of mandamus against any  
145 person who violates any provision of this chapter or any  
146 provision of law with respect to professional guardians or the  
147 rules adopted pursuant thereto.

148 (8) Notwithstanding chapter 120, if the Office of Public  
149 and Professional Guardians determines that revocation of a  
150 professional guardian's registration is the appropriate penalty,  
151 the revocation is permanent.

152 (9) If the Office of Public and Professional Guardians  
153 makes a final determination to suspend or revoke the  
154 professional guardian's registration, the office must provide  
155 the determination to the court of competent jurisdiction for any  
156 guardianship case to which the professional guardian is



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157 currently appointed.

158 (10) The purpose of this section is to facilitate uniform  
159 discipline for those actions made punishable under this section  
160 and, to this end, a reference to this section constitutes a  
161 general reference under the doctrine of incorporation by  
162 reference.

163 (11) The Office of Public and Professional Guardians shall  
164 adopt rules to administer this section.

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

167 And the title is amended as follows:

168 Delete line 45

169 and insert:

170 Elderly Affairs to adopt rules; creating s. 744.20041,  
171 F.S.; specifying the acts by a professional guardian  
172 that constitute grounds for the Office of Public and  
173 Professional Guardians to take specified disciplinary  
174 actions; specifying penalties that the Office of  
175 Public and Professional Guardians may impose;  
176 requiring the Office of Public and Professional  
177 Guardians to consider sanctions necessary to safeguard  
178 wards and to protect the public; requiring the Office  
179 of Public and Professional Guardians to adopt by rule  
180 and periodically review disciplinary guidelines;  
181 providing legislative intent for the disciplinary  
182 guidelines; requiring the Office of Public and  
183 Professional Guardians to designate by rule possible  
184 mitigating and aggravating circumstances and the  
185 variation and range of penalties; requiring an





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186 administrative law judge to follow the Office of  
187 Public and Professional Guardians' disciplinary  
188 guidelines when recommending penalties; requiring the  
189 administrative law judge to provide written mitigating  
190 or aggravating circumstances under certain  
191 circumstances; authorizing the Office of Public and  
192 Professional Guardians to impose a penalty other than  
193 those in the disciplinary guidelines under certain  
194 circumstances; authorizing the Office of Public and  
195 Professional Guardians to seek an injunction or a writ  
196 of mandamus for specified violations; providing for  
197 permanent revocation of a professional guardian's  
198 registration by the Office of Public and Professional  
199 Guardians under certain circumstances; requiring the  
200 Office of Public and Professional Guardians to notify  
201 a court of the determination to suspend or revoke the  
202 professional guardian's registration under certain  
203 circumstances; providing that cross-references are  
204 considered a general reference for the purpose of  
205 incorporation by reference; requiring the Office of  
206 Public and Professional Guardians to adopt rules;  
207 renumbering and

By the Committee on Children, Families, and Elder Affairs; and  
Senator Detert

586-00777-16

2016232c1

1 A bill to be entitled  
2 An act relating to guardianship; providing directives  
3 to the Division of Law Revision and Information;  
4 amending s. 744.1012, F.S.; revising legislative  
5 intent; renumbering s. 744.201, F.S., relating to  
6 domicile of ward; renumbering and amending s. 744.202,  
7 F.S.; conforming a cross-reference; renumbering s.  
8 744.2025, F.S., relating to change of ward's  
9 residence; renumbering and amending s. 744.7021, F.S.;  
10 renaming the Statewide Public Guardianship Office to  
11 the Office of Public and Professional Guardians;  
12 revising the duties and responsibilities of the  
13 executive director for the Office of Public and  
14 Professional Guardians; conforming provisions to  
15 changes made by the act; renumbering and amending s.  
16 744.1083, F.S.; providing that a guardian has standing  
17 to seek judicial review pursuant to ch. 120, F.S., if  
18 his or her registration is denied; removing a  
19 provision authorizing the executive director to  
20 suspend or revoke the registration of a guardian who  
21 commits certain violations; removing the requirement  
22 of written notification to the chief judge of the  
23 judicial circuit upon the executive director's denial,  
24 suspension, or revocation of a registration;  
25 conforming provisions to changes made by the act;  
26 conforming a cross-reference; renumbering and amending  
27 s. 744.1085, F.S.; conforming provisions to changes  
28 made by the act; removing an obsolete provision;  
29 conforming a cross-reference; creating s. 744.2004,

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

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30 F.S.; requiring the Office of Public and Professional  
31 Guardians to establish certain procedures by a  
32 specified date; requiring the office to establish  
33 disciplinary proceedings, conduct hearings, and take  
34 administrative action pursuant to ch. 120, F.S.;  
35 requiring the Department of Elderly Affairs to provide  
36 certain written information in disciplinary  
37 proceedings; requiring that certain findings and  
38 recommendations be made within a certain time;  
39 requiring the office, under certain circumstances, to  
40 make a specified recommendation to a court of  
41 competent jurisdiction; requiring the office to report  
42 determination or suspicion of abuse to the Department  
43 of Children and Families' central abuse hotline under  
44 specified circumstances; requiring the Department of  
45 Elderly Affairs to adopt rules; renumbering and  
46 amending s. 744.344, F.S.; making technical changes;  
47 renumbering and amending s. 744.703, F.S.; conforming  
48 provisions to changes made by the act; renumbering ss.  
49 744.704 and 744.705, F.S., relating to the powers and  
50 duties of public guardians and the costs of public  
51 guardians, respectively; renumbering and amending ss.  
52 744.706 and 744.707, F.S.; conforming provisions to  
53 changes made by the act; renumbering s. 744.709, F.S.,  
54 relating to surety bonds; renumbering and amending s.  
55 744.708, F.S.; conforming provisions to changes made  
56 by the act; renumbering and amending s. 744.7081,  
57 F.S.; requiring that the Office of Public and  
58 Professional Guardians be provided financial audits

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59 upon its request as part of an investigation;  
 60 conforming provisions to changes made by the act;  
 61 renumbering and amending s. 744.7082, F.S.; conforming  
 62 provisions to changes made by the act; renumbering and  
 63 amending s. 744.712, F.S.; providing legislative  
 64 intent; conforming provisions; renumbering and  
 65 amending ss. 744.713, 744.714, and 744.715, F.S.;

66 conforming provisions to changes made by the act;  
 67 amending s. 744.3135, F.S.; requiring the office to  
 68 adopt rules by a certain date; conforming provisions  
 69 to changes made by the act; repealing s. 744.701,  
 70 F.S., relating to a short title; repealing s. 744.702,  
 71 F.S., relating to legislative intent; repealing s.  
 72 744.7101, F.S., relating to a short title; repealing  
 73 s. 744.711, F.S., relating to legislative findings and  
 74 intent; amending ss. 400.148 and 744.331, F.S.;

75 conforming provisions to changes made by the act;  
 76 amending ss. 20.415, 415.1102, 744.309, and 744.524,  
 77 F.S.; conforming cross-references; making technical  
 78 changes; providing an effective date.

79  
 80 Be It Enacted by the Legislature of the State of Florida:

81  
 82 Section 1. The Division of Law Revision and Information is  
 83 directed to add ss. 744.1096-744.1098, Florida Statutes, created  
 84 by this act, to part I of chapter 744, Florida Statutes.

85 Section 2. The Division of Law Revision and Information is  
 86 directed to rename part II of chapter 744, Florida Statutes,  
 87 entitled "VENUE," as "PUBLIC AND PROFESSIONAL GUARDIANS,"

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88 consisting of ss. 744.2001-744.2109, Florida Statutes.

89 Section 3. The Division of Law Revision and Information is  
 90 directed to remove part IX of chapter 744, Florida Statutes.

91 Section 4. Section 744.1012, Florida Statutes, is amended  
 92 to read:

93 744.1012 Legislative intent.—The Legislature finds that:

94 (1) That Adjudicating a person totally incapacitated and in  
 95 need of a guardian deprives such person of all her or his civil  
 96 and legal rights and that such deprivation may be unnecessary.

97 (2) The Legislature further finds that It is desirable to  
 98 make available the least restrictive form of guardianship to  
 99 assist persons who are only partially incapable of caring for  
 100 their needs and that alternatives to guardianship and less  
 101 restrictive means of assistance, including, but not limited to,  
 102 guardian advocates, should always be explored before an  
 103 individual's rights are removed through an adjudication of  
 104 incapacity.

105 (3) By recognizing that every individual has unique needs  
 106 and differing abilities, the Legislature declares that it is the  
 107 purpose of this act to promote the public welfare by  
 108 establishing a system that permits incapacitated persons to  
 109 participate as fully as possible in all decisions affecting  
 110 them; that assists such persons in meeting the essential  
 111 requirements for their physical health and safety, in protecting  
 112 their rights, in managing their financial resources, and in  
 113 developing or regaining their abilities to the maximum extent  
 114 possible; and that accomplishes these objectives through  
 115 providing, in each case, the form of assistance that least  
 116 interferes with the legal capacity of a person to act in her or

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117 his own behalf. This act shall be liberally construed to  
118 accomplish this purpose.

119 (4) Private guardianship may be inadequate when there is no  
120 willing and responsible family member or friend, other person,  
121 bank, or corporation available to serve as guardian for an  
122 incapacitated person, and such person does not have adequate  
123 income or wealth for the compensation of a private guardian.

124 (5) Through the establishment of the Office of Public and  
125 Professional Guardians, the Legislature intends to permit the  
126 establishment of offices of public guardians for the purpose of  
127 providing guardianship services for incapacitated persons when  
128 no private guardian is available.

129 (6) A public guardian will be provided only to those  
130 persons whose needs cannot be met through less restrictive means  
131 of intervention.

132 Section 5. Section 744.201, Florida Statutes, is renumbered  
133 as section 744.1096, Florida Statutes.

134 Section 6. Section 744.202, Florida Statutes, is renumbered  
135 as section 744.1097, Florida Statutes, and subsection (3) of  
136 that section is amended, to read:

137 744.1097 744.202 Venue.—

138 (3) When the residence of an incapacitated person is  
139 changed to another county, the guardian shall petition to have  
140 the venue of the guardianship changed to the county of the  
141 acquired residence, except as provided in s. 744.1098 ~~s-~~  
142 ~~744.2025~~.

143 Section 7. Section 744.2025, Florida Statutes, is  
144 renumbered as section 744.1098, Florida Statutes.

145 Section 8. Section 744.7021, Florida Statutes, is

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146 renumbered as section 744.2001, Florida Statutes, and amended to  
147 read:

148 744.2001 744.7021 ~~Statewide Public Guardianship Office of~~  
149 Public and Professional Guardians.—There is hereby created the  
150 ~~Statewide Public Guardianship Office of Public and Professional~~  
151 Guardians within the Department of Elderly Affairs.

152 (1) The Secretary of Elderly Affairs shall appoint the  
153 executive director, who shall be the head of the ~~Statewide~~  
154 Public Guardianship Office of Public and Professional Guardians.  
155 The executive director must be a member of The Florida Bar,  
156 knowledgeable of guardianship law and of the social services  
157 available to meet the needs of incapacitated persons, shall  
158 serve on a full-time basis, and shall personally, or through a  
159 representative ~~representatives~~ of the office, carry out the  
160 purposes and functions of the ~~Statewide Public Guardianship~~  
161 Office of Public and Professional Guardians in accordance with  
162 state and federal law. The executive director shall serve at the  
163 pleasure of and report to the secretary.

164 (2) The executive director shall, within available  
165 resources:—

166 (a) Have oversight responsibilities for all public and  
167 professional guardians.

168 (b) Establish standards of practice for public and  
169 professional guardians by rule, in consultation with  
170 professional guardianship associations and other interested  
171 stakeholders, no later than October 1, 2016. The executive  
172 director shall provide a draft of the standards to the Governor,  
173 the Legislature, and the secretary for review by August 1, 2016.

174 (c) Review and approve the standards and criteria for the

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175 education, registration, and certification of public and  
 176 professional guardians in Florida.

177 (3) The executive director's oversight responsibilities of  
 178 professional guardians must be finalized by October 1, 2016, and  
 179 shall include, but are not limited to:

180 (a) Developing and implementing a monitoring tool to ensure  
 181 compliance of professional guardians with the standards of  
 182 practice established by the Office of Public and Professional  
 183 Guardians. This monitoring tool may not include a financial  
 184 audit as required by the clerk of the circuit court under s.  
 185 744.368.

186 (b) Developing procedures, in consultation with  
 187 professional guardianship associations and other interested  
 188 stakeholders, for the review of an allegation that a  
 189 professional guardian has violated the standards of practice  
 190 established by the Office of Public and Professional Guardians  
 191 governing the conduct of professional guardians.

192 (c) Establishing disciplinary proceedings, conducting  
 193 hearings, and taking administrative action pursuant to chapter  
 194 120.

195 (4) The executive director's oversight responsibilities of  
 196 public guardians shall include, but are not limited to:

197 (a) Reviewing ~~The executive director shall review~~ the  
 198 current public guardian programs in Florida and other states.

199 (b) Developing ~~The executive director,~~ in consultation with  
 200 local guardianship offices and other interested stakeholders,  
 201 ~~shall develop~~ statewide performance measures and standards.

202 (c) Reviewing ~~The executive director shall review~~ the  
 203 various methods of funding public guardianship programs, the

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204 kinds of services being provided by such programs, and the  
 205 demographics of the wards. In addition, the executive director  
 206 shall review and make recommendations regarding the feasibility  
 207 of recovering a portion or all of the costs of providing public  
 208 guardianship services from the assets or income of the wards.

209 ~~(d) By January 1 of each year, providing the executive~~  
 210 ~~director shall provide~~ a status report and ~~provide further~~  
 211 recommendations to the secretary which ~~that~~ address the need for  
 212 public guardianship services and related issues.

213 (e) Developing a guardianship training program curriculum  
 214 that may be offered to all guardians, whether public or private.

215 ~~(5)(e)~~ The executive director may provide assistance to  
 216 local governments or entities in pursuing grant opportunities.  
 217 The executive director shall review and make recommendations in  
 218 the annual report on the availability and efficacy of seeking  
 219 Medicaid matching funds. The executive director shall diligently  
 220 seek ways to use existing programs and services to meet the  
 221 needs of public wards.

222 ~~(f) The executive director, in consultation with the~~  
 223 ~~Florida Guardianship Foundation, shall develop a guardianship~~  
 224 ~~training program curriculum that may be offered to all guardians~~  
 225 ~~whether public or private.~~

226 ~~(6)(3)~~ The executive director may conduct or contract for  
 227 demonstration projects authorized by the Department of Elderly  
 228 Affairs, within funds appropriated or through gifts, grants, or  
 229 contributions for such purposes, to determine the feasibility or  
 230 desirability of new concepts of organization, administration,  
 231 financing, or service delivery designed to preserve the civil  
 232 and constitutional rights of persons of marginal or diminished

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233 capacity. Any gifts, grants, or contributions for such purposes  
234 shall be deposited in the Department of Elderly Affairs  
235 Administrative Trust Fund.

236 Section 9. Section 744.1083, Florida Statutes, is  
237 renumbered as section 744.2002, Florida Statutes, subsections  
238 (1) through (5) of that section are amended, and subsections (7)  
239 and (10) of that section are republished, to read:

240 744.2002 ~~744.1083~~ Professional guardian registration.—

241 (1) A professional guardian must register with the  
242 ~~Statewide Public Guardianship Office of Public and Professional~~  
243 Guardians established in part II ~~IX~~ of this chapter.

244 (2) Annual registration shall be made on forms furnished by  
245 the ~~Statewide Public Guardianship Office of Public and~~  
246 Professional Guardians and accompanied by the applicable  
247 registration fee as determined by rule. The fee may not exceed  
248 \$100.

249 (3) Registration must include the following:

250 (a) Sufficient information to identify the professional  
251 guardian, as follows:

252 1. If the professional guardian is a natural person, the  
253 name, address, date of birth, and employer identification or  
254 social security number of the person.

255 2. If the professional guardian is a partnership or  
256 association, the name, address, and employer identification  
257 number of the entity.

258 (b) Documentation that the bonding and educational  
259 requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

260 (c) Sufficient information to distinguish a guardian  
261 providing guardianship services as a public guardian,

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262 individually, through partnership, corporation, or any other  
263 business organization.

264 (4) Prior to registering a professional guardian, the  
265 ~~Statewide Public Guardianship Office of Public and Professional~~  
266 Guardians must receive and review copies of the credit and  
267 criminal investigations conducted under s. 744.3135. The credit  
268 and criminal investigations must have been completed within the  
269 previous 2 years.

270 (5) The executive director of the office may deny  
271 registration to a professional guardian if the executive  
272 director determines that the guardian's proposed registration,  
273 including the guardian's credit or criminal investigations,  
274 indicates that registering the professional guardian would  
275 violate any provision of this chapter. If a guardian's proposed  
276 registration is denied, the guardian has standing to seek  
277 judicial review of the denial pursuant to chapter 120 ~~If a~~  
278 ~~guardian who is currently registered with the office violates a~~  
279 ~~provision of this chapter, the executive director of the office~~  
280 ~~may suspend or revoke the guardian's registration. If the~~  
281 ~~executive director denies registration to a professional~~  
282 ~~guardian or suspends or revokes a professional guardian's~~  
283 ~~registration, the Statewide Public Guardianship Office must send~~  
284 ~~written notification of the denial, suspension, or revocation to~~  
285 ~~the chief judge of each judicial circuit in which the guardian~~  
286 ~~was serving on the day of the office's decision to deny,~~  
287 ~~suspend, or revoke the registration.~~

288 (7) A trust company, a state banking corporation or state  
289 savings association authorized and qualified to exercise  
290 fiduciary powers in this state, or a national banking

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291 association or federal savings and loan association authorized  
 292 and qualified to exercise fiduciary powers in this state, may,  
 293 but is not required to, register as a professional guardian  
 294 under this section. If a trust company, state banking  
 295 corporation, state savings association, national banking  
 296 association, or federal savings and loan association described  
 297 in this subsection elects to register as a professional guardian  
 298 under this subsection, the requirements of subsections (3) and  
 299 (4) do not apply and the registration must include only the  
 300 name, address, and employer identification number of the  
 301 registrant, the name and address of its registered agent, if  
 302 any, and the documentation described in paragraph (3)(b).

303 (10) A state college or university or an independent  
 304 college or university that is located and chartered in Florida,  
 305 that is accredited by the Commission on Colleges of the Southern  
 306 Association of Colleges and Schools or the Accrediting Council  
 307 for Independent Colleges and Schools, and that confers degrees  
 308 as defined in s. 1005.02(7) may, but is not required to,  
 309 register as a professional guardian under this section. If a  
 310 state college or university or independent college or university  
 311 elects to register as a professional guardian under this  
 312 subsection, the requirements of subsections (3) and (4) do not  
 313 apply and the registration must include only the name, address,  
 314 and employer identification number of the registrant.

315 Section 10. Section 744.1085, Florida Statutes, is  
 316 renumbered as section 744.2003, Florida Statutes, subsections  
 317 (3), (6), and (9) of that section are amended, and subsection  
 318 (8) of that section is republished, to read:

319 744.2003 ~~744.1085~~ Regulation of professional guardians;

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320 application; bond required; educational requirements.-

321 (3) Each professional guardian defined in s. 744.102(17)  
 322 and public guardian must receive a minimum of 40 hours of  
 323 instruction and training. Each professional guardian must  
 324 receive a minimum of 16 hours of continuing education every 2  
 325 calendar years after the year in which the initial 40-hour  
 326 educational requirement is met. The instruction and education  
 327 must be completed through a course approved or offered by the  
 328 ~~Statewide Public Guardianship Office~~ of Public and Professional  
 329 Guardians. The expenses incurred to satisfy the educational  
 330 requirements prescribed in this section may not be paid with the  
 331 assets of any ward. This subsection does not apply to any  
 332 attorney who is licensed to practice law in this state or an  
 333 institution acting as guardian under s. 744.2002(7).

334 (6) ~~After July 1, 2005,~~ Each professional guardian is shall  
 335 ~~be~~ required to demonstrate competency to act as a professional  
 336 guardian by taking an examination approved by the Department of  
 337 Elderly Affairs.

338 (a) The Department of Elderly Affairs shall determine the  
 339 minimum examination score necessary for passage of guardianship  
 340 examinations.

341 (b) The Department of Elderly Affairs shall determine the  
 342 procedure for administration of the examination.

343 (c) The Department of Elderly Affairs or its contractor  
 344 shall charge an examination fee for the actual costs of the  
 345 development and the administration of the examination. The  
 346 examination fee for a guardian may, not ~~to~~ exceed \$500.

347 (d) The Department of Elderly Affairs may recognize passage  
 348 of a national guardianship examination in lieu of all or part of

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349 the examination approved by the Department of Elderly Affairs,  
350 except that all professional guardians must take and pass an  
351 approved examination section related to Florida law and  
352 procedure.

353 (8) The Department of Elderly Affairs shall waive the  
354 examination requirement in subsection (6) if a professional  
355 guardian can provide:

356 (a) Proof that the guardian has actively acted as a  
357 professional guardian for 5 years or more; and

358 (b) A letter from a circuit judge before whom the  
359 professional guardian practiced at least 1 year which states  
360 that the professional guardian had demonstrated to the court  
361 competency as a professional guardian.

362 (9) ~~After July 1, 2004,~~ The court ~~may shall~~ not appoint any  
363 professional guardian who ~~is has~~ not ~~registered~~ by the Office of  
364 Public and Professional Guardians ~~met the requirements of this~~  
365 ~~section and s. 744.1003.~~

366 Section 11. Section 744.2004, Florida Statutes, is created  
367 to read:

368 744.2004 Complaints; disciplinary proceedings; penalties;  
369 enforcement.—

370 (1) By October 1, 2016, the Office of Public and  
371 Professional Guardians shall establish procedures to:

372 (a) Review and, if determined legally sufficient,  
373 investigate any complaint that a professional guardian has  
374 violated the standards of practice established by the Office of  
375 Public and Professional Guardians governing the conduct of  
376 professional guardians. A complaint is legally sufficient if it  
377 contains ultimate facts that show a violation of a standard of

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378 practice by a professional guardian has occurred.

379 (b) Initiate an investigation no later than 10 business  
380 days after the Office of Public and Professional Guardians  
381 receives a complaint.

382 (c) Complete and provide initial investigative findings and  
383 recommendations, if any, to the professional guardian and the  
384 person who filed the complaint within 60 days of receipt.

385 (d) Obtain supporting information or documentation to  
386 determine the legal sufficiency of a complaint.

387 (e) Interview a ward, family member, or interested party to  
388 determine the legal sufficiency of a complaint.

389 (f) Dismiss any complaint if, at any time after legal  
390 sufficiency is determined, it is found there is insufficient  
391 evidence to support the allegations contained in the complaint.

392 (g) Coordinate, to the greatest extent possible, with the  
393 clerks of court to avoid duplication of duties with regard to  
394 the financial audits prepared by the clerks pursuant to s.  
395 744.368.

396 (2) The Office of Public and Professional Guardians shall  
397 establish disciplinary proceedings, conduct hearings, and take  
398 administrative action pursuant to chapter 120. Disciplinary  
399 actions may include, but are not limited to, requiring a  
400 professional guardian to participate in additional educational  
401 courses provided or approved by the Office of Public and  
402 Professional Guardians, imposing additional monitoring by the  
403 office of the guardianships to which the professional guardian  
404 is appointed, and suspension or revocation of a professional  
405 guardian's registration.

406 (3) In any disciplinary proceeding that may result in the



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407 suspension or revocation of a professional guardian's  
 408 registration, the Department of Elderly Affairs shall provide  
 409 the professional guardian and the person who filed the  
 410 complaint:

411 (a) A written explanation of how an administrative  
 412 complaint is resolved by the disciplinary process.

413 (b) A written explanation of how and when the person may  
 414 participate in the disciplinary process.

415 (c) A written notice of any hearing before the Division of  
 416 Administrative Hearings at which final agency action may be  
 417 taken.

418 (4) If the office makes a final determination to suspend or  
 419 revoke the professional guardian's registration, it must provide  
 420 such determination to the court of competent jurisdiction for  
 421 any guardianship case to which the professional guardian is  
 422 currently appointed.

423 (5) If the office determines or has reasonable cause to  
 424 suspect that a vulnerable adult has been or is being abused,  
 425 neglected, or exploited as a result of a filed complaint or  
 426 during the course of an investigation of a complaint, it shall  
 427 immediately report such determination or suspicion to the  
 428 central abuse hotline established and maintained by the  
 429 Department of Children and Families pursuant to s. 415.103.

430 (6) By October 1, 2016, the Department of Elderly Affairs  
 431 shall adopt rules to implement the provisions of this section.

432 Section 12. Section 744.344, Florida Statutes, is  
 433 renumbered as section 744.2005, Florida Statutes, and amended to  
 434 read:

435 744.2005 744.344 Order of appointment.--

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436 (1) The court may hear testimony on the question of who is  
 437 entitled to preference in the appointment of a guardian. Any  
 438 interested person may intervene in the proceedings.

439 (2) The order appointing a guardian must state the nature  
 440 of the guardianship as either plenary or limited. If limited,  
 441 the order must state that the guardian may exercise only those  
 442 delegable rights which have been removed from the incapacitated  
 443 person and specifically delegated to the guardian. The order  
 444 shall state the specific powers and duties of the guardian.

445 (3)~~(2)~~ The order appointing a guardian must be consistent  
 446 with the incapacitated person's welfare and safety, must be the  
 447 least restrictive appropriate alternative, and must reserve to  
 448 the incapacitated person the right to make decisions in all  
 449 matters commensurate with the person's ability to do so.

450 (4)~~(3)~~ If a petition for appointment of a guardian has been  
 451 filed, an order appointing a guardian must be issued  
 452 contemporaneously with the order adjudicating the person  
 453 incapacitated. The order must specify the amount of the bond to  
 454 be given by the guardian and must state specifically whether the  
 455 guardian must place all, or part, of the property of the ward in  
 456 a restricted account in a financial institution designated  
 457 pursuant to s. 69.031.

458 (5)~~(4)~~ If a petition for the appointment of a guardian has  
 459 not been filed or ruled upon at the time of the hearing on the  
 460 petition to determine capacity, the court may appoint an  
 461 emergency temporary guardian in the manner and for the purposes  
 462 specified in s. 744.3031.

463 (6)~~(5)~~ A plenary guardian shall exercise all delegable  
 464 rights and powers of the incapacitated person.

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465 ~~(7)(6)~~ A person for whom a limited guardian has been  
 466 appointed retains all legal rights except those that ~~which~~ have  
 467 been specifically granted to the guardian in the court's written  
 468 order.

469 Section 13. Section 744.703, Florida Statutes, is  
 470 renumbered as section 744.2006, Florida Statutes, and  
 471 subsections (1) and (6) of that section are amended, to read:

472 744.2006 ~~744.703~~ Office of Public and Professional  
 473 Guardians ~~guardian~~; appointment, notification.-

474 (1) The executive director of the ~~Statewide Public~~  
 475 ~~Guardianship~~ Office of Public and Professional Guardians, after  
 476 consultation with the chief judge and other circuit judges  
 477 within the judicial circuit and with appropriate advocacy groups  
 478 and individuals and organizations who are knowledgeable about  
 479 the needs of incapacitated persons, may establish, within a  
 480 county in the judicial circuit or within the judicial circuit,  
 481 one or more offices of public guardian and if so established,  
 482 shall create a list of persons best qualified to serve as the  
 483 public guardian, who have been investigated pursuant to s.  
 484 744.3135. The public guardian must have knowledge of the legal  
 485 process and knowledge of social services available to meet the  
 486 needs of incapacitated persons. The public guardian shall  
 487 maintain a staff or contract with professionally qualified  
 488 individuals to carry out the guardianship functions, including  
 489 an attorney who has experience in probate areas and another  
 490 person who has a master's degree in social work, or a  
 491 gerontologist, psychologist, registered nurse, or nurse  
 492 practitioner. A public guardian that is a nonprofit corporate  
 493 guardian under s. 744.309(5) must receive tax-exempt status from

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494 the United States Internal Revenue Service.

495 (6) Public guardians who have been previously appointed by  
 496 a chief judge prior to the effective date of this act pursuant  
 497 to this section may continue in their positions until the  
 498 expiration of their term pursuant to their agreement. However,  
 499 oversight of all public guardians shall transfer to the  
 500 ~~Statewide Public Guardianship~~ Office of Public and Professional  
 501 Guardians upon the effective date of this act. The executive  
 502 director of the ~~Statewide Public Guardianship~~ Office of Public  
 503 and Professional Guardians shall be responsible for all future  
 504 appointments of public guardians pursuant to this act.

505 Section 14. Section 744.704, Florida Statutes, is  
 506 renumbered as section 744.2007, Florida Statutes.

507 Section 15. Section 744.705, Florida Statutes, is  
 508 renumbered as section 744.2008, Florida Statutes.

509 Section 16. Section 744.706, Florida Statutes, is  
 510 renumbered as section 744.2009, Florida Statutes, and amended to  
 511 read:

512 744.2009 ~~744.706~~ Preparation of budget.-Each public  
 513 guardian, whether funded in whole or in part by money raised  
 514 through local efforts, grants, or any other source or whether  
 515 funded in whole or in part by the state, shall prepare a budget  
 516 for the operation of the office of public guardian to be  
 517 submitted to the ~~Statewide Public Guardianship~~ Office of Public  
 518 and Professional Guardians. As appropriate, the ~~Statewide Public~~  
 519 ~~Guardianship~~ Office of Public and Professional Guardians will  
 520 include such budgetary information in the Department of Elderly  
 521 Affairs' legislative budget request. The office of public  
 522 guardian shall be operated within the limitations of the General

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523 Appropriations Act and any other funds appropriated by the  
 524 Legislature to that particular judicial circuit, subject to the  
 525 provisions of chapter 216. The Department of Elderly Affairs  
 526 shall make a separate and distinct request for an appropriation  
 527 for the ~~Statewide Public Guardianship~~ Office of Public and  
 528 Professional Guardians. However, this section ~~may shall~~ not be  
 529 construed to preclude the financing of any operations of the  
 530 office of ~~the~~ public guardian by moneys raised through local  
 531 effort or through the efforts of the ~~Statewide Public~~  
 532 Guardianship Office of Public and Professional Guardians.

533 Section 17. Section 744.707, Florida Statutes, is  
 534 renumbered as section 744.2101, Florida Statutes, and amended to  
 535 read:

536 744.2101 ~~744.707~~ Procedures and rules.—The public guardian,  
 537 subject to the oversight of the ~~Statewide Public Guardianship~~  
 538 Office of Public and Professional Guardians, is authorized to:

539 (1) Formulate and adopt necessary procedures to assure the  
 540 efficient conduct of the affairs of the ward and general  
 541 administration of the office and staff.

542 (2) Contract for services necessary to discharge the duties  
 543 of the office.

544 (3) Accept the services of volunteer persons or  
 545 organizations and provide reimbursement for proper and necessary  
 546 expenses.

547 Section 18. Section 744.709, Florida Statutes, is  
 548 renumbered as section 744.2102, Florida Statutes.

549 Section 19. Section 744.708, Florida Statutes, is  
 550 renumbered as section 744.2103, Florida Statutes, and  
 551 subsections (3), (4), (5), and (7) of that section are amended,

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552 to read:

553 744.2103 ~~744.708~~ Reports and standards.—

554 (3) A public guardian shall file an annual report on the  
 555 operations of the office of public guardian, in writing, by  
 556 September 1 for the preceding fiscal year with the ~~Statewide~~  
 557 Public Guardianship Office of Public and Professional Guardians,  
 558 which shall have responsibility for supervision of the  
 559 operations of the office of public guardian.

560 (4) Within 6 months of his or her appointment as guardian  
 561 of a ward, the public guardian shall submit to the clerk of the  
 562 court for placement in the ward's guardianship file and to the  
 563 executive director of the ~~Statewide Public Guardianship~~ Office  
 564 of Public and Professional Guardians a report on his or her  
 565 efforts to locate a family member or friend, other person, bank,  
 566 or corporation to act as guardian of the ward and a report on  
 567 the ward's potential to be restored to capacity.

568 (5) (a) Each office of public guardian shall undergo an  
 569 independent audit by a qualified certified public accountant at  
 570 least once every 2 years. A copy of the audit report shall be  
 571 submitted to the ~~Statewide Public Guardianship~~ Office of Public  
 572 and Professional Guardians.

573 (b) In addition to regular monitoring activities, the  
 574 ~~Statewide Public Guardianship~~ Office of Public and Professional  
 575 Guardians shall conduct an investigation into the practices of  
 576 each office of public guardian related to the managing of each  
 577 ward's personal affairs and property. If feasible, the  
 578 investigation shall be conducted in conjunction with the  
 579 financial audit of each office of public guardian under  
 580 paragraph (a).

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581 (7) The ratio for professional staff to wards shall be 1  
 582 professional to 40 wards. The ~~Statewide Public Guardianship~~  
 583 Office of Public and Professional Guardians may increase or  
 584 decrease the ratio after consultation with the local public  
 585 guardian and the chief judge of the circuit court. The basis for  
 586 the decision to increase or decrease the prescribed ratio must  
 587 be included in the annual report to the secretary.

588 Section 20. Section 744.7081, Florida Statutes, is  
 589 renumbered as section 744.2104, Florida Statutes, and amended to  
 590 read:

591 744.2104 ~~744.7081~~ Access to records by the ~~Statewide Public~~  
 592 ~~Guardianship~~ Office of Public and Professional Guardians;  
 593 confidentiality.-

594 (1) Notwithstanding any other provision of law to the  
 595 contrary, any medical, financial, or mental health records held  
 596 by an agency, or the court and its agencies, or financial audits  
 597 prepared by the clerk of the court pursuant to s. 744.368 and  
 598 held by the court, which are necessary as part of an  
 599 investigation of a guardian as a result of a complaint filed  
 600 with the Office of Public and Professional Guardians to evaluate  
 601 the public guardianship system, to assess the need for  
 602 additional public guardianship, or to develop required reports,  
 603 shall be provided to the ~~Statewide Public Guardianship~~ Office of  
 604 Public and Professional Guardians upon that office's request.  
 605 Any confidential or exempt information provided to the ~~Statewide~~  
 606 ~~Public Guardianship~~ Office of Public and Professional Guardians  
 607 shall continue to be held confidential or exempt as otherwise  
 608 provided by law.

609 (2) All records held by the ~~Statewide Public Guardianship~~

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610 ~~Office of Public and Professional Guardians~~ relating to the  
 611 medical, financial, or mental health of vulnerable adults as  
 612 defined in chapter 415, persons with a developmental disability  
 613 as defined in chapter 393, or persons with a mental illness as  
 614 defined in chapter 394, shall be confidential and exempt from s.  
 615 119.07(1) and s. 24(a), Art. I of the State Constitution.

616 Section 21. Section 744.7082, Florida Statutes, is  
 617 renumbered as section 744.2105, Florida Statutes, and  
 618 subsections (1) through (5) and (8) of that section are amended,  
 619 to read:

620 744.2105 ~~744.7082~~ Direct-support organization; definition;  
 621 use of property; board of directors; audit; dissolution.-

622 (1) DEFINITION.-As used in this section, the term "direct-  
 623 support organization" means an organization whose sole purpose  
 624 is to support the ~~Statewide Public Guardianship~~ Office of Public  
 625 and Professional Guardians and is:

626 (a) A not-for-profit corporation incorporated under chapter  
 627 617 and approved by the Department of State;

628 (b) Organized and operated to conduct programs and  
 629 activities; to raise funds; to request and receive grants,  
 630 gifts, and bequests of moneys; to acquire, receive, hold,  
 631 invest, and administer, in its own name, securities, funds,  
 632 objects of value, or other property, real or personal; and to  
 633 make expenditures to or for the direct or indirect benefit of  
 634 the ~~Statewide Public Guardianship~~ Office of Public and  
 635 Professional Guardians; and

636 (c) Determined by the ~~Statewide Public Guardianship~~ Office  
 637 of Public and Professional Guardians to be consistent with the  
 638 goals of the office, in the best interests of the state, and in

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639 accordance with the adopted goals and mission of the Department  
640 of Elderly Affairs and the ~~Statewide Public Guardianship~~ Office  
641 of Public and Professional Guardians.

642 (2) CONTRACT.—The direct-support organization shall operate  
643 under a written contract with the ~~Statewide Public Guardianship~~  
644 Office of Public and Professional Guardians. The written  
645 contract must provide for:

646 (a) Certification by the ~~Statewide Public Guardianship~~  
647 Office of Public and Professional Guardians that the direct-  
648 support organization is complying with the terms of the contract  
649 and is doing so consistent with the goals and purposes of the  
650 office and in the best interests of the state. This  
651 certification must be made annually and reported in the official  
652 minutes of a meeting of the direct-support organization.

653 (b) The reversion of moneys and property held in trust by  
654 the direct-support organization:

655 1. To the ~~Statewide Public Guardianship~~ Office of Public  
656 and Professional Guardians if the direct-support organization is  
657 no longer approved to operate for the office;

658 2. To the ~~Statewide Public Guardianship~~ Office of Public  
659 and Professional Guardians if the direct-support organization  
660 ceases to exist;

661 3. To the Department of Elderly Affairs if the ~~Statewide~~  
662 ~~Public Guardianship~~ Office of Public and Professional Guardians  
663 ceases to exist; or

664 4. To the state if the Department of Elderly Affairs ceases  
665 to exist.

666  
667 The fiscal year of the direct-support organization shall begin

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668 on July 1 of each year and end on June 30 of the following year.

669 (c) The disclosure of the material provisions of the  
670 contract, and the distinction between the ~~Statewide Public~~  
671 ~~Guardianship~~ Office of Public and Professional Guardians and the  
672 direct-support organization, to donors of gifts, contributions,  
673 or bequests, including such disclosure on all promotional and  
674 fundraising publications.

675 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs  
676 shall appoint a board of directors for the direct-support  
677 organization from a list of nominees submitted by the executive  
678 director of the ~~Statewide Public Guardianship~~ Office of Public  
679 and Professional Guardians.

680 (4) USE OF PROPERTY.—The Department of Elderly Affairs may  
681 permit, without charge, appropriate use of fixed property and  
682 facilities of the department or the ~~Statewide Public~~  
683 ~~Guardianship~~ Office of Public and Professional Guardians by the  
684 direct-support organization. The department may prescribe any  
685 condition with which the direct-support organization must comply  
686 in order to use fixed property or facilities of the department  
687 or the ~~Statewide Public Guardianship~~ Office of Public and  
688 Professional Guardians.

689 (5) MONEYS.—Any moneys may be held in a separate depository  
690 account in the name of the direct-support organization and  
691 subject to the provisions of the written contract with the  
692 ~~Statewide Public Guardianship~~ Office of Public and Professional  
693 Guardians. Expenditures of the direct-support organization shall  
694 be expressly used to support the ~~Statewide Public Guardianship~~  
695 Office of Public and Professional Guardians. The expenditures of  
696 the direct-support organization may not be used for the purpose

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697 of lobbying as defined in s. 11.045.

698 (8) DISSOLUTION.—~~A After July 1, 2004, any~~ not-for-profit  
699 corporation incorporated under chapter 617 that is determined by  
700 a circuit court to be representing itself as a direct-support  
701 organization created under this section, but that does not have  
702 a written contract with the ~~Statewide Public Guardianship~~ Office  
703 of Public and Professional Guardians in compliance with this  
704 section, is considered to meet the grounds for a judicial  
705 dissolution described in s. 617.1430(1)(a). The ~~Statewide Public~~  
706 ~~Guardianship~~ Office of Public and Professional Guardians shall  
707 be the recipient for all assets held by the dissolved  
708 corporation which accrued during the period that the dissolved  
709 corporation represented itself as a direct-support organization  
710 created under this section.

711 Section 22. Section 744.712, Florida Statutes, is  
712 renumbered as section 744.2106, Florida Statutes, and amended to  
713 read:

714 744.2106 744.712 ~~Joining Forces for Public Guardianship~~  
715 ~~grant program; purpose.—The Legislature establishes the Joining~~  
716 ~~Forces for Public Guardianship matching grant program for the~~  
717 ~~purpose of assisting counties to establish and fund community-~~  
718 ~~supported public guardianship programs.~~ The Joining Forces for  
719 Public Guardianship matching grant program shall be established  
720 and administered by the ~~Statewide Public Guardianship~~ Office of  
721 Public and Professional Guardians within the Department of  
722 Elderly Affairs. The purpose of the program is to provide  
723 startup funding to encourage communities to develop and  
724 administer locally funded and supported public guardianship  
725 programs to address the needs of indigent and incapacitated

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726 residents.

727 (1) The ~~Statewide Public Guardianship~~ Office of Public and  
728 Professional Guardians may distribute the grant funds as  
729 follows:

730 (a) As initial startup funding to encourage counties that  
731 have no office of public guardian to establish an office, or as  
732 initial startup funding to open an additional office of public  
733 guardian within a county whose public guardianship needs require  
734 more than one office of public guardian.

735 (b) As support funding to operational offices of public  
736 guardian that demonstrate a necessity for funds to meet the  
737 public guardianship needs of a particular geographic area in the  
738 state which the office serves.

739 (c) To assist counties that have an operating public  
740 guardianship program but that propose to expand the geographic  
741 area or population of persons they serve, or to develop and  
742 administer innovative programs to increase access to public  
743 guardianship in this state.

744 Notwithstanding this subsection, the executive director of the  
745 office may award emergency grants if he or she determines that  
746 the award is in the best interests of public guardianship in  
747 this state. Before making an emergency grant, the executive  
748 director must obtain the written approval of the Secretary of  
749 Elderly Affairs. Subsections (2), (3), and (4) do not apply to  
750 the distribution of emergency grant funds.

751 (2) One or more grants may be awarded within a county.  
752 However, a county may not receive an award that equals, or  
753 multiple awards that cumulatively equal, more than 20 percent of  
754

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755 the total amount of grant funds appropriated during any fiscal  
756 year.

757 (3) If an applicant is eligible and meets the requirements  
758 to receive grant funds more than once, the ~~Statewide Public~~  
759 ~~Guardianship~~ Office of Public and Professional Guardians shall  
760 award funds to prior awardees in the following manner:

761 (a) In the second year that grant funds are awarded, the  
762 cumulative sum of the award provided to one or more applicants  
763 within the same county may not exceed 75 percent of the total  
764 amount of grant funds awarded within that county in year one.

765 (b) In the third year that grant funds are awarded, the  
766 cumulative sum of the award provided to one or more applicants  
767 within the same county may not exceed 60 percent of the total  
768 amount of grant funds awarded within that county in year one.

769 (c) In the fourth year that grant funds are awarded, the  
770 cumulative sum of the award provided to one or more applicants  
771 within the same county may not exceed 45 percent of the total  
772 amount of grant funds awarded within that county in year one.

773 (d) In the fifth year that grant funds are awarded, the  
774 cumulative sum of the award provided to one or more applicants  
775 within the same county may not exceed 30 percent of the total  
776 amount of grant funds awarded within that county in year one.

777 (e) In the sixth year that grant funds are awarded, the  
778 cumulative sum of the award provided to one or more applicants  
779 within the same county may not exceed 15 percent of the total  
780 amount of grant funds awarded within that county in year one.

781  
782 The ~~Statewide Public Guardianship~~ Office of Public and  
783 Professional Guardians may not award grant funds to any

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784 applicant within a county that has received grant funds for more  
785 than 6 years.

786 (4) Grant funds shall be used only to provide direct  
787 services to indigent wards, except that up to 10 percent of the  
788 grant funds may be retained by the awardee for administrative  
789 expenses.

790 (5) Implementation of the program is subject to a specific  
791 appropriation by the Legislature in the General Appropriations  
792 Act.

793 Section 23. Section 744.713, Florida Statutes, is  
794 renumbered as section 744.2107, Florida Statutes, and amended to  
795 read:

796 744.2107 ~~744.713~~ Program administration; duties of the  
797 ~~Statewide Public Guardianship~~ Office of Public and Professional  
798 Guardians.—The ~~Statewide Public Guardianship~~ Office of Public  
799 and Professional Guardians shall administer the grant program.

800 The office shall:

801 (1) Publicize the availability of grant funds to entities  
802 that may be eligible for the funds.

803 (2) Establish an application process for submitting a grant  
804 proposal.

805 (3) Request, receive, and review proposals from applicants  
806 seeking grant funds.

807 (4) Determine the amount of grant funds each awardee may  
808 receive and award grant funds to applicants.

809 (5) Develop a monitoring process to evaluate grant  
810 awardees, which may include an annual monitoring visit to each  
811 awardee's local office.

812 (6) Ensure that persons or organizations awarded grant

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813 funds meet and adhere to the requirements of this act.

814 Section 24. Section 744.714, Florida Statutes, is  
815 renumbered as section 744.2108, Florida Statutes, and paragraph  
816 (b) of subsection (1) and paragraph (b) of subsection (2) of  
817 that section are amended, to read:

818 744.2108 ~~744.714~~ Eligibility.—

819 (1) Any person or organization that has not been awarded a  
820 grant must meet all of the following conditions to be eligible  
821 to receive a grant:

822 (b) The applicant must have already been appointed by, or  
823 is pending appointment by, the ~~Statewide Public Guardianship~~  
824 Office of Public and Professional Guardians to become an office  
825 of public guardian in this state.

826 (2) Any person or organization that has been awarded a  
827 grant must meet all of the following conditions to be eligible  
828 to receive another grant:

829 (b) The applicant must have been appointed by, or is  
830 pending reappointment by, the ~~Statewide Public Guardianship~~  
831 Office of Public and Professional Guardians to be an office of  
832 public guardian in this state.

833 Section 25. Section 744.715, Florida Statutes, is  
834 renumbered as section 744.2109, Florida Statutes, and amended to  
835 read:

836 744.2109 ~~744.715~~ Grant application requirements; review  
837 criteria; awards process.—Grant applications must be submitted  
838 to the ~~Statewide Public Guardianship~~ Office of Public and  
839 Professional Guardians for review and approval.

840 (1) A grant application must contain:

841 (a) The specific amount of funds being requested.

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842 (b) The proposed annual budget for the office of public  
843 guardian for which the applicant is applying on behalf of,  
844 including all sources of funding, and a detailed report of  
845 proposed expenditures, including administrative costs.

846 (c) The total number of wards the applicant intends to  
847 serve during the grant period.

848 (d) Evidence that the applicant has:

849 1. Attempted to procure funds and has exhausted all  
850 possible other sources of funding; or

851 2. Procured funds from local sources, but the total amount  
852 of the funds collected or pledged is not sufficient to meet the  
853 need for public guardianship in the geographic area that the  
854 applicant intends to serve.

855 (e) An agreement or confirmation from a local funding  
856 source, such as a county, municipality, or any other public or  
857 private organization, that the local funding source will  
858 contribute matching funds to the public guardianship program  
859 totaling not less than \$1 for every \$1 of grant funds awarded.  
860 For purposes of this section, an applicant may provide evidence  
861 of agreements or confirmations from multiple local funding  
862 sources showing that the local funding sources will pool their  
863 contributed matching funds to the public guardianship program  
864 for a combined total of not less than \$1 for every \$1 of grant  
865 funds awarded. In-kind contributions, such as materials,  
866 commodities, office space, or other types of facilities,  
867 personnel services, or other items as determined by rule shall  
868 be considered by the office and may be counted as part or all of  
869 the local matching funds.

870 (f) A detailed plan describing how the office of public



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871 guardian for which the applicant is applying on behalf of will  
872 be funded in future years.

873 (g) Any other information determined by rule as necessary  
874 to assist in evaluating grant applicants.

875 (2) If the ~~Statewide Public Guardianship~~ Office of Public  
876 and Professional Guardians determines that an applicant meets  
877 the requirements for an award of grant funds, the office may  
878 award the applicant any amount of grant funds the executive  
879 director deems appropriate, if the amount awarded meets the  
880 requirements of this act. The office may adopt a rule allocating  
881 the maximum allowable amount of grant funds which may be  
882 expended on any ward.

883 (3) A grant awardee must submit a new grant application for  
884 each year of additional funding.

885 (4) (a) In the first year of the Joining Forces for Public  
886 Guardianship program's existence, the ~~Statewide Public~~  
887 ~~Guardianship~~ Office of Public and Professional Guardians shall  
888 give priority in awarding grant funds to those entities that:

889 1. Are operating as appointed offices of public guardians  
890 in this state;

891 2. Meet all of the requirements for being awarded a grant  
892 under this act; and

893 3. Demonstrate a need for grant funds during the current  
894 fiscal year due to a loss of local funding formerly raised  
895 through court filing fees.

896 (b) In each fiscal year after the first year that grant  
897 funds are distributed, the ~~Statewide Public Guardianship~~  
898 Office of Public and Professional Guardians may give priority to  
899 awarding grant funds to those entities that:

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900 1. Meet all of the requirements of this section and ss.  
901 744.2106, 744.2107, and 744.2108 ~~this act~~ for being awarded  
902 grant funds; and

903 2. Submit with their application an agreement or  
904 confirmation from a local funding source, such as a county,  
905 municipality, or any other public or private organization, that  
906 the local funding source will contribute matching funds totaling  
907 an amount equal to or exceeding \$2 for every \$1 of grant funds  
908 awarded by the office. An entity may submit with its application  
909 agreements or confirmations from multiple local funding sources  
910 showing that the local funding sources will pool their  
911 contributed matching funds to the public guardianship program  
912 for a combined total of not less than \$2 for every \$1 of grant  
913 funds awarded. In-kind contributions allowable under this  
914 section shall be evaluated by the ~~Statewide Public Guardianship~~  
915 Office of Public and Professional Guardians and may be counted  
916 as part or all of the local matching funds.

917 Section 26. Subsection (3), paragraph (c) of subsection  
918 (4), and subsections (5) and (6) of section 744.3135, Florida  
919 Statutes, are amended to read:

920 744.3135 Credit and criminal investigation.—

921 (3) For professional guardians, the court and the ~~Statewide~~  
922 ~~Public Guardianship~~ Office of Public and Professional Guardians  
923 shall accept the satisfactory completion of a criminal history  
924 record check by any method described in this subsection. A  
925 professional guardian satisfies the requirements of this section  
926 by undergoing an electronic fingerprint criminal history record  
927 check. A professional guardian may use any electronic  
928 fingerprinting equipment used for criminal history record

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929 checks. By October 1, 2016, the ~~Statewide Public Guardianship~~  
 930 ~~Office of Public and Professional Guardians~~ shall adopt a rule  
 931 detailing the acceptable methods for completing an electronic  
 932 fingerprint criminal history record check under this section.  
 933 The professional guardian shall pay the actual costs incurred by  
 934 the Federal Bureau of Investigation and the Department of Law  
 935 Enforcement for the criminal history record check. The entity  
 936 completing the record check must immediately send the results of  
 937 the criminal history record check to the clerk of the court and  
 938 the ~~Statewide Public Guardianship~~ Office of Public and  
 939 Professional Guardians. The clerk of the court shall maintain  
 940 the results in the professional guardian's file and shall make  
 941 the results available to the court.

942 (4)

943 (c) The Department of Law Enforcement shall search all  
 944 arrest fingerprints received under s. 943.051 against the  
 945 fingerprints retained in the statewide automated biometric  
 946 identification system under paragraph (b). Any arrest record  
 947 that is identified with the fingerprints of a person described  
 948 in this paragraph must be reported to the clerk of court. The  
 949 clerk of court must forward any arrest record received for a  
 950 professional guardian to the ~~Statewide Public Guardianship~~  
 951 Office of Public and Professional Guardians within 5 days. Each  
 952 professional guardian who elects to submit fingerprint  
 953 information electronically shall participate in this search  
 954 process by paying an annual fee to the ~~Statewide Public~~  
 955 ~~Guardianship~~ Office of Public and Professional Guardians of the  
 956 Department of Elderly Affairs and by informing the clerk of  
 957 court and the ~~Statewide Public Guardianship~~ Office of Public and

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958 Professional Guardians of any change in the status of his or her  
 959 guardianship appointment. The amount of the annual fee to be  
 960 imposed for performing these searches and the procedures for the  
 961 retention of professional guardian fingerprints and the  
 962 dissemination of search results shall be established by rule of  
 963 the Department of Law Enforcement. At least once every 5 years,  
 964 the ~~Statewide Public Guardianship~~ Office of Public and  
 965 Professional Guardians must request that the Department of Law  
 966 Enforcement forward the fingerprints maintained under this  
 967 section to the Federal Bureau of Investigation.

968 (5) (a) A professional guardian, and each employee of a  
 969 professional guardian who has a fiduciary responsibility to a  
 970 ward, must complete, at his or her own expense, an investigation  
 971 of his or her credit history before and at least once every 2  
 972 years after the date of the guardian's registration with the  
 973 ~~Statewide Public Guardianship~~ Office of Public and Professional  
 974 Guardians.

975 (b) By October 1, 2016, the ~~Statewide Public Guardianship~~  
 976 Office of Public and Professional Guardians shall adopt a rule  
 977 detailing the acceptable methods for completing a credit  
 978 investigation under this section. If appropriate, the ~~Statewide~~  
 979 ~~Public Guardianship~~ Office of Public and Professional Guardians  
 980 may administer credit investigations. If the office chooses to  
 981 administer the credit investigation, the office may adopt a rule  
 982 setting a fee, not to exceed \$25, to reimburse the costs  
 983 associated with the administration of a credit investigation.

984 (6) The ~~Statewide Public Guardianship~~ Office of Public and  
 985 Professional Guardians may inspect at any time the results of  
 986 any credit or criminal history record check of a public or

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987 professional guardian conducted under this section. The office  
 988 shall maintain copies of the credit or criminal history record  
 989 check results in the guardian's registration file. If the  
 990 results of a credit or criminal investigation of a public or  
 991 professional guardian have not been forwarded to the ~~Statewide~~  
 992 ~~Public Guardianship~~ Office of Public and Professional Guardians  
 993 by the investigating agency, the clerk of the court shall  
 994 forward copies of the results of the investigations to the  
 995 office upon receiving them.

996 Section 27. Section 744.701, Florida Statutes, is repealed.  
 997 Section 28. Section 744.702, Florida Statutes, is repealed.  
 998 Section 29. Section 744.7101, Florida Statutes, is  
 999 repealed.

1000 Section 30. Section 744.711, Florida Statutes, is repealed.  
 1001 Section 31. Subsection (5) of section 400.148, Florida  
 1002 Statutes, is amended to read:  
 1003 400.148 Medicaid "Up-or-Out" Quality of Care Contract  
 1004 Management Program.—  
 1005 (5) The agency shall, jointly with the ~~Statewide Public~~  
 1006 ~~Guardianship~~ Office of Public and Professional Guardians,  
 1007 develop a system in the pilot project areas to identify Medicaid  
 1008 recipients who are residents of a participating nursing home or  
 1009 assisted living facility who have diminished ability to make  
 1010 their own decisions and who do not have relatives or family  
 1011 available to act as guardians in nursing homes listed on the  
 1012 Nursing Home Guide Watch List. The agency and the ~~Statewide~~  
 1013 ~~Public Guardianship~~ Office of Public and Professional Guardians  
 1014 shall give such residents priority for publicly funded  
 1015 guardianship services.

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1016 Section 32. Paragraph (d) of subsection (3) of section  
 1017 744.331, Florida Statutes, is amended to read:  
 1018 744.331 Procedures to determine incapacity.—  
 1019 (3) EXAMINING COMMITTEE.—  
 1020 (d) A member of an examining committee must complete a  
 1021 minimum of 4 hours of initial training. The person must complete  
 1022 2 hours of continuing education during each 2-year period after  
 1023 the initial training. The initial training and continuing  
 1024 education program must be developed under the supervision of the  
 1025 ~~Statewide Public Guardianship~~ Office of Public and Professional  
 1026 Guardians, in consultation with the Florida Conference of  
 1027 Circuit Court Judges; the Elder Law and the Real Property,  
 1028 Probate and Trust Law sections of The Florida Bar; and the  
 1029 Florida State Guardianship Association; ~~and the Florida~~  
 1030 ~~Guardianship Foundation.~~ The court may waive the initial  
 1031 training requirement for a person who has served for not less  
 1032 than 5 years on examining committees. If a person wishes to  
 1033 obtain his or her continuing education on the Internet or by  
 1034 watching a video course, the person must first obtain the  
 1035 approval of the chief judge before taking an Internet or video  
 1036 course.

1037 Section 33. Paragraph (a) of subsection (1) of section  
 1038 20.415, Florida Statutes, is amended to read:  
 1039 20.415 Department of Elderly Affairs; trust funds.—The  
 1040 following trust funds shall be administered by the Department of  
 1041 Elderly Affairs:  
 1042 (1) Administrative Trust Fund.  
 1043 (a) Funds to be credited to and uses of the trust fund  
 1044 shall be administered in accordance with ss. 215.32, 744.534,

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1045 and 744.2001 ~~744.7021~~.

1046 Section 34. Paragraph (e) of subsection (2) of section  
1047 415.1102, Florida Statutes, is amended to read:

1048 415.1102 Adult protection teams.—

1049 (2) Such teams may be composed of, but need not be limited  
1050 to:

1051 (e) Public and professional guardians as described in part  
1052 II ~~IX~~ of chapter 744.

1053 Section 35. Paragraph (a) of subsection (7) of section  
1054 744.309, Florida Statutes, is amended to read:

1055 744.309 Who may be appointed guardian of a resident ward.—

1056 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate  
1057 guardian existing under the laws of this state is qualified to  
1058 act as guardian of a ward if the entity is qualified to do  
1059 business in the state, is wholly owned by the person who is the  
1060 circuit's public guardian in the circuit where the corporate  
1061 guardian is appointed, has met the registration requirements of  
1062 s. 744.2002 ~~s. 744.1083~~, and posts and maintains a bond or  
1063 insurance policy under paragraph (a).

1064 (a) The for-profit corporate guardian must meet one of the  
1065 following requirements:

1066 1. Post and maintain a blanket fiduciary bond of at least  
1067 \$250,000 with the clerk of the circuit court in the county in  
1068 which the corporate guardian has its principal place of  
1069 business. The corporate guardian shall provide proof of the  
1070 fiduciary bond to the clerks of each additional circuit court in  
1071 which he or she is serving as a guardian. The bond must cover  
1072 all wards for whom the corporation has been appointed as a  
1073 guardian at any given time. The liability of the provider of the

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1074 bond is limited to the face value of the bond, regardless of the  
1075 number of wards for whom the corporation is acting as a  
1076 guardian. The terms of the bond must cover the acts or omissions  
1077 of each agent or employee of the corporation who has direct  
1078 contact with the ward or access to the assets of the  
1079 guardianship. The bond must be payable to the Governor and his  
1080 or her successors in office and be conditioned on the faithful  
1081 performance of all duties of a guardian under this chapter. The  
1082 bond is in lieu of and not in addition to the bond required  
1083 under s. 744.2003 ~~s. 744.1085~~ but is in addition to any bonds  
1084 required under s. 744.351. The expenses incurred to satisfy the  
1085 bonding requirements of this section may not be paid with the  
1086 assets of any ward; or

1087 2. Maintain a liability insurance policy that covers any  
1088 losses sustained by the guardianship caused by errors,  
1089 omissions, or any intentional misconduct committed by the  
1090 corporation's officers or agents. The policy must cover all  
1091 wards for whom the corporation is acting as a guardian for  
1092 losses up to \$250,000. The terms of the policy must cover acts  
1093 or omissions of each agent or employee of the corporation who  
1094 has direct contact with the ward or access to the assets of the  
1095 guardianship. The corporate guardian shall provide proof of the  
1096 policy to the clerk of each circuit court in which he or she is  
1097 serving as a guardian.

1098 Section 36. Section 744.524, Florida Statutes, is amended  
1099 to read:

1100 744.524 Termination of guardianship on change of domicile  
1101 of resident ward.—When the domicile of a resident ward has  
1102 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign

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1103 court having jurisdiction over the ward at the ward's new  
1104 domicile has appointed a guardian and that guardian has  
1105 qualified and posted a bond in an amount required by the foreign  
1106 court, the guardian in this state may file her or his final  
1107 report and close the guardianship in this state. The guardian of  
1108 the property in this state shall cause a notice to be published  
1109 once a week for 2 consecutive weeks, in a newspaper of general  
1110 circulation published in the county, that she or he has filed  
1111 her or his accounting and will apply for discharge on a day  
1112 certain and that jurisdiction of the ward will be transferred to  
1113 the state of foreign jurisdiction. If an objection is filed to  
1114 the termination of the guardianship in this state, the court  
1115 shall hear the objection and enter an order either sustaining or  
1116 overruling the objection. Upon the disposition of all objections  
1117 filed, or if no objection is filed, final settlement shall be  
1118 made by the Florida guardian. On proof that the remaining  
1119 property in the guardianship has been received by the foreign  
1120 guardian, the guardian of the property in this state shall be  
1121 discharged. The entry of the order terminating the guardianship  
1122 in this state shall not exonerate the guardian or the guardian's  
1123 surety from any liability previously incurred.

1124 Section 37. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Guardianship

SB 232

12/1/15  
Meeting Date

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name CHRIS CARD

Job Title Chief Operations Officer (Lutheran Services Florida)

Address 3627 W. Waters Ave  
Street

Phone (813) 843-1827

Tampa FL 33614  
City State Zip

Email ccard@lutheranservices.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Lutheran Services Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1/15

Meeting Date

232

Bill Number (if applicable)

256734

Amendment Barcode (if applicable)

Topic Amendment re: SB 232

Name Karen Campbell

Job Title Director

Address 1425 Piedmont Dr.

Street

Phone (850) 487-4609

Tallahassee FL 32308

City

State

Zip

Email wecare@bigbend.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Office of the Public Guardian, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 7018

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Child Welfare

DATE: November 30, 2015      REVISED: 12/02/15

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Preston	Hendon		<b>CF Submitted as Committee Bill</b>
1.	Davis	Cibula	JU	<b>Favorable</b>
2.			AHS	
3.			AP	

---

**I. Summary:**

SB 7018 revises the state’s approach to out-of-home placement services for children living in foster care. Among the revisions, the bill:

- Provides a more consistent approach to the delivery of intervention services;
- Requires a two-pronged assessment process to determine the service and support needs as well as the appropriate placement for each child who enters the foster care system;
- Requires the Department of Children and Families to develop a continuum of care that provides appropriate services based on the level of care for both foster home and group home placements; and
- Requires data collection on every aspect of the assessment, placement, and service provision process for children in foster care.

The bill also requires community-based care lead agencies to have available a full array of services, including intervention services, to help keep children from coming into foster care and requires more accountability for the outcomes of services delivered. Once a child enters the child welfare system, however, the bill requires the child to be assessed through a standardized assessment process to determine the appropriate placement. Finally, the bill repeals a number of residential group home statutes that would become obsolete upon passage of the bill.

The bill is anticipated to have an insignificant fiscal impact on state government.

**II. Present Situation:**

**State Trends in Child Welfare**

Many states are moving in the direction of reducing the use of residential group homes for children in foster care. This shift reflects a growing consensus within the child-welfare field that



group home settings for foster children, while sometimes necessary, should be used sparingly and appropriately. To lower the number of group care placements, states have two main options: providing more preventive support for unsafe families and recruiting more people, including relatives and non-relatives with whom children have a strong emotional relationship, to serve as foster parents.

Placement instability is harmful to children in foster care. Research shows an association between frequent placement disruptions and outcomes that are adverse to the child, including poor academic performance and social or emotional adjustment difficulties such as aggression, withdrawal, and poor social interaction with peers and teachers. Despite this evidence, there has been limited intervention by child welfare systems to reduce placement instability as a mechanism for improving outcomes for children. According to some, a thorough assessment process to determine the appropriate placement is the most effective way to reduce multiple placements.

### **Placement Options for Children in Out-of-Home Care**

Federal law has long supported the belief that all children should grow up in families. The Adoption Assistance and Child Welfare Act of 1980 codified the concept that children should be cared for in their own homes whenever it is possible to do so safely and in new permanent homes when it is not. To preserve the well-being of children who enter the system, out-of-home placements must be in the least restrictive setting possible that is most like a family.<sup>1</sup> Florida has likewise codified the concept of least restrictive setting.<sup>2</sup>

The Adoption and Safe Families Act of 1997 (ASFA) was considered the most significant piece of legislation addressing child welfare since the enactment of the Adoption Assistance and Child Welfare Act 17 years earlier. The legislation was enacted as a response to increasing concerns voiced around the nation that child welfare systems were not providing for the safety, well-being, and permanent placement of children in a timely and adequate manner. The new law sought to focus on child safety when making case decisions and make certain that children did not languish or grow up in foster care, but were instead connected with permanent families.<sup>3</sup> Florida was one of the first states to enact the provisions of ASFA.<sup>4</sup>

### ***Placement with Relatives or Kinship Care***

A substantial amount of research acknowledges the evidence that children in the care of relatives, or what is often referred to as “kinship care,” are less likely to change placements and benefit from increased placement stability, as compared to children placed in general foster care. Most child welfare systems strive to place children in stable conditions without multiple living arrangement changes because it has consistently demonstrated a better result for all children living in out-of-home care. As opposed to children living in foster care, children living in kinship care are more likely to remain in their own neighborhoods, be placed with their siblings, and

---

<sup>1</sup> Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96–272, 42 USC s. 675.

<sup>2</sup> See ss. 39.407, 39.6012 and 409.165, F.S.

<sup>3</sup> Olivia Golden and Jennifer Macomber, *Intentions and Results: A Look Back at the Adoption and Safe Families Act* (Dec. 11, 2009), available at: <http://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act> (last visited Nov. 23, 2015).

<sup>4</sup> Chapter 98-403, Laws of Fla.

have more consistent interactions with their birth parents than do children who are placed in foster care, all of which might contribute to less disruptive transitions into out-of-home care.<sup>5</sup>

Among the appropriate placement options for children who could not be reunified with their parents, ASFA included placement with relatives, legal guardians, or another planned permanent-living arrangement. Even though ASFA encouraged states to seek fit and willing relatives as permanent family options, it did not offer ongoing financial assistance for relatives who were foster parents caring for children as their guardians outside of foster care.<sup>6</sup> ASFA provided incentives to encourage the movement of children to adoptive families, but did not provide similar fiscal incentives that would help children leave care to live permanently with legal guardians or relatives who were not adopting them.<sup>7</sup> Additional provisions of ASFA created challenges for placing a child with a fit and willing relative. In particular, ASFA regulations require that foster homes of relatives be licensed in the same manner as foster homes for children in non-relative placements, with few case-specific exceptions.<sup>8</sup>

More recent federal legislation, the 2008 Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), makes this requirement a bit less restrictive by allowing states to waive non-safety related licensing standards for relative homes on a case-by-case basis. Fostering Connections also supports states in providing financial subsidies to kinship legal guardianship placement as long as certain conditions have been met. Florida has not implemented the provisions of Fostering Connections related to relative guardianship.<sup>9</sup>

Florida did, however, recognize the importance of relative placements by creating the Relative Caregiver Program in 1998 to provide financial assistance to eligible relatives caring for children who would otherwise be in the foster care system.<sup>10</sup> Nonetheless, this recognition provided benefits in an amount less than those provided to foster parents or adoptive parents. While the statewide average monthly rate for children judicially placed with relatives or nonrelatives who are not licensed as foster homes may not exceed 82 percent of the statewide average foster care rate,<sup>11</sup> currently, the monthly amount of the payment is far less than that:<sup>12</sup>

- Age zero through five years – \$242
- Age six through 12 years – \$249
- Age 13 to 18 years – \$298

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<sup>5</sup> David Rubin and Kevin Downes, K., et al., *The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care* (June 2, 2008), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/>.

<sup>6</sup> MaryLee Allen and Beth Davis-Pratt *The Impact of ASFA on Family Connections for Children* (Dec. 11, 2009), available at: <http://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act>.

<sup>7</sup> While some relatives want to adopt, grandparents are often hesitant to do so. This is because it is necessary to first terminate their own children's parental rights and because of their hope that their adult sons or daughters will one day be able to resume parenting.

<sup>8</sup> *Supra* at 6.

<sup>9</sup> P.L. 110-351.

<sup>10</sup> Section 39.5085, F.S. In 2014 the program was expanded to include specified nonrelative caregivers. Chapter 2014-224, Laws of Fla.

<sup>11</sup> *Id.*

<sup>12</sup> 65C-28.008, F.A.C.

In addition, children living with relatives are often not eligible for other benefits provided to children living in licensed foster care.<sup>13</sup> According to the department, as of September 30, 2015, Florida had 12,343 children receiving in-home services, 12,341 children who are in kinship foster care placements, and 10,029 children who are in licensed foster care placements.<sup>14</sup>

### *Family Foster Homes*

Family foster homes offer the next least restrictive environment following kinship care for children who need out-of-home placements. Florida does not have enough family foster homes and does not have an adequate array of homes necessary to meet the variety of needs of children in out-of-home placements. It is a problem that has existed for at least 15 years. In 2001, it was reported that “Florida’s foster care system was overwhelmed with many problems during the past several years as evidenced by law suits, grand jury investigations, and special investigations such as the District 7 Child Safety Strike Force.”<sup>15</sup>

The Justification Review of the Child Protection Program in the Department of Children and Families, February, 2001 by the Office of Program Policy Analysis and Government Accountability (OPPAGA),<sup>16</sup> reported the following problems with Florida’s foster care system:

- The number of children admitted to foster care increased by 28.8 percent between June 1996 and June 2000.
- The department increased its foster home capacity by only 5 percent between FY 1997-98 and 1998-99 even after receiving 70 new FTEs from the 1999 Legislature solely for the purpose of recruiting new foster families.
- The number of children needing care outpaced the number of foster homes leaving many foster homes overcrowded.

Lawsuits also alleged numerous problems associated with the foster care system, including failure on the part of the state to develop an array of foster care settings to ensure a safe and secure placement for each foster child, particularly in respect to foster homes for teenagers.<sup>17</sup>

Florida responded to the lack of foster homes by enacting legislation in 2001 and 2002 to increase the utilization of residential group home placements until additional foster homes could be recruited.<sup>18</sup> In addition to requiring that any dependent child 11 years of age or older who has been in licensed family foster care for 6 months or longer, who is then moved more than once and who is a child with extraordinary needs must be assessed for placement in licensed

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<sup>13</sup> See s. 409.1451, F.S.

<sup>14</sup> Florida Department of Children and Families, DCF Quick Facts, available at: <http://www.dcf.state.fl.us/general-information/quick-facts/cw/> (last visited Nov. 23, 2015).

<sup>15</sup> Information contained in this portion of this bill analysis is from the analysis for CS/CS/SB 1214 by the Senate Committee on Children and Families (March 29, 2001) available at: [http://archive.flsenate.gov/session/index.cfm?Mode=Bills&SubMenu=1&BI\\_Mode=ViewBillInfo&BillNum=1214&Year=2001&Chamber=Senate#Analysis](http://archive.flsenate.gov/session/index.cfm?Mode=Bills&SubMenu=1&BI_Mode=ViewBillInfo&BillNum=1214&Year=2001&Chamber=Senate#Analysis).

<sup>16</sup> Office of Program Policy Analysis and Government Accountability, *Justification Review of the Child Protection Program in the Department of Children and Family Services*. Report Number 01-14 (February, 2001) available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0114rpt.pdf>.

<sup>17</sup> See, for example, *31 Foster Children v. Bush*, 329 F.3d 1255 (11th Cir. 2003) and *Ward. v. Feaver, et al*, 2000 WL34025227 U.S. District Court S.D. Florida.

<sup>18</sup> See ss. 39.523, 409.1676, 409.1677 and 409.1679, F.S.

residential group care, funds were also authorized to be used for one-time startup funding for residential group care purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction costs, leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs.<sup>19</sup>

At the same time, the department expressed concerns that the provisions of the proposed legislation were contrary to the literature, contrary to guidance from the federal government, and contrary to the fact that movement over the past decade was away from group home care.<sup>20</sup>

### ***Residential Group Care***

Residential group care as a placement option for children in the child welfare system who are in out-of-home care has many forms and functions, including serving as a child placement option and as a treatment component of the children's mental health system of care. The multiple roles of group care make an analysis of its effectiveness difficult and complex.<sup>21</sup>

Some people working in child welfare contend that all residential group care has the potential to be harmful and should be eliminated. Others support the position that those placements can be beneficial for some children under certain circumstances. Other professionals support the wholesale use of residential group care as an alternative to the limited supply of family placements or dependence on family placements that could expose children to additional risks. However, both favorable and unfavorable claims about the effectiveness of residential group care and other options are often made without adequate supporting evidence.<sup>22</sup>

There appears to be a growing consensus within the child-welfare community that residential group home settings for children in out-of-home care are sometimes necessary but should be used sparingly and only for the length of time necessary to place the child in a less restrictive environment. While some states have been more successful than others, many states have tried to decrease reliance on group home care.<sup>23</sup>

KVC Health Systems is a private company employed to provide child-welfare services in eastern Kansas. It has been very successful in reducing the number of children in residential group care. KVC reports that only three percent of the 3,100 children it is responsible for are in group settings, primarily for short-term psychiatric treatment, while almost all of the others are placed

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<sup>19</sup> Section 39.523, F.S.

<sup>20</sup> Testimony from committee meetings: Senate Children and Families Committee, SB 623, January 30, 2002; Senate Children and Families Committee, SB 1214, March 14, 2001; House Child and Family Security Committee, HB 1145, March 15, 2001; House Child and Family Security Committee, HB 755, February 7, 2002.

<sup>21</sup> Richard Barth, *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*. Chapel Hill, NC: University of North Carolina, School of Social Work, Jordan Institute for Families (June 17, 2002), available at: [http://www.researchgate.net/publication/237273744\\_vs.\\_Foster\\_Homes\\_The\\_Empirical\\_Base\\_for\\_a\\_Century\\_of\\_Action](http://www.researchgate.net/publication/237273744_vs._Foster_Homes_The_Empirical_Base_for_a_Century_of_Action).

<sup>22</sup> Child Welfare League of America, *Residential Transitions Project Phase One Final Report* (April 2008), available at: [http://rbsreform.org/materials/Residential%20Transitions%20Project%20-%204%2030%2008%20\\_2\\_.pdf](http://rbsreform.org/materials/Residential%20Transitions%20Project%20-%204%2030%2008%20_2_.pdf).

<sup>23</sup> *Id.* Also see California Health and Human Services Agency. California's Child Welfare Continuum of Care Reform, January 2015, *Children's Rights, What Works in Child Welfare Reform: Reducing Reliance on Congregate Care in Tennessee*, July 2011, and The Annie E. Casey Foundation, *Rightsizing Congregate Care, A Powerful First Step in Transforming Child Welfare System*, 2010.

with foster families. That is a noticeable and dramatic change from 1997, when 30 percent of the children KVC was responsible for were in group care placements.<sup>24</sup>

A number of child welfare organizations are supporting an overhaul of the federal funding system for child welfare. Their goal is to shift funding from residential group home settings to alternative placements such as family-based care. The Annie E. Casey Foundation and one of its partners, the Jim Casey Youth Opportunities Initiative, supports the proposal that federal reimbursement should be eliminated for shelters and group care for children under 13 years of age but should be allowed for older children's group care but only for short periods of time when psychiatric treatment or other specialized care is needed.<sup>25</sup>

U.S. Sen. Orrin Hatch, chair of the U.S. Senate Finance Committee, recently held two hearings related to reducing reliance on residential group care placements. The written statement submitted for the May 19, 2015 hearing by Dr. Jeremy Kohomban, President and CEO of The Children's Village in New York,<sup>26</sup> stated:

In fact, the time has come for private providers to make a change in how we do business, and more providers than you might think are rising to this challenge. Just as public agencies must change, so must private agencies. Our business models must move away from mostly residential care and toward community- and family-based care that is targeted, effective and short-term—including, of course, short-term effective residential care as needed for emergency interventions. You may hear complaints from private providers in your district. They may say this kind of change is hard. Or that the needs of children and families cannot be met using these new models of care. But the evidence is not on their side . . . .

Nationally, according to the Adoption and Foster Care Analysis and Reporting System (AFCARS) data, in 2014, 46 percent of all children in foster care lived in the foster family homes of non-relatives. Twenty-nine percent lived in family foster homes with relatives, or kinship care. Six percent lived in group homes, eight percent lived in institutions, four percent lived in pre-adoptive families, and the remainder lived in other types of facilities.<sup>27</sup> These statistics do not differ substantially from the distributions at the beginning of the decade, although there has been a small decrease of foster children living in group homes and institutions, and a corresponding increase of foster children in home care.<sup>28</sup> In Florida during the 2013-14 fiscal year, 11 percent of children in foster care were in residential group care and 83

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<sup>24</sup> David Crary, *Foster care: U.S. Moves to Phase Out Group Care for Foster Kids*, Christian Science Monitor (May 17, 2014), available at: <http://www.csmonitor.com/The-Culture/Family/2014/0517/Foster-care-US-moves-to-phase-out-group-care-for-foster-kids>.

<sup>25</sup> *Id.*

<sup>26</sup> *No Place to Grow Up: How to Safely Reduce Reliance on Foster Care Group Homes*, Before the S. Comm. on Finance, 114th Cong. (2015) (statement of Jeremy Kohomban, PhD., President and CEO of The Children's Village and President of Harlem Dowling Westside Center).

<sup>27</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. The AFCARS Report (Sept. 18, 2015), available at: <http://www.acf.hhs.gov/programs/cb/resource/afcars-report-22>.

<sup>28</sup> Child Trends Data Bank, Foster Care (Dec. 2014), available at: <http://www.childtrends.org/?indicators=foster-care>.

percent of the children in group care were 11 years of age and older, compared to 17 percent of children in family care settings.<sup>29</sup>

Residential group homes are one of the most expensive placement options for children in the child welfare system. The costs associated with institutional care far exceed the costs for foster care or treatment foster care. The difference in monthly costs are often six to 10 times higher than foster care and between two and three times higher than for treatment foster care. Because there is essentially no evidence that these additional costs yield better outcomes for foster children, according to at least one researcher, there is no justification for the cost benefit for group care, when other placement options are available.<sup>30</sup>

In Florida, unlike rates for foster parents and relative caregivers, which are set in statute and in rule, community-based care lead agencies annually negotiate rates for residential group home placements with providers. According to a 2014 OPPAGA study, in the 2013-2014 fiscal year, the per diem rate for the shift-care group home model averaged \$124, and costs ranged from \$52 to \$283. The per diem rate for a family group home model averaged \$97, and costs ranged from \$17 to \$175. Family foster home care pays an average daily rate of \$15.<sup>31</sup> The cost of group home care in Florida for the 2013-14 fiscal year was \$81.7 million.<sup>32</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 39.01, F.S., relating to definitions, to create a definition of the term “conditions for return” which applies when consideration is being given to the department returning a child.

**Section 2** amends s. 39.013, F.S., relating to procedures, jurisdiction, and right to counsel, to continue court jurisdiction until the age of 22 for young adults having a disability who choose to remain in extended foster care. This is consistent with the provisions of s. 39.6251, F.S.

**Section 3** amends s. 39.402, F.S., relating to placement in a shelter, to require that the court order for placement of a child in shelter contain a written finding that the placement proposed by the department is in the least restrictive and most family-like setting that meets the needs of the child, unless that type of placement is unavailable.

**Section 4** amends s. 39.521, F.S., relating to disposition hearings, to require that the court order for disposition contain a written finding that the placement of the child is in the least restrictive and most family-like setting that meets the needs of the child, as determined by the required assessments.

**Section 5** amends s. 39.522, F.S., relating to postdisposition change of custody, to change the standard for the court to return a child to the home from “substantially complied with the terms

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<sup>29</sup> Office of Program Policy and Government Accountability, Research Memorandum, *Florida’s Residential Group Care Program for Children in the Child Welfare System* (Dec. 22, 2014) (on file with the Senate Committee on Judiciary).

<sup>30</sup> *Supra* at 21.

<sup>31</sup> *Supra* at 29.

<sup>32</sup> *Id.*

of the case plan” to whether the “circumstances that caused the out-of-home placement have been remedied” with an in-home safety plan in place.

**Section 6** amends s. 39.6011, F.S., relating to the development of case plans, to rearrange and restructure the section. The section now states the purpose of a case plan and requires documentation that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, if appropriate, have been provided and that reasonable efforts to prevent out-of-home placement have been made. Procedures for involving the child in the case planning process are revised and put in a separate subsection.

**Section 7** amends s. 39.6012, F.S., relating to case plan requirements for services and tasks for parents and safety, permanency and well-being for children, to rearrange and restructure the section. The bill requires documentation in the case plan that the required placement assessments have been completed; that the child has been placed in the least restrictive, most family-like setting or if not, the reason for the alternative placement; and that if the child has been placed in a residential group care setting, regular reviews and updates to the case plan must be completed.

The bill also requires that provisions in the case plan relating to visitation and contact of the child with his or her parents and/or siblings also apply to extended family members and fictive kin. The term “fictive kin” is defined as individuals that are unrelated to the child by either birth or marriage, but have an emotionally significant relationship with the child that would take on the characteristics of a family relationship.

**Section 8** amends s. 39.6035, F.S., relating to the transition plan, to clarify that the transition plan must be approved by the court before the child’s 18th birthday.

**Section 9** amends s. 39.621, F.S., relating to permanency determinations by the court, to add provisions relating to maintaining and strengthening the placement. These provisions are current law in s. 39.6011, F.S., and they are being relocated to s. 39.621, F.S.

**Section 10** amends s. 39.701, F.S., relating to judicial review, to add a requirement to the social study report for judicial review to include documentation that the placement of the child is in the least restrictive, most family-like setting that meets the needs of the child as determined through assessment. The section also requires the court to order the department and the community-based care lead agency to file a written notification before a child changes placements if possible. If the notification before changing placements is not possible, the notification shall be filed immediately following a change. This flexibility would accommodate those cases when a child must be moved on short notice or after work hours.

**Section 11** creates s. 409.142, F.S., relating to intervention services for unsafe children, to provide legislative findings that intervention services and supports are designed to strengthen and support families in order to keep them safely together and to prevent children from entering foster care. The bill also states legislative intent for the department to identify evidence-based intervention programs that remedy child abuse and neglect, reduce the likelihood of foster care placement by supporting parents and relative or nonrelative caregivers, increase family reunification with parents or other relatives, and promote placement stability for children living with relatives or nonrelative caregivers. The section defines the term “intervention services and



supports,” provides the types of intervention services that must be available for eligible individuals, provides eligibility for intervention services, and requires each community-based care lead agency to submit a monitoring plan to the department by October 1, 2016. Each community-based care lead agency must also submit an annual report to the department detailing specified collected data as part of the Results Oriented Accountability Program under s. 409.997, F.S. The department is also given rulemaking authority to adopt rules to administer this section.

**Section 12** creates s. 409.143, F.S., relating to assessment and determination of appropriate placements for children in care, and provides state legislative findings and intent relating to the assessment of children in order to determine the most appropriate placement for each child in out-of-home care. The bill defines the terms “child functioning level,” “comprehensive behavioral health assessment,” and “level of care.” The bill requires an initial placement assessment whenever a child has been determined to need an out-of-home placement and requires the department to document these initial assessments in the Florida Safe Families Network (FSFN) and update the case plan.

The bill requires procedures in s. 39.407, F.S., to be followed whenever a child is being placed in a residential treatment facility and prohibits placement decisions from being made by an individual or entity that has a conflict of interest with an agency being considered for placement.

The bill also requires a follow-up comprehensive behavioral health assessment to be completed for each child placed in out-of-home care; requires certain information to be included in the assessment; requires that the assessment be completed within 30 calendar days after the child enters out-of-home care; and requires the department to use the results of the comprehensive assessment to determine the child’s functioning level and the level of care needed by the child.

The bill requires the establishment of permanency teams by the department or the community-based care lead agencies to regularly convene a multi-disciplinary staffing every 180 days to review the appropriateness of the child’s placement and provides what is to be included in the review. An annual report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year that includes specified data on child placements and services.

**Section 13** creates s. 409.144, F.S., relating to continuum of care. The section provides legislative findings and intent pertaining to the safety, permanency, and well-being of children in out-of-home care. The section defines the terms “continuum of care,” “family foster care,” “level of care,” “out-of-home care,” and “residential group care.”

The bill requires the department, in collaboration with the Florida Institute for Child Welfare, the Quality Parenting Initiative, and the Florida Coalition for Children to develop a continuum of care for the placement of children in out-of-home care that includes both family foster care and residential group care by December 31, 2017. To implement the continuum the department must:

- Establish levels of care that are clearly defined with the qualifying criteria for placement at each level identified;
- Revise licensure standards and rules to reflect the services and supports provided by a placement at each level of care and include the quality standards that must be met by licensed providers;



- Develop policies and procedures to ensure that placements are appropriate for each child as determined by the required assessments and staffings and last only long enough to resolve the issue that required the placement;
- Develop a plan to recruit, train, and retain specialized foster homes for pregnant and parenting teens that are designed to provide an out-of-home placement option that will enable them to live in the same foster family home while caring for the child and working towards independent care of the child; and
- Work with the Department of Juvenile Justice to develop specialized placements for children who are involved with both the dependency and the juvenile justice systems.

The bill requires an annual report by the department to the Governor, the President of the Senate, and the Speaker of the House of Representatives and specifies what the report must contain.

**Section 14** amends s. 409.1451, F.S., relating to the Road-to-Independence Program, to create a process for making federal education and training vouchers available to a child or young adult in out-of-home care if he or she meets certain eligibility requirements. The section provides that the department may adopt rules to implement the program which must include an appeals process.

**Section 15** amends s. 409.988, F.S., relating to the duties of community-based care lead agencies. The section requires lead agencies to ensure the availability of a full array of services necessary to meet the needs of all individuals within their local system of care. The section also requires the department to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the adequacy of the available service array by lead agency.

**Section 16** amends s. 39.202, F.S., relating to the confidentiality of records and reports in cases of child abuse or neglect, to revise the designation of an agency.

**Section 17** amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect, to correct a cross reference.

**Section 18** amends s. 39.524, F.S., relating to safe-harbor placement, to correct a cross reference.

**Section 19** amends s. 39.6013, F.S., relating to case plan amendments, to correct a cross reference.

**Section 20** amends s. 394.495, F.S., relating to child adolescent mental health system of care, to correct a cross reference.

**Section 21** amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation, to correct a cross reference.

**Section 22** amends s. 960.065, F.S., relating to eligibility for awards, to correct a cross reference.

**Section 23** amends s. 1002.3305, F.S., relating to the College-Preparatory Boarding Academy Pilot Program for at-risk students, to correct a cross reference.

**Section 24** repeals s. 39.523, F.S., relating to placement in residential group care.

**Section 25** repeals s. 409.141, F.S., relating to equitable reimbursement methodology for residential group home care.

**Section 26** repeals s. 409.1676, F.S., relating to comprehensive residential group care services to children who have extraordinary needs.

**Section 27** repeals s. 409.1677, F.S., relating to model comprehensive residential services programs.

**Section 28** repeals, s. 409.1679, F.S., relating to additional requirements and reimbursement methodology for residential group care.

**Section 29** provides an effective date of July 1, 2016.

#### **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:

Most community based care lead agencies make the determination to place a child in foster care. In some areas of the state however, private, non-profit agencies under contract with the community based care lead agency determine placements of foster children. The bill prohibits an agency under contract with the community based care lead agency from providing placement services and operating group homes. The bill does this to ensure there is no conflict of interest for the placement agency in recommending placements in group homes operated by that same agency. Under the requirements of this bill some providers may have to choose between providing placement services and operating group homes.

**C. Government Sector Impact:**

To the extent the bill reduces the number of children in group home care and increases the number of children in foster homes, the bill would have a positive fiscal impact on the state. The average cost of group care with shift care workers is \$124 per day per child, the average cost of group care with house parents is \$97 per day per child, and the average cost of foster homes is \$15 per day per child.<sup>33</sup> The amount of such an impact is indeterminate.

The bill revises current practices in assessment and placement of children in foster care. To the extent that these new procedures are more costly than current practices, the bill would have a negative fiscal impact on the state. The amount of such an impact is indeterminate.

The bill revises current court procedures in the case planning and placement of children in foster care. To the extent that these new procedures are more costly than current practices, the bill would have a negative fiscal impact on the state. The amount of such an impact is indeterminate.

Finally, the bill authorizes education and training vouchers for certain children in foster care under certain circumstances. The fiscal impact of this change is indeterminate.

The Office of the State Courts Administrator states that the bill will increase judicial workloads, but it cannot accurately determine the fiscal impact because the data needed to quantify the increase in judicial time and workload is not available.<sup>34</sup> However, the increased costs result from requirements for courts to consider additional evidence at shelter hearings and additional information from the Department of Children and Families at disposition hearings and requirements for courts to make additional findings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.013, 39.202, 39.302, 39.402, 39.521, 39.522, 39.524, 39.6011, 39.6012, 39.6013, 39.6035, 39.621, 39.701, 39.495, 409.1451, 409.1678, 409.988, 960.065, and 1002.3305.

This bill creates the following sections of the Florida Statutes: 409.142, 409.143, and 409.144

<sup>33</sup> *Supra* at 29.

<sup>34</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement for SB 7018* (Dec. 1, 2015) (on file with the Senate Committee on Judiciary).

This bill repeals the following sections of the Florida Statutes: 39.523, 409.141, 409.1676, 409.1677, and 409.1679.

**IX. Additional Information:**

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

None.

B. **Amendments:**

None.

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

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By the Committee on Children, Families, and Elder Affairs

586-00943A-16

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1 A bill to be entitled  
 2 An act relating to child welfare; amending s. 39.01,  
 3 F.S.; defining a term; amending s. 39.013, F.S.;  
 4 extending court jurisdiction to age 22 for young  
 5 adults with disabilities in foster care; amending s.  
 6 39.402, F.S.; revising information that the Department  
 7 of Children and Families is required to inform the  
 8 court of at shelter hearings; revising the written  
 9 findings required to be included in an order for  
 10 placement of a child in shelter care; amending s.  
 11 39.521, F.S.; revising the required information a  
 12 court must include in its written orders of  
 13 disposition; amending s. 39.522, F.S.; providing  
 14 conditions under which a child may be returned home  
 15 with an in-home safety plan; amending s. 39.6011,  
 16 F.S.; providing the purpose of a case plan; requiring  
 17 a case plan to document that a preplacement plan has  
 18 been provided and reasonable efforts have been made to  
 19 prevent out-of-home placement; removing the  
 20 prohibition of threatening or coercing a parent with  
 21 the loss of custody or parental rights for failing to  
 22 admit certain actions in a case plan; providing that a  
 23 child must be given the opportunity to review, sign,  
 24 and receive a copy of his or her case plan; providing  
 25 additional requirements when the child attains a  
 26 certain age; requiring the case plan to document that  
 27 each parent has received additional written notices;  
 28 amending s. 39.6012, F.S.; providing additional  
 29 requirements for the department and criteria for a

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

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30 case plan, with regard to placement, permanency,  
 31 education, health care, contact with family, extended  
 32 family, and fictive kin, and independent living;  
 33 amending s. 39.6035, F.S.; requiring court approval of  
 34 a transition plan before the child's 18th birthday;  
 35 amending s. 39.621, F.S.; creating an exception to the  
 36 order of preference for permanency goals under ch. 39,  
 37 F.S., for maintaining and strengthening the placement;  
 38 authorizing the new permanency goal to be used in  
 39 specified circumstances; amending s. 39.701, F.S.;  
 40 revising the information which must be included in a  
 41 specified written report under certain circumstances;  
 42 requiring a court, if possible, to order the  
 43 department to file a written notification; creating s.  
 44 409.142, F.S.; providing legislative findings and  
 45 intent; defining the term "intervention services and  
 46 supports"; requiring specified intervention services  
 47 and supports; providing eligibility for such services  
 48 and supports; providing requirements for the provision  
 49 of services and supports; requiring community-based  
 50 care lead agencies to submit a monitoring plan to the  
 51 department by a certain date; requiring community-  
 52 based care lead agencies to annually collect and  
 53 report specified information for each child to whom  
 54 intervention services and supports are provided;  
 55 requiring the department to adopt rules; creating s.  
 56 409.143, F.S.; providing legislative findings and  
 57 intent; defining terms; requiring an initial placement  
 58 assessment for certain children under specified

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59 circumstances; requiring every child placed in out-of-  
 60 home care to be referred within a certain time for a  
 61 comprehensive behavioral health assessment; requiring  
 62 the department or the community-based care lead agency  
 63 to establish special permanency teams to assist  
 64 children in adjusting to home placement; requiring the  
 65 department to submit an annual report to the Governor  
 66 and the Legislature on the placement of children in  
 67 licensed out-of-home care; creating s. 409.144, F.S.;  
 68 providing legislative findings and intent; defining  
 69 terms; requiring the department to develop a continuum  
 70 of care for the placement of children in care  
 71 settings; requiring the department to submit a report  
 72 annually to the Governor and the Legislature;  
 73 requiring the department to adopt rules; amending s.  
 74 409.1451, F.S.; requiring that a child be living in  
 75 licensed care on or after his or her 18th birthday as  
 76 a condition for receiving aftercare services;  
 77 requiring the department to provide education training  
 78 vouchers; providing eligibility requirements;  
 79 prohibiting vouchers from exceeding a certain amount;  
 80 providing rulemaking authority; amending s. 409.988,  
 81 F.S.; requiring lead agencies to ensure the  
 82 availability of a full array of family support  
 83 services; requiring the department to submit annually  
 84 to the Governor and Legislature a report that  
 85 evaluates the adequacy of family support services;  
 86 requiring the department to adopt rules; amending s.  
 87 39.202, F.S.; revising the designation of an agency

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88 with access to records; amending ss. 39.302, 39.524,  
 89 39.6013, 394.495, 409.1678, 960.065, and 1002.3305,  
 90 F.S.; conforming cross-references; repealing s.  
 91 39.523, F.S., relating to the placement of children in  
 92 residential group care; repealing s. 409.141, F.S.,  
 93 relating to equitable reimbursement methodology;  
 94 repealing s. 409.1676, F.S., relating to comprehensive  
 95 residential group care services to children who have  
 96 extraordinary needs; repealing s. 409.1677, F.S.,  
 97 relating to model comprehensive residential services  
 98 programs; repealing s. 409.1679, F.S., relating to  
 99 program requirements and reimbursement methodology;  
 100 providing an effective date.

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

103  
 104 Section 1. Subsection (10) of section 39.01, Florida  
 105 Statutes, is amended, present subsections (20) through (79) of  
 106 that section are redesignated as subsections (21) through (80),  
 107 respectively, a new subsection (20) is added to that section,  
 108 and present subsection (32) of that section is amended, to read:

109 39.01 Definitions.—When used in this chapter, unless the  
 110 context otherwise requires:

111 (10) "Caregiver" means the parent, legal custodian,  
 112 permanent guardian, adult household member, or other person  
 113 responsible for a child's welfare as defined in subsection (48)  
 114 ~~subsection (47)~~.

115 (20) "Conditions for return" means the circumstances that  
 116 caused the out-of-home placement have been remedied to the

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117 extent that the return of the child to the home with an in-home  
 118 safety plan will not be detrimental to the child's safety, well-  
 119 being, and physical, mental, and emotional health.

120 (32) "Institutional child abuse or neglect" means  
 121 situations of known or suspected child abuse or neglect in which  
 122 the person allegedly perpetrating the child abuse or neglect is  
 123 an employee of a private school, public or private day care  
 124 center, residential home, institution, facility, or agency or  
 125 any other person at such institution responsible for the child's  
 126 care as defined in subsection (48) ~~subsection (47)~~.

127 Section 2. Paragraph (e) is added to subsection (2) of  
 128 section 39.013, Florida Statutes, to read:

129 39.013 Procedures and jurisdiction; right to counsel.-

130 (2) The circuit court has exclusive original jurisdiction  
 131 of all proceedings under this chapter, of a child voluntarily  
 132 placed with a licensed child-caring agency, a licensed child-  
 133 placing agency, or the department, and of the adoption of  
 134 children whose parental rights have been terminated under this  
 135 chapter. Jurisdiction attaches when the initial shelter  
 136 petition, dependency petition, or termination of parental rights  
 137 petition, or a petition for an injunction to prevent child abuse  
 138 issued pursuant to s. 39.504, is filed or when a child is taken  
 139 into the custody of the department. The circuit court may assume  
 140 jurisdiction over any such proceeding regardless of whether the  
 141 child was in the physical custody of both parents, was in the  
 142 sole legal or physical custody of only one parent, caregiver, or  
 143 some other person, or was not in the physical or legal custody  
 144 of any person when the event or condition occurred that brought  
 145 the child to the attention of the court. When the court obtains

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146 jurisdiction of any child who has been found to be dependent,  
 147 the court shall retain jurisdiction, unless relinquished by its  
 148 order, until the child reaches 21 years of age, with the  
 149 following exceptions:

150 (e) If a young adult with a disability remains in foster  
 151 care, jurisdiction shall continue until the young adult chooses  
 152 to leave foster care or upon the young adult reaching 22 years  
 153 of age, whichever occurs first.

154 Section 3. Paragraphs (f) and (h) of subsection (8) of  
 155 section 39.402, Florida Statutes, are amended to read:

156 39.402 Placement in a shelter.-

157 (8)

158 (f) At the shelter hearing, the department shall inform the  
 159 court of:

160 1. Any identified current or previous case plans negotiated  
 161 under this chapter in any judicial circuit district with the  
 162 parents or caregivers ~~under this chapter~~ and problems associated  
 163 with compliance;

164 2. Any adjudication of the parents or caregivers of  
 165 delinquency;

166 3. Any past or current injunction for protection from  
 167 domestic violence; and

168 4. All of the child's places of residence during the prior  
 169 12 months.

170 (h) The order for placement of a child in shelter care must  
 171 identify the parties present at the hearing and must contain  
 172 written findings:

173 1. That placement in shelter care is necessary based on the  
 174 criteria in subsections (1) and (2).

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175 2. That placement in shelter care is in the best interest  
176 of the child.

177 3. That the placement proposed by the department is in the  
178 least restrictive and most family-like setting that meets the  
179 needs of the child, unless it is otherwise documented that the  
180 identified type of placement needed is not available.

181 ~~4.3-~~ That continuation of the child in the home is contrary  
182 to the welfare of the child because the home situation presents  
183 a substantial and immediate danger to the child's physical,  
184 mental, or emotional health or safety which cannot be mitigated  
185 by the provision of preventive services.

186 ~~5.4-~~ That based upon the allegations of the petition for  
187 placement in shelter care, there is probable cause to believe  
188 that the child is dependent or that the court needs additional  
189 time, which may not exceed 72 hours, in which to obtain and  
190 review documents pertaining to the family in order to  
191 appropriately determine the risk to the child.

192 ~~6.5-~~ That the department has made reasonable efforts to  
193 prevent or eliminate the need for removal of the child from the  
194 home. A finding of reasonable effort by the department to  
195 prevent or eliminate the need for removal may be made and the  
196 department is deemed to have made reasonable efforts to prevent  
197 or eliminate the need for removal if:

198 a. The first contact of the department with the family  
199 occurs during an emergency;

200 b. The appraisal of the home situation by the department  
201 indicates that the home situation presents a substantial and  
202 immediate danger to the child's physical, mental, or emotional  
203 health or safety which cannot be mitigated by the provision of

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204 preventive services;

205 c. The child cannot safely remain at home, either because  
206 there are no preventive services that can ensure the health and  
207 safety of the child or because, even with appropriate and  
208 available services being provided, the health and safety of the  
209 child cannot be ensured; or

210 d. The parent or legal custodian is alleged to have  
211 committed any of the acts listed as grounds for expedited  
212 termination of parental rights in s. 39.806(1)(f)-(i).

213 ~~7.6-~~ That the department has made reasonable efforts to  
214 keep siblings together if they are removed and placed in out-of-  
215 home care unless such placement is not in the best interest of  
216 each child. It is preferred that siblings be kept together in a  
217 foster home, if available. Other reasonable efforts shall  
218 include short-term placement in a group home with the ability to  
219 accommodate sibling groups if such a placement is available. The  
220 department shall report to the court its efforts to place  
221 siblings together unless the court finds that such placement is  
222 not in the best interest of a child or his or her sibling.

223 ~~8.7-~~ That the court notified the parents, relatives that  
224 are providing out-of-home care for the child, or legal  
225 custodians of the time, date, and location of the next  
226 dependency hearing and of the importance of the active  
227 participation of the parents, relatives that are providing out-  
228 of-home care for the child, or legal custodians in all  
229 proceedings and hearings.

230 ~~9.8-~~ That the court notified the parents or legal  
231 custodians of their right to counsel to represent them at the  
232 shelter hearing and at each subsequent hearing or proceeding,



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233 and the right of the parents to appointed counsel, pursuant to  
234 the procedures set forth in s. 39.013.

235 ~~10.9-~~ That the court notified relatives who are providing  
236 out-of-home care for a child as a result of the shelter petition  
237 being granted that they have the right to attend all subsequent  
238 hearings, to submit reports to the court, and to speak to the  
239 court regarding the child, if they so desire.

240 Section 4. Paragraph (d) of subsection (1) of section  
241 39.521, Florida Statutes, is amended to read:

242 39.521 Disposition hearings; powers of disposition.-

243 (1) A disposition hearing shall be conducted by the court,  
244 if the court finds that the facts alleged in the petition for  
245 dependency were proven in the adjudicatory hearing, or if the  
246 parents or legal custodians have consented to the finding of  
247 dependency or admitted the allegations in the petition, have  
248 failed to appear for the arraignment hearing after proper  
249 notice, or have not been located despite a diligent search  
250 having been conducted.

251 (d) The court shall, in its written order of disposition,  
252 include all of the following:

253 1. The placement or custody of the child, including whether  
254 the placement is in the least restrictive and most family-like  
255 setting that meets the needs of the child, as determined by  
256 assessments completed pursuant to s. 409.143.

257 2. Special conditions of placement and visitation.

258 3. Evaluation, counseling, treatment activities, and other  
259 actions to be taken by the parties, if ordered.

260 4. The persons or entities responsible for supervising or  
261 monitoring services to the child and parent.

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262 5. Continuation or discharge of the guardian ad litem, as  
263 appropriate.

264 6. The date, time, and location of the next scheduled  
265 review hearing, which must occur within the earlier of:  
266 a. Ninety days after the disposition hearing;  
267 b. Ninety days after the court accepts the case plan;  
268 c. Six months after the date of the last review hearing; or  
269 d. Six months after the date of the child's removal from  
270 his or her home, if no review hearing has been held since the  
271 child's removal from the home.

272 7. If the child is in an out-of-home placement, child  
273 support to be paid by the parents, or the guardian of the  
274 child's estate if possessed of assets which under law may be  
275 disbursed for the care, support, and maintenance of the child.  
276 The court may exercise jurisdiction over all child support  
277 matters, shall adjudicate the financial obligation, including  
278 health insurance, of the child's parents or guardian, and shall  
279 enforce the financial obligation as provided in chapter 61. The  
280 state's child support enforcement agency shall enforce child  
281 support orders under this section in the same manner as child  
282 support orders under chapter 61. Placement of the child shall  
283 not be contingent upon issuance of a support order.

284 8.a. If the court does not commit the child to the  
285 temporary legal custody of an adult relative, legal custodian,  
286 or other adult approved by the court, the disposition order  
287 shall include the reasons for such a decision and shall include  
288 a determination as to whether diligent efforts were made by the  
289 department to locate an adult relative, legal custodian, or  
290 other adult willing to care for the child in order to present

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291 that placement option to the court instead of placement with the  
292 department.

293 b. If no suitable relative is found and the child is placed  
294 with the department or a legal custodian or other adult approved  
295 by the court, both the department and the court shall consider  
296 transferring temporary legal custody to an adult relative  
297 approved by the court at a later date, but neither the  
298 department nor the court is obligated to so place the child if  
299 it is in the child's best interest to remain in the current  
300 placement.

301  
302 For the purposes of this section, "diligent efforts to locate an  
303 adult relative" means a search similar to the diligent search  
304 for a parent, but without the continuing obligation to search  
305 after an initial adequate search is completed.

306 9. Other requirements necessary to protect the health,  
307 safety, and well-being of the child, to preserve the stability  
308 of the child's educational placement, and to promote family  
309 preservation or reunification whenever possible.

310 Section 5. Subsection (2) of section 39.522, Florida  
311 Statutes, is amended to read:

312 39.522 Postdisposition change of custody.—The court may  
313 change the temporary legal custody or the conditions of  
314 protective supervision at a postdisposition hearing, without the  
315 necessity of another adjudicatory hearing.

316 (2) In cases where the issue before the court is whether a  
317 child should be reunited with a parent, the court shall  
318 determine whether the circumstances that caused the out-of-home  
319 placement have been remedied ~~parent has substantially complied~~

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320 ~~with the terms of the case plan to the extent that the return of~~  
321 ~~the child to the home with an in-home safety plan will not be~~  
322 ~~detrimental to the child's safety, well-being, and physical,~~  
323 ~~mental, and emotional health of the child is not endangered by~~  
324 ~~the return of the child to the home.~~

325 Section 6. Section 39.6011, Florida Statutes, is amended to  
326 read:

327 (Substantial rewording of section. See  
328 s. 39.6011, F.S., for present text.)

329 39.6011 Case plan purpose; requirements; procedures.—

330 (1) PURPOSE.—The purpose of the case plan is to promote and  
331 facilitate change in parental behavior and to address the  
332 treatment and long-term well-being of children receiving  
333 services under this chapter.

334 (2) GENERAL REQUIREMENTS.—The department shall draft a case  
335 plan for each child receiving services under this chapter. The  
336 case plan must:

337 (a) Document that a preplacement assessment of the service  
338 needs of the child and family, and preplacement preventive  
339 services, if appropriate, have been provided pursuant to s.  
340 409.142, and that reasonable efforts to prevent out-of-home  
341 placement have been made.

342 (b) Be developed in a face-to-face conference with the  
343 parent of the child, any court-appointed guardian ad litem, the  
344 child's attorney, and, if appropriate, the temporary custodian  
345 of the child. The parent may receive assistance from any person  
346 or social service agency in preparing the case plan. The social  
347 service agency, the department, and the court, when applicable,  
348 shall inform the parent of the right to receive such assistance,

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349 including the right to assistance of counsel.

350 (c) Be written simply and clearly in English and, if  
 351 English is not the principal language of the child's parent, in  
 352 the parent's principal language, to the extent practicable.

353 (d) Describe a process for making available to all physical  
 354 custodians and family services counselors the information  
 355 required by s. 39.6012(2) and for ensuring that this information  
 356 follows the child until permanency has been achieved.

357 (e) Specify the period of time for which the case plan is  
 358 applicable, which must be as short a period as possible for the  
 359 parent to comply with the terms of the plan. The case plan's  
 360 compliance period expires no later than 12 months after the date  
 361 the child was initially removed from the home, the date the  
 362 child is adjudicated dependent, or the date the case plan is  
 363 accepted by the court, whichever occurs first.

364 (f) Be signed by all of the parties. Signing the case plan  
 365 constitutes an acknowledgment by each of the parties that they  
 366 have been involved in the development of the case plan and that  
 367 they are in agreement with the terms and conditions contained in  
 368 the case plan. The refusal of a parent to sign the case plan  
 369 does not preclude the court's acceptance of the case plan if it  
 370 is otherwise acceptable to the court. The parent's signing of  
 371 the case plan does not constitute an admission to any allegation  
 372 of abuse, abandonment, or neglect and does not constitute  
 373 consent to a finding of dependency or termination of parental  
 374 rights. The department shall explain the provisions of the case  
 375 plan to all persons involved in its implementation, before the  
 376 signing of the plan.

377 (3) PARTICIPATION BY THE CHILD.—It is important that the

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378 child be involved in all aspects of the case planning process,  
 379 including development of the plan, as well as the opportunity to  
 380 review, sign, and receive a copy of the case plan. The child may  
 381 not be included in any aspect of the case planning process when  
 382 information will be revealed or discussed that is of a nature  
 383 that would best be presented to the child in a more therapeutic  
 384 setting. The child, when the child has attained 14 years of age  
 385 or the child is otherwise at the appropriate age and capacity,  
 386 must:

387 (a) Be included in the face-to-face conference to develop  
 388 the plan under this section, have the opportunity to express a  
 389 placement preference, and have the option to choose two members  
 390 of the case planning team who are not a foster parent or  
 391 caseworker for the child.

392 (b) Sign the case plan, unless there is reason to waive the  
 393 child's signature.

394 (c) Receive an explanation of the provisions of the case  
 395 plan from the department.

396 (d) Be provided a copy of the case plan:

397 1. After the case plan has been agreed upon and signed; and  
 398 2. Within 3 business days before the disposition hearing  
 399 after jurisdiction attaches and the plan has been filed with the  
 400 court.

401 (4) NOTICE TO PARENTS.—The case plan must document that  
 402 each parent has been advised of the following by written notice:

403 (a) That he or she may not be coerced or threatened with  
 404 the loss of custody or parental rights for failing to admit the  
 405 abuse, neglect, or abandonment of the child in the case plan.

406 Participation in the development of a case plan is not an

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407 admission to any allegation of abuse, abandonment, or neglect  
 408 and does not constitute consent to a finding of dependency or  
 409 termination of parental rights.

410 (b) That the department must document a parent's  
 411 unwillingness or inability to participate in developing a case  
 412 plan and provide such documentation in writing to the parent  
 413 when it becomes available for the court record. In such event,  
 414 the department will prepare a case plan that, to the extent  
 415 possible, conforms with the requirements of this section. The  
 416 parent must also be advised that his or her unwillingness or  
 417 inability to participate in developing a case plan does not  
 418 preclude the filing of a petition for dependency or for  
 419 termination of parental rights. If the parent is available, the  
 420 department shall provide a copy of the case plan to the parent  
 421 and advise him or her that, at any time before the filing of a  
 422 petition for termination of parental rights, he or she may enter  
 423 into a case plan and that he or she may request judicial review  
 424 of any provision of the case plan with which he or she disagrees  
 425 at any court hearing set for the child.

426 (c) That his or her failure to substantially comply with  
 427 the case plan may result in the termination of parental rights,  
 428 and that a material breach of the case plan may result in the  
 429 filing of a petition for termination of parental rights before  
 430 the scheduled completion date.

431 (5) DISTRIBUTION AND FILING WITH THE COURT.—The department  
 432 shall adhere to the following procedural requirements in  
 433 developing and distributing a case plan:

434 (a) After the case plan has been agreed upon and signed by  
 435 the parties, a copy of the case plan must immediately be given

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436 to the parties and to other persons, as directed by the court.

437 (b) In each case in which a child has been placed in out-  
 438 of-home care, a case plan must be prepared within 60 days after  
 439 the department removes the child from the home and must be  
 440 submitted to the court for review and approval before the  
 441 disposition hearing.

442 (c) After jurisdiction attaches, all case plans must be  
 443 filed with the court, and a copy provided to all of the parties  
 444 whose whereabouts are known not less than 3 business days before  
 445 the disposition hearing. The department shall file with the  
 446 court and provide copies of such to all of the parties, all case  
 447 plans prepared before jurisdiction of the court attached.

448 (d) A case plan must be prepared, but need not be submitted  
 449 to the court, for a child who will be in care for 30 days or  
 450 less unless that child is placed in out-of-home care for a  
 451 second time within a 12-month period.

452 Section 7. Section 39.6012, Florida Statutes, is amended to  
 453 read:

454 (Substantial rewording of section. See  
 455 s. 39.6012, F.S., for present text.)

456 39.6012 Services and parental tasks under the case plan;  
 457 safety, permanency, and well-being of the child.—The case plan  
 458 must include a description of the identified problem that is  
 459 being addressed, including the parent's behavior or acts that  
 460 have resulted in a threat to the safety of the child and the  
 461 reason for the department's intervention. The case plan must be  
 462 designed to improve conditions in the child's home to facilitate  
 463 the child's safe return and ensure proper care of the child, or  
 464 to facilitate the child's permanent placement. The services

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465 offered must be as unobtrusive as possible in the lives of the  
 466 parent and the child, must focus on clearly defined objectives,  
 467 and must provide the most timely and efficient path to  
 468 reunification or permanent placement, given the circumstances of  
 469 the case and the child's need for safe and proper care.

470 (1) CASE PLAN SERVICES AND TASKS.—The case plan must be  
 471 based upon an assessment of the circumstances that required  
 472 intervention by the child welfare system. The case plan must  
 473 describe the role of the foster parents or legal custodians, and  
 474 must be developed in conjunction with the determination of the  
 475 services that are to be provided under the case plan to the  
 476 child, foster parents, or legal custodians. If a parent's  
 477 substantial compliance with the case plan requires the  
 478 department to provide services to the parent or the child and  
 479 the parent agrees to begin compliance with the case plan before  
 480 it is accepted by the court, the department shall make  
 481 appropriate referrals for services which will allow the parent  
 482 to immediately begin the agreed-upon tasks and services.

483 (a) Itemization in the case plan.—The case plan must  
 484 describe each of the tasks which the parent must complete and  
 485 the services that will be provided to the parent, in the context  
 486 of the identified problem, including:

487 1. The type of services or treatment which will be  
 488 provided.

489 2. If the service is being provided by the department or  
 490 its agent, the date the department will provide each service or  
 491 referral for service.

492 3. The date by which the parent must complete each task.

493 4. The frequency of services or treatment to be provided,

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494 which shall be determined by the professionals providing the  
 495 services and may be adjusted as needed based on the best  
 496 professional judgment of the provider.

497 5. The location of the delivery of the services.

498 6. Identification of the staff of the department or the  
 499 service provider who are responsible for the delivery of  
 500 services or treatment.

501 7. A description of measurable outcomes, including the  
 502 timeframes specified for achieving the objectives of the case  
 503 plan and addressing the identified problem.

504 (b) Meetings with case manager.—The case plan must include  
 505 a schedule of the minimum number of face-to-face meetings to be  
 506 held each month between the parent and the case manager to  
 507 review the progress of the case plan, eliminate barriers to  
 508 completion of the plan, and resolve conflicts or disagreements.

509 (c) Request for notification from relative.—The case  
 510 manager shall advise the attorney for the department of a  
 511 relative's request to receive notification of proceedings and  
 512 hearings submitted pursuant to s. 39.301(14)(b).

513 (d) Financial support.—The case plan must specify the  
 514 parent's responsibility for the financial support of the child,  
 515 including, but not limited to, health insurance and child  
 516 support. The case plan must list the costs associated with any  
 517 services or treatment that the parent and child are expected to  
 518 receive which are the financial responsibility of the parent.  
 519 The determination of child support and other financial support  
 520 must be made independently of any determination of dependency  
 521 under s. 39.013.

522 (2) SAFETY, PERMANENCY, AND WELL-BEING OF THE CHILD.—The

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523 case plan must include all available information that is  
 524 relevant to the child's care, including a detailed description  
 525 of the identified needs of the child while in care and a  
 526 description of the plan for ensuring that the child receives  
 527 safe and proper care that is appropriate to his or her needs.  
 528 Participation by the child must meet the requirements under s.  
 529 39.6011.

530 (a) Placement.—To comply with federal law, the department  
 531 must ensure that the placement of a child in foster care be in  
 532 the least restrictive, most family-like environment; must review  
 533 the family assessment, safety plan, and case plan for the child  
 534 to assess the necessity for and the appropriateness of the  
 535 placement; must assess the progress that has been made toward  
 536 case plan outcomes; and must project a likely date by which the  
 537 child can be safely reunified or placed for adoption or legal  
 538 guardianship. The family assessment must indicate the type of  
 539 placement to which the child has been assigned and must document  
 540 the following:

541 1. That the child has undergone the placement assessments  
 542 required pursuant to s. 409.143.

543 2. That the child has been placed in the least restrictive  
 544 and most family-like setting available consistent with the best  
 545 interest and special needs of the child, and in as close  
 546 proximity as possible to the child's home.

547 3. If the child is placed in a setting that is more  
 548 restrictive than recommended by the placement assessments or is  
 549 placed more than 50 miles from the child's home, the reasons why  
 550 the placement is necessary and in the best interest of the child  
 551 and the steps required to place the child in the placement

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552 recommended by the assessment.

553 4. If residential group care is recommended for the child,  
 554 the needs of the child which necessitate such placement, the  
 555 plan for transitioning the child to a family setting, and the  
 556 projected timeline for the child's transition to a less  
 557 restrictive environment. If the child is placed in residential  
 558 group care, his or her case plan shall be reviewed and updated  
 559 within 90 days after the child's admission to the residential  
 560 group care facility and at least every 60 days thereafter.

561 (b) Permanency.—If reunifying a child with his or her  
 562 family is not possible, the department shall make every effort  
 563 to provide other forms of permanency, such as adoption or  
 564 guardianship. If a child is placed in an out-of-home placement,  
 565 the case plan, in addition to any other requirements imposed by  
 566 law or department rule, must include:

567 1. If concurrent planning is being used, a description of  
 568 the permanency goal of reunification with the parent or legal  
 569 custodian and a description of one of the remaining permanency  
 570 goals defined in s. 39.01; or, if concurrent case planning is  
 571 not being used, an explanation as to why it is not being used.

572 2. If the case plan has as its goal the adoption of the  
 573 child or his or her placement in another permanent home, a  
 574 statement of the child's wishes regarding his or her permanent  
 575 placement plan and an assessment of those stated wishes. The  
 576 case plan must also include documentation of the steps the  
 577 agency is taking to find an adoptive family or other permanent  
 578 living arrangements for the child; to place the child with an  
 579 adoptive family, an appropriate and willing relative, or a legal  
 580 guardian; and to finalize the adoption or legal guardianship. At

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581 a minimum, the documentation must include child-specific  
 582 recruitment efforts, such as the use of state, regional, and  
 583 national adoption exchanges, including electronic exchange  
 584 systems, after he or she has become legally eligible for  
 585 adoption.

586 3. If the child has been in out-of-home care for at least  
 587 12 months and the permanency goal is not adoptive placement, the  
 588 documentation of the compelling reason for a finding that  
 589 termination of parental rights is not in the child's best  
 590 interest.

591 (c) Education.—A case plan must ensure the educational  
 592 stability of the child while in foster care. To the extent  
 593 available and accessible, the names and addresses of the child's  
 594 educational providers, a record of his or her grade level  
 595 performance, and his or her school record must be attached to  
 596 the case plan and updated throughout the judicial review  
 597 process. The case plan must also include documentation that the  
 598 placement:

599 1. Takes into account the appropriateness of the current  
 600 educational setting and the proximity to the school in which the  
 601 child is enrolled at the time of placement.

602 2. Has been coordinated with appropriate local educational  
 603 agencies to ensure that the child remains in the school in which  
 604 the child is enrolled at the time of placement, or, if remaining  
 605 in that school is not in the best interest of the child,  
 606 assurances by the department and the local education agency to  
 607 provide immediate and appropriate enrollment in a new school and  
 608 to provide all of the child's educational records to the new  
 609 school.

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610 (d) Health care.—To the extent that they are available and  
 611 accessible, the names and addresses of the child's health and  
 612 behavioral health providers, a record of the child's  
 613 immunizations, the child's known medical history, including any  
 614 known health issues, the child's medications, and any other  
 615 relevant health and behavioral health information must be  
 616 attached to the case plan and updated throughout the judicial  
 617 review process.

618 (e) Contact with family, extended family, and fictive kin.—  
 619 When out-of-home placement is made, the case plan must include  
 620 provisions for the development and maintenance of sibling  
 621 relationships and visitation, if the child has siblings and is  
 622 separated from them, a description of the parent's visitation  
 623 rights and obligations, and a description of any visitation  
 624 rights with extended family members as defined in s. 751.011. As  
 625 used in this paragraph, the term "fictive kin" means individuals  
 626 who are unrelated to the child by either birth or marriage, but  
 627 who have an emotionally significant relationship with the child  
 628 that would take on the characteristics of a family relationship.  
 629 As soon as possible after a court order is entered, the  
 630 following must be provided to the child's out-of-home caregiver:

631 1. Information regarding any court-ordered visitation  
 632 between the child and the parents, and the terms and conditions  
 633 necessary to facilitate such visits and protect the safety of  
 634 the child.

635 2. Information regarding the schedule and frequency of the  
 636 visits between the child and his or her siblings, as well as any  
 637 court-ordered terms and conditions necessary to facilitate the  
 638 visits and protect the safety of the child.

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639 3. Information regarding the schedule and frequency of the  
 640 visits between the child and any extended family member or  
 641 fictive kin, as well as any court-ordered terms and conditions  
 642 necessary to facilitate the visits and protect the safety of the  
 643 child.

644 (f) Independent living.-

645 1. When appropriate, the case plan for a child who is 13  
 646 years of age or older, must include a written description of the  
 647 life skills services to be provided by the caregiver which will  
 648 assist the child, consistent with his or her best interests, in  
 649 preparing for the transition from foster care to independent  
 650 living. The case plan must be developed with the child and  
 651 individuals identified as important to the child, and must  
 652 include the steps the agency is taking to ensure that the child  
 653 has a connection with a caring adult.

654 2. During the 180-day period after a child reaches 17 years  
 655 of age, the department and the community-based care provider, in  
 656 collaboration with the caregiver and any other individual whom  
 657 the child would like to include, shall assist the child in  
 658 developing a transition plan pursuant to s. 39.6035, which is in  
 659 addition to standard case management requirements. The  
 660 transition plan must address specific options that the child may  
 661 use in obtaining services, including housing, health insurance,  
 662 education, and workforce support and employment services. The  
 663 transition plan must also consider establishing and maintaining  
 664 naturally occurring mentoring relationships and other personal  
 665 support services. The transition plan may be as detailed as the  
 666 child chooses and must be attached to the case plan and updated  
 667 before each judicial review.

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668 Section 8. Subsection (4) of section 39.6035, Florida  
 669 Statutes, is amended to read:

670 39.6035 Transition plan.-

671 ~~(4) If a child is planning to leave care upon reaching 18~~  
 672 ~~years of age, The transition plan must be approved by the court~~  
 673 ~~before the child's 18th birthday child leaves care and the court~~  
 674 ~~terminates jurisdiction.~~

675 Section 9. Subsection (2) of section 39.621, Florida  
 676 Statutes, is amended, present subsections (3) through (11) of  
 677 that section are redesignated as subsections (4) through (12),  
 678 respectively, and a new subsection (3) is added to that section,  
 679 to read:

680 39.621 Permanency determination by the court.-

681 (2) Except as provided in subsection (3), the permanency  
 682 goals available under this chapter, listed in order of  
 683 preference, are:

684 (a) Reunification;

685 (b) Adoption, if a petition for termination of parental  
 686 rights has been or will be filed;

687 (c) Permanent guardianship of a dependent child under s.  
 688 39.6221; or

689 ~~(d) Permanent placement with a fit and willing relative~~  
 690 ~~under s. 39.6231; or~~

691 ~~(d)(e)~~ Placement in another planned permanent living  
 692 arrangement under s. 39.6241.

693 (3) The permanency goal of maintaining and strengthening  
 694 the placement with a parent may be used in the following  
 695 circumstances:

696 (a) If a child has not been removed from a parent but is

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697 found to be dependent, even if adjudication of dependency is  
 698 withheld, the court may leave the child in the current placement  
 699 with maintaining and strengthening the placement as a permanency  
 700 option.

701 (b) If a child has been removed from a parent and is placed  
 702 with the parent from whom the child was not removed, the court  
 703 may leave the child in the placement with the parent from whom  
 704 the child was not removed with maintaining and strengthening the  
 705 placement as a permanency option.

706 (c) If a child has been removed from a parent and is  
 707 subsequently reunified with that parent, the court may leave the  
 708 child with that parent with maintaining and strengthening the  
 709 placement as a permanency option.

710 Section 10. Paragraphs (a) and (d) of subsection (2) of  
 711 section 39.701, Florida Statutes, are amended to read:

712 39.701 Judicial review.—

713 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF  
 714 AGE.—

715 (a) *Social study report for judicial review.*—Before every  
 716 judicial review hearing or citizen review panel hearing, the  
 717 social service agency shall make an investigation and social  
 718 study concerning all pertinent details relating to the child and  
 719 shall furnish to the court or citizen review panel a written  
 720 report that includes, but is not limited to:

721 1. A description of the type of placement the child is in  
 722 at the time of the hearing, including the safety of the child,  
 723 ~~and the continuing necessity for and appropriateness of the~~  
 724 placement, and that the placement is in the least restrictive  
 725 and most family-like setting that meets the needs of the child

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726 as determined by the assessment completed pursuant to s.  
 727 409.143.

728 2. Documentation of the diligent efforts made by all  
 729 parties to the case plan to comply with each applicable  
 730 provision of the case plan.

731 3. The amount of fees assessed and collected during the  
 732 period of time being reported.

733 4. The services provided to the foster family or legal  
 734 custodian in an effort to address the needs of the child as  
 735 indicated in the case plan.

736 5. A statement that either:

737 a. The parent, though able to do so, did not comply  
 738 substantially with the case plan, and the agency  
 739 recommendations;

740 b. The parent did substantially comply with the case plan;  
 741 or

742 c. The parent has partially complied with the case plan,  
 743 with a summary of additional progress needed and the agency  
 744 recommendations.

745 6. A statement from the foster parent or legal custodian  
 746 providing any material evidence concerning the return of the  
 747 child to the parent or parents.

748 7. A statement concerning the frequency, duration, and  
 749 results of the parent-child visitation, if any, and the agency  
 750 recommendations for an expansion or restriction of future  
 751 visitation.

752 8. The number of times a child has been removed from his or  
 753 her home and placed elsewhere, the number and types of  
 754 placements that have occurred, and the reason for the changes in

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755 placement.

756 9. The number of times a child's educational placement has  
757 been changed, the number and types of educational placements  
758 which have occurred, and the reason for any change in placement.

759 10. If the child has reached 13 years of age but is not yet  
760 18 years of age, a statement from the caregiver on the progress  
761 the child has made in acquiring independent living skills.

762 11. Copies of all medical, psychological, and educational  
763 records that support the terms of the case plan and that have  
764 been produced concerning the parents or any caregiver since the  
765 last judicial review hearing.

766 12. Copies of the child's current health, mental health,  
767 and education records as identified in s. 39.6012.

768 (d) Orders.—

769 1. Based upon the criteria ~~set forth~~ in paragraph (c) and  
770 the recommended order of the citizen review panel, if any, the  
771 court shall determine whether ~~or not~~ the social service agency  
772 shall initiate proceedings to have a child declared a dependent  
773 child, return the child to the parent, continue the child in  
774 out-of-home care for a specified period of time, or initiate  
775 termination of parental rights proceedings for subsequent  
776 placement in an adoptive home. Amendments to the case plan must  
777 be prepared as prescribed in s. 39.6013. If the court finds that  
778 ~~the prevention or reunification efforts of the department will~~  
779 ~~allow the child can safely to remain in the safely at home with~~  
780 ~~an in-home safety plan or be safely returned to the home,~~ the  
781 court shall allow the child to remain in ~~or return to~~ the home  
782 ~~after making a specific finding of fact that the reasons for the~~  
783 ~~creation of the case plan have been remedied to the extent that~~

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784 ~~the child's safety, well-being, and physical, mental, and~~  
785 ~~emotional health will not be endangered.~~

786 2. The court shall return the child to the custody of the  
787 parents with an in-home safety plan at any time it determines  
788 that they have met conditions for return ~~substantially complied~~  
789 ~~with the case plan,~~ and if the court is satisfied that return of  
790 the child to the home reunification will not be detrimental to  
791 the child's safety, well-being, and physical, mental, and  
792 emotional health.

793 3. If, in the opinion of the court, the social service  
794 agency has not complied with its obligations as specified in the  
795 written case plan, the court may find the social service agency  
796 in contempt, shall order the social service agency to submit its  
797 plans for compliance with the agreement, and shall require the  
798 social service agency to show why the child could not safely be  
799 returned to the home of the parents.

800 4. If possible, the court shall order the department to  
801 file a written notification before a child changes placements or  
802 living arrangements. If such notification is not possible before  
803 the change, the department must file a notification immediately  
804 after a change. A written notification filed with the court must  
805 include assurances from the department that the provisions of s.  
806 409.145 and administrative rule relating to placement changes  
807 have been met.

808 ~~5.4-~~ If, at any judicial review, the court finds that the  
809 parents have failed to substantially comply with the case plan  
810 to the degree that further reunification efforts are without  
811 merit and not in the best interest of the child, on its own  
812 motion, the court may order the filing of a petition for

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813 termination of parental rights, whether or not the time period  
814 as contained in the case plan for substantial compliance has  
815 expired.

816 ~~6.5-~~ Within 6 months after the date that the child was  
817 placed in shelter care, the court shall conduct a judicial  
818 review hearing to review the child's permanency goal as  
819 identified in the case plan. At the hearing the court shall make  
820 findings regarding the likelihood of the child's reunification  
821 with the parent or legal custodian within 12 months after the  
822 removal of the child from the home. If the court makes a written  
823 finding that it is not likely that the child will be reunified  
824 with the parent or legal custodian within 12 months after the  
825 child was removed from the home, the department must file with  
826 the court, and serve on all parties, a motion to amend the case  
827 plan under s. 39.6013 and declare that it will use concurrent  
828 planning for the case plan. The department must file the motion  
829 within 10 business days after receiving the written finding of  
830 the court. The department must attach the proposed amended case  
831 plan to the motion. If concurrent planning is already being  
832 used, the case plan must document the efforts the department is  
833 taking to complete the concurrent goal.

834 ~~7.6-~~ The court may issue a protective order in assistance,  
835 or as a condition, of any other order made under this part. In  
836 addition to the requirements included in the case plan, the  
837 protective order may set forth requirements relating to  
838 reasonable conditions of behavior to be observed for a specified  
839 period of time by a person or agency who is before the court;  
840 and the order may require any person or agency to make periodic  
841 reports to the court containing such information as the court in

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842 its discretion may prescribe.

843 Section 11. Section 409.142, Florida Statutes, is created  
844 to read:

845 409.142 Intervention services for unsafe children.-

846 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds  
847 that intervention services and supports are designed to  
848 strengthen and support families in order to keep them safely  
849 together and to prevent children from entering foster care.  
850 Therefore, it is the intent of the Legislature for the  
851 department to identify evidence-based intervention programs that  
852 remedy child abuse and neglect, reduce the likelihood of foster  
853 care placement by supporting parents and relative or nonrelative  
854 caregivers, increase family reunification with parents or other  
855 relatives, and promote placement stability for children living  
856 with relatives or nonrelative caregivers.

857 (2) DEFINITION.-As used in this section the term  
858 "Intervention services and supports" means assistance provided  
859 to a child or to the parents or relative and nonrelative  
860 caregivers of a child determined by a child protection  
861 investigation to be in present or impending danger.

862 (3) SERVICES AND SUPPORTS.-Intervention services and  
863 supports that shall be made available to eligible individuals  
864 include, but are not limited to:

865 (a) Safety management services provided to unsafe children  
866 which immediately and actively protect the child from dangerous  
867 threats if the parent or other caregiver cannot, as part of a  
868 safety plan.

869 (b) Parenting skills training, including parent advocates,  
870 peer-to-peer mentoring, and support groups for parents and

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871 relative caregivers.872 (c) Individual, group, and family counseling, mentoring,  
873 and therapy.874 (d) Behavioral health care needs, domestic violence, and  
875 substance abuse services.876 (e) Crisis assistance or services to stabilize families in  
877 times of crisis or to facilitate relative placement, such as  
878 transportation, clothing, household goods, assistance with  
879 housing and utility payments, child care, respite care, and  
880 assistance connecting families with other community-based  
881 services.882 (4) ELIGIBILITY FOR SERVICES.—The following individuals are  
883 eligible for services and supports under this section:884 (a) A child who is unsafe but can remain safely at home or  
885 in a relative or nonrelative placement with receipt of specified  
886 services and supports.887 (b) A parent or relative caregiver of an unsafe child.888 (5) GENERAL REQUIREMENTS.—The community-based care lead  
889 agency shall prepare a case plan for each child and his or her  
890 family receiving services and support under this section which  
891 includes:892 (a) The safety services and supports necessary to prevent  
893 the child's entry into foster care.894 (b) The services and supports that will enable the child to  
895 return home with an in-home safety plan.896 (6) ASSESSMENT AND REPORTING.—897 (a) By October 1, 2016, each community-based care lead  
898 agency shall submit a monitoring plan to the department  
899 describing how the lead agency will monitor and oversee the

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900 safety of children who receive intervention services and  
901 supports. The monitoring plan shall include a description of  
902 training and support for caseworkers handling intervention  
903 cases, including how caseload size and type will be determined,  
904 managed, and overseen.905 (b) Beginning October 1, 2016, each community-based care  
906 lead agency shall collect and report annually to the department,  
907 as part of the child welfare Results Oriented Accountability  
908 Program required under s. 409.997, the following with respect to  
909 each child for whom, or on whose behalf, intervention services  
910 and supports are provided during a 12-month period:911 1. The number of children and families served;912 2. The specific services provided and the total  
913 expenditures for each such service;914 3. The child's placement status at the beginning and at the  
915 end of the period; and916 4. The child's placement status 1 year after the end of the  
917 period.918 (c) Outcomes for this subsection shall be included in the  
919 annual report required under s. 409.997.920 (7) RULEMAKING.—The department shall adopt rules to  
921 administer this section.922 Section 12. Section 409.143, Florida Statutes, is created  
923 to read:924 409.143 Assessment and determination of appropriate  
925 placement.—926 (1) LEGISLATIVE FINDINGS AND INTENT.—927 (a) The Legislature finds that it is a basic tenet of child  
928 welfare practice and the law that children be placed in the

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929 least restrictive, most family-like setting available in close  
 930 proximity to the home of their parents, consistent with the best  
 931 interests and needs of the child, and that children be placed in  
 932 permanent homes in a timely manner.

933 (b) The Legislature also finds that behavior problems can  
 934 create difficulties in a child's placement and ultimately lead  
 935 to multiple placements, which have been linked to negative  
 936 outcomes for children.

937 (c) The Legislature further finds that given the harm  
 938 associated with multiple placements, the ideal is connecting  
 939 children to the most appropriate setting at the time they come  
 940 into care.

941 (d) Therefore, it is the intent of the Legislature that  
 942 through the use of a standardized assessment process and the  
 943 availability of an adequate array of appropriate placement  
 944 options, that the first placement be the best placement for  
 945 every child entering care.

946 (2) DEFINITIONS.—As used in this section, the term:

947 (a) "Child functioning level" means specific categories of  
 948 child behaviors and needs.

949 (b) "Comprehensive behavioral health assessment" means an  
 950 in-depth and detailed assessment of the child's emotional,  
 951 social, behavioral, and developmental functioning within the  
 952 family home, school, and community that must include direct  
 953 observation of the child in the home, school, and community, as  
 954 well as in the clinical setting.

955 (c) "Level of care" means a tiered approach to the types of  
 956 placement used and the acuity and intensity of intervention  
 957 services provided to meet the severity of a dependent child's

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958 specific physical, emotional, psychological, and social needs.

959 (3) INITIAL PLACEMENT ASSESSMENT.—

960 (a) Each child that has been determined by the department,  
 961 a sheriff's office conducting protective investigations, or a  
 962 community-based care provider to require an out-of-home  
 963 placement must be assessed prior to placement selection to  
 964 determine the best placement option to meet the child's  
 965 immediate and ongoing intervention and services and supports  
 966 needs. The department shall develop and adopt by rule a  
 967 preplacement assessment tool, which must include an analysis  
 968 based on information available to the department at the time of  
 969 the assessment, of the child's age, maturity level, known  
 970 behavioral health diagnosis, behaviors, prior placement  
 971 arrangements, physical and medical needs, and educational  
 972 commitments.

973 (b) If it is determined during the preplacement evaluation  
 974 that a child may be suitable for residential treatment as  
 975 defined in s. 39.407, the procedures in that section must be  
 976 followed.

977 (c) A decision to place a child in group care with a  
 978 residential child care agency may not be made by any individual  
 979 or entity who has an actual or perceived conflict of interest  
 980 with any agency being considered for placement.

981 (d) The department shall document initial placement  
 982 assessments in the Florida Safe Families Network.

983 (4) COMPREHENSIVE ASSESSMENT.—

984 (a) Each child placed in out-of-home care shall be referred  
 985 by the department for a comprehensive behavioral health  
 986 assessment. The comprehensive assessment is intended to support

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987 the family assessment, which will guide the case plan outcomes,  
 988 treatment, and well-being service provisions for a child in out-  
 989 of-home care, in addition to providing information to help  
 990 determine if the child's initial placement was the most  
 991 appropriate out-of-home care setting for the child.  
 992 (b) The referral for the comprehensive behavioral health  
 993 assessment shall be made within 7 calendars days of the child  
 994 entering out-of-home care.  
 995 (c) The comprehensive assessment will measure the strengths  
 996 and needs of the child and the services and supports that are  
 997 necessary to maintain the child in the least restrictive out-of-  
 998 home care setting. In developing the assessment, consideration  
 999 must be given to:  
 1000 1. Current and historical information from any  
 1001 psychological testing or evaluation of the child;  
 1002 2. Current behaviors exhibited by the child which interfere  
 1003 with or limit the child's role or ability to function in a less  
 1004 restrictive, family-like setting;  
 1005 3. Current and historical information from the guardian ad  
 1006 litem, if one has been appointed;  
 1007 4. Current and historical information from any current  
 1008 therapist, teacher, or other professional who has knowledge of  
 1009 the child or has worked with the child;  
 1010 5. Information related to the placement of any siblings of  
 1011 the child; and  
 1012 6. If the child has been moved more than once, the  
 1013 circumstances necessitating the moves and the recommendations of  
 1014 the former foster families or other caregivers, if available.  
 1015 (d) Completion of the comprehensive assessment must occur

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1016 within 30 calendar days after the child entering out-of-home  
 1017 care.  
 1018 (e) The department shall use the results of the  
 1019 comprehensive assessment and any additional information gathered  
 1020 to determine the child's functioning level and the level of care  
 1021 needed for continued placement.  
 1022 (f) Upon receipt of a child's completed comprehensive  
 1023 assessment, the child's case manager shall review the  
 1024 assessment, and document whether a less restrictive, more  
 1025 family-like setting for the child is recommended and available.  
 1026 The department shall document determinations resulting from the  
 1027 comprehensive assessment in the Florida Safe Families Network  
 1028 and update the case plan to include identified needs of the  
 1029 child, specified services and supports to be provided by the  
 1030 out-of-home care placement setting to meet the needs of the  
 1031 child, and diligent efforts to transition the child to a less  
 1032 restrictive, family-like setting.  
 1033 (5) PERMANENCY TEAMS.—The department or community-based  
 1034 care lead agency that places children pursuant to this section  
 1035 shall establish special permanency teams dedicated to overcoming  
 1036 the permanency challenges occurring for children in out-of-home  
 1037 care. The special permanency team shall convene a  
 1038 multidisciplinary staffing every 180 calendar days, to coincide  
 1039 with the judicial review, to reassess the appropriateness of the  
 1040 child's current placement. At a minimum, the staffing shall be  
 1041 attended by the community-based care lead agency, the caseworker  
 1042 for the child, out-of-home care provider, guardian ad litem, and  
 1043 any other agency or provider of services to the child. The  
 1044 multidisciplinary staffing shall consider, at a minimum, the

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1045 current level of the child's functioning, whether recommended  
 1046 services are being provided effectively, any services that would  
 1047 enable transition to a less restrictive family-like setting, and  
 1048 diligent search efforts to find other permanent living  
 1049 arrangements for the child.

1050 (6) ANNUAL REPORT.—By October 1 of each year, the  
 1051 department shall report to the Governor, the President of the  
 1052 Senate, and the Speaker of the House of Representatives on the  
 1053 placement of children in licensed out-of-home care, including  
 1054 family foster homes and residential group care, during the year.  
 1055 At a minimum, the report should include the number of children  
 1056 placed in family foster homes and residential group care, the  
 1057 number of children placed more than 50 miles from their parents,  
 1058 the number of children who had to change schools as a result of  
 1059 a placement decision; use of this form of placement on a local,  
 1060 regional, and statewide level; and the available services array  
 1061 to serve children in the least restrictive settings.

1062 Section 13. Section 409.144, Florida Statutes, is created  
 1063 to read:

1064 409.144 Continuum of care for children.—

1065 (1) LEGISLATIVE FINDINGS AND INTENT.—

1066 (a) The Legislature finds that permanency, well-being, and  
 1067 safety are critical goals for all children, especially for those  
 1068 in care, and that children in foster care or at risk of entering  
 1069 foster care are best supported through a continuum of care that  
 1070 provides appropriate ongoing services, supports and place to  
 1071 live from entry to exit.

1072 (b) The Legislature also finds that federal law requires  
 1073 that out-of-home placements for children are to be in the least

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1074 restrictive, most family-like setting available that is in close  
 1075 proximity to the home of their parents and consistent with the  
 1076 best interests and needs of the child, and that children be  
 1077 transitioned from out-of-home care to a permanent home in a  
 1078 timely manner.

1079 (c) The Legislature further finds that permanency can be  
 1080 achieved through preservation of the family, reunification with  
 1081 the birth family, or through legal guardianship or adoption by  
 1082 relatives or other caring and committed adults. Planning for  
 1083 permanency should begin at entry into care and should be child-  
 1084 driven, family-focused, culturally appropriate, continuous, and  
 1085 approached with the highest degree of urgency.

1086 (d) It is, therefore, the intent of the Legislature that  
 1087 the department and the larger child welfare community establish  
 1088 and maintain a continuum of care that affords every child the  
 1089 opportunity to benefit from the most appropriate and least  
 1090 restrictive interventions, both in or out of the home, while  
 1091 ensuring that well-being and safety are addressed.

1092 (2) DEFINITIONS.—As used in this section, the term:

1093 (a) "Continuum of care" means the complete range of  
 1094 programs and services for children served by, or at risk of  
 1095 being served by, the dependency system.

1096 (b) "Family foster care" means a family foster home as  
 1097 defined in s. 409.175.

1098 (c) "Level of care" means a tiered approach to the type of  
 1099 placements used and the acuity and intensity of intervention  
 1100 services provided to meet the severity of a dependent child's  
 1101 specific physical, emotional, psychological, and social needs.

1102 (d) "Out-of-home care" means the placement of a child in

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1103 licensed and nonlicensed settings, arranged and supervised by  
 1104 the department or contracted service provider, outside the home  
 1105 of the parent.

1106 (e) "Residential group care" means a 24-hour, live-in  
 1107 environment that provides supervision, care, and services to  
 1108 meet the physical, emotional, social, and life skills needs of  
 1109 children served by the dependency system. Services may be  
 1110 provided by residential group care staff who are qualified to  
 1111 perform the needed service or a community-based service provider  
 1112 with clinical expertise, credentials, and training to provide  
 1113 services to the children being served.

1114 (3) DEVELOPMENT OF CONTINUUM.—The department, in  
 1115 collaboration with the Florida Institute for Child Welfare, the  
 1116 Quality Parenting Initiative, and the Florida Coalition for  
 1117 Children, Inc., shall develop a continuum of care for the  
 1118 placement of children in care, including, but not limited to,  
 1119 both family foster care and residential group care. To implement  
 1120 the continuum of care, the department shall by December 31,  
 1121 2017:

1122 (a) Establish levels of care in the continuum which are  
 1123 clearly and concisely defined with the qualifying criteria for  
 1124 placement for each level identified.

1125 (b) Revise licensure standards and rules to reflect the  
 1126 supports and services provided by a placement at each level of  
 1127 care and the complexity of the needs of the children served.  
 1128 This must include attention to the need for a particular  
 1129 category of provider in a community before licensure can be  
 1130 considered; quality standards of operation that must be met by  
 1131 all licensed providers; numbers and qualifications of staff

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1132 which are adequate to effectively serve children with the issues  
 1133 the facility seeks to serve; and a well-defined process tied to  
 1134 specific criteria which leads to licensure suspension or  
 1135 revocation.

1136 (c) Develop policies and procedures necessary to ensure  
 1137 that placement in any level of care is appropriate for each  
 1138 specific child, is determined by the required assessments and  
 1139 staffing, and lasts only as long as necessary to resolve the  
 1140 issue that required the placement.

1141 (d) Develop a plan to recruit, train, and retain  
 1142 specialized family foster homes for pregnant and parenting  
 1143 children and young adults. These family foster homes must be  
 1144 designed to provide an out-of-home placement option for young  
 1145 parents and their children to enable them to live in the same  
 1146 family foster home while caring for their children and working  
 1147 toward independent care of the child.

1148 (e) Develop, in collaboration with the Department of  
 1149 Juvenile Justice, a plan to develop specialized out-of-home  
 1150 placements for children who are involved in both the dependency  
 1151 and the juvenile justice systems.

1152 (4) REPORTING REQUIREMENT.—The department shall submit a  
 1153 report to the Governor, the President of the Senate, and the  
 1154 Speaker of the House of Representatives by October 1 of each  
 1155 year, with the first report due October 1, 2016. At a minimum,  
 1156 the report must include the following:

1157 (a) An update on the development of the continuum of care  
 1158 required by this section.

1159 (b) An inventory of existing placements for children by  
 1160 type and by community-based care lead agency.



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1161 (c) An inventory of existing services available by  
 1162 community-based care lead agency and a plan for filling any  
 1163 identified gap, as well as a determination of what services are  
 1164 available that can be provided to children in family foster care  
 1165 without having to move the child to a more restrictive  
 1166 placement.

1167 (d) The strategies being used by community-based care lead  
 1168 agencies to recruit, train, and support an adequate number of  
 1169 families to provide home-based family care.

1170 (e) For every placement of a child made that is contrary to  
 1171 an appropriate placement as determined by the assessment process  
 1172 in s. 409.142, an explanation from the community-based care lead  
 1173 agency as to why the placement was made.

1174 (f) The strategies being used by the community-based care  
 1175 lead agencies to reduce the high percentage of turnover in  
 1176 caseworkers.

1177 (g) A plan for oversight by the department over the  
 1178 implementation of the continuum by the community-based care lead  
 1179 agencies.

1180 (5) RULEMAKING.—The department shall adopt rules to  
 1181 implement this section.

1182 Section 14. Subsection (3) of section 409.1451, Florida  
 1183 Statutes, is amended, and subsection (11) is added to that  
 1184 section, to read:

1185 409.1451 The Road-to-Independence Program.—

1186 (3) AFTERCARE SERVICES.—

1187 (a) Aftercare services are available to a young adult who  
 1188 was living in licensed care on his or her 18th birthday, who has  
 1189 reached 18 years of age but is not yet 23 years of age, and is:

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1190 1. Not in foster care.

1191 2. Temporarily not receiving financial assistance under  
 1192 subsection (2) to pursue postsecondary education.

1193 (11) EDUCATION AND TRAINING VOUCHERS.—The department shall  
 1194 make available education and training vouchers.

1195 (a) A child or young adult is eligible for services and  
 1196 support under this subsection if he or she is ineligible for  
 1197 services under subsection (2) and:

1198 1. Was living in licensed care on his or her 18th birthday,  
 1199 is currently living in licensed care, or is at least 16 years of  
 1200 age and has been adopted from foster care or placed with a  
 1201 court-approved dependency guardian.

1202 2. Has earned a standard high school diploma pursuant to s.  
 1203 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent  
 1204 as provided in s. 1003.435.

1205 3. Has been admitted for enrollment as a student in a  
 1206 postsecondary educational institution.

1207 4. Has made the initial application to participate before  
 1208 age 21 and is not yet 23 years of age.

1209 5. Has applied, with assistance from his or her caregiver  
 1210 and the community-based lead agency, for any other grants and  
 1211 scholarships for which he or she is qualified.

1212 6. Has submitted a Free Application for Federal Student Aid  
 1213 which is complete and error free.

1214 7. Has signed an agreement to allow the department and the  
 1215 community-based care lead agency access to school records.

1216 8. Has maintained satisfactory academic progress as  
 1217 determined by the postsecondary institution.

1218 (b) The voucher provided for an individual under this

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1219 subsection may not exceed the lesser of \$5,000 per year or the  
 1220 total cost of attendance as defined in 42 U.S.C. s. 672.

1221 (c) The department may adopt rules concerning the payment  
 1222 of financial assistance that considers the applicant's requests  
 1223 concerning disbursement. The rules must include an appeals  
 1224 process.

1225 Section 15. Subsection (3) of section 409.988, Florida  
 1226 Statutes, is amended to read:

1227 409.988 Lead agency duties; general provisions.-

1228 (3) SERVICES.-

1229 (a) A lead agency must provide dependent children with  
 1230 services that are supported by research or that are recognized  
 1231 as best practices in the child welfare field. The agency shall  
 1232 give priority to the use of services that are evidence-based and  
 1233 trauma-informed and may also provide other innovative services,  
 1234 including, but not limited to, family-centered and cognitive-  
 1235 behavioral interventions designed to mitigate out-of-home  
 1236 placements.

1237 (b) Lead agencies shall ensure the availability of a full  
 1238 array of services to address the complex needs of all children,  
 1239 including teens, and caregivers served within their local system  
 1240 of care and that sufficient flexibility exists within the  
 1241 service array to adequately match services to the unique  
 1242 characteristics of families served, including the ages of the  
 1243 children, cultural considerations, and parental choice.

1244 (c) The department shall annually complete an evaluation of  
 1245 the service array adequacies, the engagement of trauma-informed  
 1246 and evidenced-based programming, and the impact of available  
 1247 services on outcomes for the children served by the lead

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1248 agencies and any subcontracted providers of lead agencies. The  
 1249 evaluation report shall be submitted to the Governor, the  
 1250 President of the Senate, and the Speaker of the House of  
 1251 Representatives by December 31 of each year.

1252 (d) The department shall adopt rules to implement this  
 1253 section.

1254 Section 16. Paragraph (s) of subsection (2) of section  
 1255 39.202, Florida Statutes, is amended to read:

1256 39.202 Confidentiality of reports and records in cases of  
 1257 child abuse or neglect.-

1258 (2) Except as provided in subsection (4), access to such  
 1259 records, excluding the name of the reporter which shall be  
 1260 released only as provided in subsection (5), shall be granted  
 1261 only to the following persons, officials, and agencies:

1262 (s) Persons with whom the department is seeking to place  
 1263 the child or to whom placement has been granted, including  
 1264 foster parents for whom an approved home study has been  
 1265 conducted, the designee of a licensed residential child-caring  
 1266 agency defined ~~group home described in s. 409.175 s. 39.523,~~ an  
 1267 approved relative or nonrelative with whom a child is placed  
 1268 pursuant to s. 39.402, preadoptive parents for whom a favorable  
 1269 preliminary adoptive home study has been conducted, adoptive  
 1270 parents, or an adoption entity acting on behalf of preadoptive  
 1271 or adoptive parents.

1272 Section 17. Subsection (1) of section 39.302, Florida  
 1273 Statutes, is amended to read:

1274 39.302 Protective investigations of institutional child  
 1275 abuse, abandonment, or neglect.-

1276 (1) The department shall conduct a child protective

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1277 investigation of each report of institutional child abuse,  
 1278 abandonment, or neglect. Upon receipt of a report that alleges  
 1279 that an employee or agent of the department, or any other entity  
 1280 or person covered by s. 39.01(33) or (48) ~~s. 39.01(32) or (47)~~,  
 1281 acting in an official capacity, has committed an act of child  
 1282 abuse, abandonment, or neglect, the department shall initiate a  
 1283 child protective investigation within the timeframe established  
 1284 under s. 39.201(5) and notify the appropriate state attorney,  
 1285 law enforcement agency, and licensing agency, which shall  
 1286 immediately conduct a joint investigation, unless independent  
 1287 investigations are more feasible. When conducting investigations  
 1288 or having face-to-face interviews with the child, investigation  
 1289 visits shall be unannounced unless it is determined by the  
 1290 department or its agent that unannounced visits threaten the  
 1291 safety of the child. If a facility is exempt from licensing, the  
 1292 department shall inform the owner or operator of the facility of  
 1293 the report. Each agency conducting a joint investigation is  
 1294 entitled to full access to the information gathered by the  
 1295 department in the course of the investigation. A protective  
 1296 investigation must include an interview with the child's parent  
 1297 or legal guardian. The department shall make a full written  
 1298 report to the state attorney within 3 working days after making  
 1299 the oral report. A criminal investigation shall be coordinated,  
 1300 whenever possible, with the child protective investigation of  
 1301 the department. Any interested person who has information  
 1302 regarding the offenses described in this subsection may forward  
 1303 a statement to the state attorney as to whether prosecution is  
 1304 warranted and appropriate. Within 15 days after the completion  
 1305 of the investigation, the state attorney shall report the

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1306 findings to the department and shall include in the report a  
 1307 determination of whether or not prosecution is justified and  
 1308 appropriate in view of the circumstances of the specific case.  
 1309 Section 18. Subsection (1) of section 39.524, Florida  
 1310 Statutes, is amended to read:  
 1311 39.524 Safe-harbor placement.—  
 1312 (1) Except as provided in s. 39.407 or s. 985.801, a  
 1313 dependent child 6 years of age or older who has been found to be  
 1314 a victim of sexual exploitation as defined in s. 39.01(70)(g) ~~s.~~  
 1315 ~~39.01(69)(g)~~ must be assessed for placement in a safe house or  
 1316 safe foster home as provided in s. 409.1678 using the initial  
 1317 screening and assessment instruments provided in s. 409.1754(1).  
 1318 If such placement is determined to be appropriate for the child  
 1319 as a result of this assessment, the child may be placed in a  
 1320 safe house or safe foster home, if one is available. However,  
 1321 the child may be placed in another setting, if the other setting  
 1322 is more appropriate to the child's needs or if a safe house or  
 1323 safe foster home is unavailable, as long as the child's  
 1324 behaviors are managed so as not to endanger other children  
 1325 served in that setting.  
 1326 Section 19. Subsection (7) of section 39.6013, Florida  
 1327 Statutes, is amended to read:  
 1328 39.6013 Case plan amendments.—  
 1329 (7) Amendments must include service interventions that are  
 1330 the least intrusive into the life of the parent and child, must  
 1331 focus on clearly defined objectives, and must provide the most  
 1332 efficient path to quick reunification or permanent placement  
 1333 given the circumstances of the case and the child's need for  
 1334 safe and proper care. A copy of the amended plan must be

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1335 immediately given to the persons identified in s. 39.6011(5) ~~s.~~  
 1336 ~~39.6011(6)(b)~~.

1337 Section 20. Paragraph (p) of subsection (4) of section  
 1338 394.495, Florida Statutes, is amended to read:  
 1339 394.495 Child and adolescent mental health system of care;  
 1340 programs and services.—  
 1341 (4) The array of services may include, but is not limited  
 1342 to:  
 1343 (p) Trauma-informed services for children who have suffered  
 1344 sexual exploitation as defined in s. 39.01(70)(g) ~~s.~~  
 1345 ~~39.01(69)(g)~~.

1346 Section 21. Paragraph (c) of subsection (1) and paragraphs  
 1347 (a) and (b) of subsection (6) of section 409.1678, Florida  
 1348 Statutes, are amended to read:  
 1349 409.1678 Specialized residential options for children who  
 1350 are victims of sexual exploitation.—  
 1351 (1) DEFINITIONS.—As used in this section, the term:  
 1352 (c) "Sexually exploited child" means a child who has  
 1353 suffered sexual exploitation as defined in s. 39.01(70)(g) ~~s.~~  
 1354 ~~39.01(69)(g)~~ and is ineligible for relief and benefits under the  
 1355 federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101  
 1356 et seq.  
 1357 (6) LOCATION INFORMATION.—  
 1358 (a) Information about the location of a safe house, safe  
 1359 foster home, or other residential facility serving victims of  
 1360 sexual exploitation, as defined in s. 39.01(70)(g) ~~s.~~  
 1361 ~~39.01(69)(g)~~, which is held by an agency, as defined in s.  
 1362 119.011, is confidential and exempt from s. 119.07(1) and s.  
 1363 24(a), Art. I of the State Constitution. This exemption applies

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1364 to such confidential and exempt information held by an agency  
 1365 before, on, or after the effective date of the exemption.  
 1366 (b) Information about the location of a safe house, safe  
 1367 foster home, or other residential facility serving victims of  
 1368 sexual exploitation, as defined in s. 39.01(70)(g) ~~s.~~  
 1369 ~~39.01(69)(g)~~, may be provided to an agency, as defined in s.  
 1370 119.011, as necessary to maintain health and safety standards  
 1371 and to address emergency situations in the safe house, safe  
 1372 foster home, or other residential facility.  
 1373 Section 22. Subsection (5) of section 960.065, Florida  
 1374 Statutes, is amended to read:  
 1375 960.065 Eligibility for awards.—  
 1376 (5) A person is not ineligible for an award pursuant to  
 1377 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that  
 1378 person is a victim of sexual exploitation of a child as defined  
 1379 in s. 39.01(70)(g) ~~s.~~ ~~39.01(69)(g)~~.

1380 Section 23. Subsection (11) of section 1002.3305, Florida  
 1381 Statutes, is amended to read:  
 1382 1002.3305 College-Preparatory Boarding Academy Pilot  
 1383 Program for at-risk students.—  
 1384 (11) STUDENT HOUSING.—Notwithstanding s. 409.176 ~~ss.~~  
 1385 ~~409.1677(3)(d)~~ and ~~409.176~~ or any other provision of law, an  
 1386 operator may house and educate dependent, at-risk youth in its  
 1387 residential school for the purpose of facilitating the mission  
 1388 of the program and encouraging innovative practices.  
 1389 Section 24. Section 39.523, Florida Statutes, is repealed.  
 1390 Section 25. Section 409.141, Florida Statutes, is repealed.  
 1391 Section 26. Section 409.1676, Florida Statutes, is  
 1392 repealed.

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1393       Section 27. Section 409.1677, Florida Statutes, is  
1394 repealed.  
1395       Section 28. Section 409.1679, Florida Statutes, is  
1396 repealed.  
1397       Section 29. This act shall take effect July 1, 2016.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

## SENATOR ELEANOR SOBEL

33rd District

November 4, 2015

Senator Miguel Diaz de la Portilla Chair  
Committee on Judiciary  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Diaz de la Portilla,

This letter is to request that **SB 7018** by the Children, Families and Elder Affairs Committee relating to Child Welfare be placed on the next scheduled agenda of the Judiciary Committee.

Thank you for your consideration of this request.

With Best Regards,



Eleanor Sobel  
State Senator, 33<sup>rd</sup> District

cc: Tom Cibula, Joyce Butler, Claude Hendon

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



The Florida Senate

## Committee Agenda Request

**To:** Senator Miguel Diaz de la Portilla, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** November 18, 2015

---

I respectfully request that **Senate Bill #7018**, relating to Child Welfare, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 28

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-1-15

Meeting Date

7018

Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name CHRISTINA SPUDEAS

Job Title Executive Director

Address 1801 N. University Dr.

Phone 954-796-0860

Street

STE 3B, Coral Springs

Email CHRISTINA.SPUDEAS@

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Waive In Support

Representing FLORIDA'S CHILDREN FIRST

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 498

INTRODUCER: Senator Sobel

SUBJECT: Repeal of a Prohibition on Cohabitation

DATE: November 30, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Favorable</b>
2.	Brown	Cibula	JU	<b>Favorable</b>
3.			RC	

---

**I. Summary:**

SB 498 repeals a provision in law which makes it a second degree misdemeanor for a man and woman to lewdly and lasciviously associate and cohabit together without being married to each other.

**II. Present Situation:**

**Cohabitation Law in Florida**

Florida law makes it a second degree misdemeanor for a man and woman to lewdly and lasciviously associate and cohabit together without being married to each other, or if married or unmarried engage in open and gross lewdness and lascivious behavior.<sup>1</sup> This law, originally enacted in 1868, made the crime of cohabitation punishable by up to 2 years in prison, up to 1 year in the county jail, or up to a \$300 fine. Somewhat similarly, s. 800.02, F.S., makes it a second degree misdemeanor for a person to engage in any unnatural and lascivious act with another person.

**Cohabitation Law in other States**

According to the National Conference of State Legislatures only three remaining states, Florida, Michigan, and Mississippi make cohabitation illegal. Eight states that once made cohabitation illegal have repealed cohabitation laws, one as recently as 2013.<sup>2</sup>

---

<sup>1</sup> Second degree misdemeanors are punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>2</sup> E-mail from staff of the National Conference of State Legislatures (November 6, 2015) (on file with the Senate Committee on Judiciary).

**States having Cohabitation Laws other than Florida**

State	Statute	Language
Michigan	MCLA § 750.335	Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$500.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

The following states have repealed laws which made cohabitation illegal: Arizona, Idaho, Maine, New Mexico, North Carolina, North Dakota, Virginia, and West Virginia.

**III. Effect of Proposed Changes:**

The bill repeals the crime of cohabitation, which makes it a second degree misdemeanor for a man and woman, lewdly and lasciviously to associate and cohabit together, without being married to each other.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In 2006, in an unpublished opinion the Superior Court of Pender County, North Carolina struck down the State’s fornication law.<sup>3</sup> The court held that the law, in prohibiting an unmarried man and a woman from cohabitating, violated the plaintiff’s substantive due

<sup>3</sup> Section 14-184 NCGSA provided in part that “[I]f any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor.”

process right to liberty as explained in the U.S. Supreme Court case in *Lawrence v. Texas*.<sup>4</sup> In that opinion Justice Kennedy quoted Justice Stevens' opinion in *Bowers v. Hardwick* which stated:

[I]ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of "liberty" protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.<sup>5</sup>

**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 substantially amends section 798.02 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.

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<sup>4</sup> *Lawrence v. Texas*, 123 S. Ct. 2472, 2483 (2003).

<sup>5</sup> *Bowers v. Hardwick*, 478 U.S. 186, 216 (1986).

B. Amendments:

None.

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

---

By Senator Sobel

33-00401A-16

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1                           A bill to be entitled  
2       An act relating to the repeal of a prohibition on  
3       cohabitation; amending s. 798.02, F.S.; deleting  
4       provisions prohibiting cohabitation by unmarried men  
5       and women; providing an effective date.

6  
7       Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Section 798.02, Florida Statutes, is amended to  
10       read:

11           798.02 Lewd and lascivious behavior. ~~If any man and woman,~~  
12       ~~not being married to each other, lewdly and lasciviously~~  
13       ~~associate and cohabit together, or~~ If any man or woman, married  
14       or unmarried, engages in open and gross lewdness and lascivious  
15       behavior, they shall be guilty of a misdemeanor of the second  
16       degree, punishable as provided in s. 775.082 or s. 775.083.

17           Section 2. This act shall take effect upon becoming a law.

BUTLER.JOYCE

---

From: OLENICK.YALE  
Sent: Wednesday, November 18, 2015 12:10 PM  
To: PORTILLA.MIGUEL  
Cc: CIBULA.THOMAS; BUTLER.JOYCE; GOSNEY.PATRICIA  
Subject: Senator Sobel - Agenda Request SB 498 - Cohabitation

November 18, 2015

Senator Miguel Diaz de la Portilla  
Chair of Committee on Judiciary  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Diaz de la Portilla,

This letter is to request that **SB 498** relating to **the Repeal of a Prohibition on Cohabitation** be placed on the agenda of the next scheduled meeting of the Judiciary Committee. It passed unanimously out of the Criminal Justice Committee.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel  
State Senator, 33rd District

Cc: Tom Cibula, Joyce Butler

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

SENATOR ELEANOR SOBEL

33rd District

November 23, 2015

Senator Miguel Diaz de la Portilla  
Chair of Committee on Judiciary  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Diaz de la Portilla,

This letter is to request that **SB 498**, relating to a **Repeal of a Prohibition on Cohabitation**, be placed on the agenda of the next scheduled meeting of the Committee on Judiciary.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel  
State Senator, 33rd District

Cc: Tom Cibula, Joyce Butler, Patricia Gosney, Anabel Castillo, Julio Guillen

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1/15  
Meeting Date

SD498  
Bill Number (if applicable)

Topic Cohabitation

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title Gen Counsel

Address PO Box 1799  
Street

Phone 850-510-2187

Tallahassee, FL 32302  
City State Zip

Email Robert.trammell@FS  
@BMe@icod

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL Public Defenders

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting



**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 334

INTRODUCER: Judiciary Committee and Senator Montford

SUBJECT: Severe Injuries Caused by Dogs

DATE: December 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 334 revises procedures for use by animal control authorities and hearing officers in investigating an attack by a dog, classifying a dog as dangerous, and ordering the destruction of a dog. The process provided in law generally consists of an investigation, an initial determination of sufficient cause at a hearing, a final determination, and an appeal to the county court.

Under current law, a dog owner may present extenuating evidence in a hearing to determine whether to classify a dog as a dangerous dog as the result of a dog bite or attack. However, current law does not allow extenuating evidence if the bite or attack resulted in a severe injury to or death of a human. The bill authorizes a hearing officer to consider evidence in determining whether to destroy a dog that has caused severe injury to, but not the death of, a human.

Under current law, while the classification process is pending the dog may be impounded. This bill authorizes animal control authorities to immediately confiscate a dog if the dog has caused severe injury to a human.

Currently, after an initial determination of sufficient cause to classify a dog as dangerous, an animal control authority must provide notice to the owner. An owner may then challenge sufficient cause or proposed requirements through a hearing. After a hearing officer has issued a final determination, the owner may appeal the finding in county court.

This bill requires an animal control authority to include in the notice of sufficient cause the requirement that an owner obtain a certificate of registration for the dangerous dog. The owner may then challenge both the finding of sufficient cause and the proposed requirements. The bill also changes the court of jurisdiction for appeals from a county to a circuit court.

## II. Present Situation:

### Financial Liability of Owners of Dogs

Under Florida law, the owner of a dog is liable for any damage done by the dog to any person, domestic animal, or livestock.<sup>1</sup> In a criminal or civil action against a person for killing or injuring a dog, satisfactory proof that the dog was killing a domestic animal or livestock is a good defense.<sup>2</sup> An owner may be a person or an entity possessing, harboring, keeping, or having control or custody of a dog or a parent of a child under the age of 18 who has a dog.<sup>3</sup> A dog owner is liable for damages if his or her dog bites a person while the person is in public, or lawfully in a private location, including the property of the owner.<sup>4</sup> Liability attaches to the owner regardless of the former viciousness of the dog or the owner's knowledge of viciousness.

Florida provides two narrow limits or exceptions to liability. The liability of an owner for negligence is reduced by the percentage that the bitten person's negligence contributed to the biting incident.<sup>5</sup> Also, if the injury takes place on the property of the owner on which the owner has prominently displayed a "Bad Dog" sign, unless the injured person is under the age of 6 or can show that damages are proximately caused by a negligent act or omission of the owner, the owner is not liable.<sup>6</sup>

### Dangerous Dogs

#### *Definition of Dangerous Dog*

Florida law imposes specific requirements on the handling of dangerous dogs. A dangerous dog is defined as a dog that:

- Has aggressively bitten, attacked, endangered or inflicted severe injury on a person on public or private property;
- Has more than one time severely injured or killed a domestic animal while the dog is off the owner's property; or
- Has, when unprovoked, chased or approached a person in public in a menacing fashion, or with an attitude of attack.<sup>7</sup>

---

<sup>1</sup> Section 767.01, F.S. The term "livestock" is defined as grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas raised for private use or commercial purposes. Section 585.01(13), F.S.

<sup>2</sup> Section 767.03, F.S.

<sup>3</sup> Section 767.11(7), F.S.

<sup>4</sup> Section 767.04, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 767.11(1), F.S., requires an appropriate authority to document a dog as a dangerous dog. Section 767.11(2), F.S., further defines what is meant by "unprovoked" as that the victim whom while acting peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog. A severe injury is any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. Section 767.11(3), F.S.

### *Process for Classification of Dogs as Dangerous*

An animal control officer or employee is typically the person who would investigate an incident involving a dog. In areas unserved by an animal control authority, the sheriff assumes the duties required of an animal control officer.<sup>8</sup>

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous.<sup>9</sup> A dog that is being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation.<sup>10</sup>

The animal control authority may not declare a dog as dangerous if:

- The injured person was unlawfully on the property, or if lawfully on the property was tormenting, abusing, or assaulting the dog or its owner or a family member; or
- The dog was protecting a person within the immediate vicinity of the dog from an unjustified attack or assault.<sup>11</sup>

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous and provide the owner an opportunity for a hearing before making a final determination. The animal control authority must provide written notice of sufficient cause to the owner by registered mail, certified hand delivery, or service in conformity with how service of process is made.

The owner has 7 calendar days from receiving the notice to file a written request for a hearing. The hearing officer must hold the hearing as soon as possible, no more than 21 calendar days, and no sooner than 5 days after receiving the request for hearing.<sup>12</sup>

Once a dog is classified as dangerous, the animal control authority must notify the owner by registered mail, certified hand delivery, or service. The owner has the right to appeal the decision in county court within 10 business days after receipt of the classification. The owner must confine the dog in a securely fenced or enclosed area pending the outcome of the appeal.<sup>13</sup>

Within 14 days after a dog is classified as dangerous or a classification is upheld by the county court, the owner must annually obtain from animal control a certificate of registration for the dog.<sup>14</sup> The owner must immediately notify animal control if his or her dangerous dog is loose or unconfined; has bitten a person or attacked an animal; is sold, given away, or dies; or is otherwise moved to another address.<sup>15</sup>

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<sup>8</sup> Section 767.11(5) and (6), F.S.

<sup>9</sup> Section 767.12(1)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 767.12(1)(b), F.S.

<sup>12</sup> Section 767.12(1)(c), F.S.

<sup>13</sup> Section 767.12(1)(d), F.S.

<sup>14</sup> Section 767.12(2), F.S.

<sup>15</sup> Section 767.12(3), F.S.

Any person who violates any of the restrictions on owning a dangerous dog commits a noncriminal infraction, punishable by a fine of up to \$500.<sup>16</sup>

### **Attack by Dangerous Dog or Any Attack Resulting in Severe Injury or Death**

Procedures different from the classification process above apply if an incident giving rise to an investigation was an attack by a dog that was previously classified as a dangerous dog or if the incident was the severe injury to or death of a human. Additionally, an attack by a dog that was previously classified as dangerous or an attack that causes a severe injury to or death of a human may result in the imposition of a criminal penalty on the dog's owner. In proceedings relating to a dog that has caused a severe injury to or death of a human, the statutes suggest that the mitigating factors used in the classification process above are immaterial.

#### ***Dangerous Dog; No Severe Injury to or Death of Human***

If a dangerous dog attacks or bites a person or domestic animal without provocation, the owner is guilty of a first degree misdemeanor, punishable by up to a year in jail and up to a \$1,000 fine.<sup>17</sup> Additionally, the animal control authority must immediately confiscate the dog, place the dog in quarantine if necessary, or impound and hold the dog for 10 business days after the owner is notified in writing, and thereafter destroy the dog, unless the owner has requested a hearing during the 10 day timeframe. While the dog is boarded, the owner must pay all costs and other fees to board the dog humanely and safely.<sup>18</sup>

#### ***Dangerous Dog; Severe Injury to or Death of Human***

If a dangerous dog causes severe injury to or death of a person, the owner commits a third degree felony, punishable by up to 5 years in prison and up to a \$5,000 fine.<sup>19</sup> In addition, the animal control authority must immediately confiscate the dog and follow the same process as is required for a dangerous dog that attacks without causing a severe injury to or death of a human.

#### ***Unclassified Dog; Severe Injury to or Death of Human***

If a dog that has not been declared dangerous causes severe injury or death to a person, if the owner had prior knowledge of the dog's dangerous propensities but demonstrated reckless disregard, the owner commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine.<sup>20</sup> In addition, the animal control authority must immediately confiscate the dog and follow the same process as is required for a dangerous dog that attacks without causing a severe injury to or death of a human.

A dog may not be destroyed while an appeal is pending.<sup>21</sup>

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<sup>16</sup> Section 767.12(7), F.S.

<sup>17</sup> Sections 767.13(1), 775.082(4)(a), and 775.083(1)(d), F.S.

<sup>18</sup> Section 767.13(1), F.S.

<sup>19</sup> Sections 767.13(3), 775.082(3)(e), and 775.083(1)(c), F.S.

<sup>20</sup> Sections 767.13(2), 775.082(3)(b), and 775.083(1)(e), F.S.

<sup>21</sup> Section 767.13(5), F.S.

### **III. Effect of Proposed Changes:**

#### **Determination of Destroying a Dog**

Current law appears to require any dog that causes a severe injury to or death of a person to be destroyed, whether previously classified as a dangerous dog or not. This bill authorizes a hearing officer or a judge to consider the nature and circumstances of the injury and the likelihood of future harm if a severe injury to a person was caused by an unclassified dog. Owners are currently afforded a similar opportunity to present extenuating circumstances in classification hearings.

#### **Investigation of a Dog Causing Injury but Unclassified as Dangerous**

Under current law, the process of determining whether a dog is dangerous begins with an investigation by an animal control officer. The bill specifies additional procedures and allows an animal control authority to take additional actions if the dog has caused severe injury to a human. Upon investigation, the animal control authority may immediately confiscate, quarantine, or impound the dog. However, the dog may not be destroyed until the case is over. If the dog is taken from the owner while the case is pending, the bill requires the owner to pay boarding costs and fees to humanely and safely keep the dog.

Under current law, a person may appeal a final determination of an animal control authority to a county court. The bill replaces the court of jurisdiction for an appeal from the county court to the circuit court.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

## D. Other Constitutional Issues:

### **Due Process for Deprivation of Property**

At least one county court has ruled s. 767.13(2), F.S., unconstitutional based on a deprivation of property without due process.<sup>22</sup> The court noted that Florida law authorizes dog owners to establish at a classification hearing extenuating circumstances by an attack of a dog but does not afford owners of dogs who cause severe injury but have not been classified as dangerous the same opportunity.<sup>23</sup> The court specifically noted:

It truly does defy logic that the owner of a dog facing potential classification as “dangerous” may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense ... may be raised by a person trying to prevent *execution* of his or her pet.<sup>24</sup>

The court concludes that s. 767.13(2), F.S., is unconstitutional as it is arbitrary and oppressive, and therefore violative of substantive due process rights.<sup>25</sup>

This bill authorizes a court to consider mitigating circumstances in determining whether to destroy a dog, not previously classified as dangerous, which caused a severe injury to a human. The change appears to address the issue raised by the court.

### **Jurisdiction of Circuit and County Court**

Article V of the State Constitution provides for the jurisdiction of courts as follows:

- County court jurisdiction is determined by the Legislature.<sup>26, 27</sup>
- Jurisdiction of appeals and the direct review of administrative action resides in the circuit court when provided by the Legislature.<sup>28</sup>

<sup>22</sup> The Fourteenth Amendment of the U.S. Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Dogs are considered property. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967).

<sup>23</sup> *IN RE: “Cody,”* Case No. 1999-33984 COCI, pg. 5 (7th Cty. Ct. 2003).

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at pg. 4-5.

<sup>26</sup> Article V, s. 6(b), Fla. Const., provides, in part “The county courts shall exercise the jurisdiction prescribed by general law.”

<sup>27</sup> “The county judge’s courts have no jurisdiction except that which is conferred upon them by the constitution and by statutory enactment, and such as may be incidentally necessary to the execution of these powers.” *In re Estate of Brown v. Brown*, 134 So.2d 290, 293 (Fla. 2d DCA 1961).

<sup>28</sup> Article V, s. 5(b), Fla. Const., provides, in part, “The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power of direct review of administrative action prescribed by general law.”

The Legislature has generally granted circuit courts, rather than county courts, appellate jurisdiction over appeals from final administrative orders of local government code enforcement boards.

Therefore, changing the court having jurisdiction over an appeal of a decision by a county animal control authority to a circuit court, instead of a county court, is consistent with constitutional requirements.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Additional costs may result from lengthier hearings to determine whether a dog that causes a severe injury to a human should be destroyed because the bill authorizes dog owners to present mitigating evidence.

The Office of the State Courts Administrator (OSCA) does not expect additional judicial workload as a result of shifting cases from county court to circuit, or from the other provisions of the bill. OSCA notes that dangerous dog-related cases are primarily resolved by local hearing officers and not judges.<sup>29</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 767.12, 767.13, 767.14, and 767.16.

This bill creates the following sections of the Florida Statutes: 767.135 and 767.136.

This bill creates section 767.135 of the Florida Statutes.

---

<sup>29</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 334* (Dec. 1, 2015).

**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 December 1, 2015:**

- Changes the court of appeal having jurisdiction over a decision of an animal control authority from a county court to a circuit court;
- Authorizes an animal control authority to immediately confiscate a dog that caused a severe injury to a human;
- Prohibits animal control authorities from destroying a dog during the pendency of a case; and
- Requires an animal control authority to include in the written notice to the owner proposed requirements such as a certificate of registration.

- B. **Amendments:**

None.





558638

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. The Division of Law Revision and Information is directed to designate ss. 767.01-767.07, Florida Statutes, as part I of chapter 767, Florida Statutes, entitled "Damage by Dogs," and ss. 767.10-767.16, Florida Statutes, as part II of that chapter, entitled "Dangerous Dogs."

Section 2. Section 767.12, Florida Statutes, is amended to read:



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12           767.12 Classification of dogs as dangerous; certification  
13 of registration; notice and hearing requirements; confinement of  
14 animal; exemption; appeals; unlawful acts.—

15           (1)~~(a)~~ An animal control authority shall investigate  
16 reported incidents involving any dog that may be dangerous and  
17 ~~shall~~, if possible, shall interview the owner and require a  
18 sworn affidavit from any person, including any animal control  
19 officer or enforcement officer, desiring to have a dog  
20 classified as dangerous.

21           (a) An animal that is the subject of a dangerous dog  
22 investigation because of severe injury to a human may be  
23 immediately confiscated by an animal control authority and  
24 placed in quarantine, if necessary, for the proper length of  
25 time, or may be impounded and held pending the outcome of the  
26 investigation and any related hearings or appeals regarding the  
27 determination of a dangerous dog classification and the  
28 assessment of any penalty under this section. If the dog is to  
29 be destroyed, the dog may not be destroyed while an appeal is  
30 pending. The owner is responsible for payment of all boarding  
31 costs and other fees as required to humanely and safely keep the  
32 animal pending any hearing or appeal.

33           (b) An ~~Any~~ animal that is the subject of a dangerous dog  
34 investigation ~~which, that~~ is not impounded with the animal  
35 control authority, ~~must~~ ~~shall~~ be humanely and safely confined by  
36 the owner in a securely fenced or enclosed area pending the  
37 outcome of the investigation and resolution of any hearings or  
38 appeals related to the dangerous dog classification and any  
39 penalty imposed under this section. The address at which ~~of~~  
40 where the animal resides shall be provided to the animal control



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41 authority. A ~~ne~~ dog that is the subject of a dangerous dog  
42 investigation may not be relocated and its ~~or~~ ownership may not  
43 be transferred pending the outcome of the ~~an~~ investigation and  
44 ~~or~~ any hearings or appeals related to the determination of a  
45 dangerous dog classification and any penalty imposed under this  
46 section. If ~~in the event that~~ a dog is to be destroyed, the dog  
47 may ~~shall~~ not be relocated and its ~~or~~ ownership may not be  
48 transferred.

49 (2)(~~b~~) A dog may ~~shall~~ not be declared dangerous if:

50 (a) The threat, injury, or damage was sustained by a person  
51 who, at the time, was unlawfully on the property or, who, while  
52 lawfully on the property, was tormenting, abusing, or assaulting  
53 the dog or its owner or a family member.

54 (b) ~~No dog may be declared dangerous if~~ The dog was  
55 protecting or defending a human ~~being~~ within the immediate  
56 vicinity of the dog from an unjustified attack or assault.

57 (3)(~~c~~) After the investigation, the animal control  
58 authority shall make an initial determination as to whether  
59 there is sufficient cause to classify the dog as dangerous and,  
60 if sufficient cause is found, as to the proposed requirements  
61 under subsection (5). The animal control authority shall afford  
62 the owner an opportunity for a hearing prior to making a final  
63 determination regarding the classification or requirement. The  
64 animal control authority shall provide written notification to  
65 the owner of the sufficient cause finding and proposed  
66 requirements, ~~to the owner~~, by registered mail, certified hand  
67 delivery, or service in conformance with the provisions of  
68 chapter 48 relating to service of process. The owner may file a  
69 written request for a hearing regarding the dangerous dog



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70 classification or the proposed requirements, or both, within 7  
71 calendar days after ~~from the date of~~ receipt of the notification  
72 of the sufficient cause finding and proposed requirements. and,  
73 If the owner requests a hearing, it requested, the hearing shall  
74 be held as soon as possible, but not longer ~~more~~ than 21  
75 calendar days and not ~~ne~~ sooner than 5 days after receipt of the  
76 request from the owner. If a hearing is not timely requested  
77 regarding the classification or proposed requirements, the  
78 determination by the animal control authority as to such issue  
79 shall become final. Each applicable local governing authority  
80 shall establish hearing procedures that conform to this  
81 subsection ~~paragraph~~.

82 (4) ~~(d)~~ Once a dog is classified as a dangerous dog, The  
83 animal control authority shall provide to the owner a written  
84 final order, notification to the owner by registered mail ~~or,~~  
85 certified hand delivery or service, after a dangerous dog  
86 classification or requirement becomes final, after a hearing or  
87 by operation of law pursuant to subsection (3). ~~and~~ The owner  
88 may file a written request for a hearing in the county court to  
89 appeal the classification or requirement, or both, by filing a  
90 written request for a hearing in the circuit court within 10  
91 business days after receipt of the final order. The owner ~~a~~  
92 written determination of dangerous dog classification and must  
93 confine the dog in a securely fenced or enclosed area pending a  
94 resolution of the appeal. Each applicable local governing  
95 authority must establish appeal procedures that conform to this  
96 subsection ~~paragraph~~.

97 (5) (a) Except as otherwise provided in paragraph (b), the  
98 owner of a dog classified as a dangerous dog shall:



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99            1.(2) Within 14 days after the issuance of the final order  
100 classifying the dog as dangerous or the conclusion of any appeal  
101 that affirms the final order ~~a dog has been classified as~~  
102 ~~dangerous by the animal control authority or a dangerous dog~~  
103 ~~classification is upheld by the county court on appeal, the~~  
104 ~~owner of the dog must~~ obtain a certificate of registration for  
105 the dog from the animal control authority serving the area in  
106 which he or she resides, and renew the certificate ~~shall be~~  
107 ~~renewed~~ annually. Animal control authorities are authorized to  
108 issue such certificates of registration, and renewals thereof,  
109 only to persons who are at least 18 years of age and who present  
110 to the animal control authority sufficient evidence of:

111            a.(a) A current certificate of rabies vaccination for the  
112 dog.

113            b.(b) A proper enclosure to confine a dangerous dog and the  
114 posting of the premises with a clearly visible warning sign at  
115 all entry points which ~~that~~ informs both children and adults of  
116 the presence of a dangerous dog on the property.

117            c.(e) Permanent identification of the dog, such as a tattoo  
118 on the inside thigh or electronic implantation.

119  
120 The appropriate governmental unit may impose an annual fee for  
121 the issuance of certificates of registration required by this  
122 section.

123            2.(3) The owner shall Immediately notify the appropriate  
124 animal control authority when a dog that has been classified as  
125 dangerous:

126            a.(a) Is loose or unconfined.

127            b.(b) Has bitten a human ~~being~~ or attacked another animal.



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128 c.~~(e)~~ Is sold, given away, or dies.

129 d.~~(d)~~ Is moved to another address.

130

131 Prior to a dangerous dog being sold or given away, the owner  
132 shall provide the name, address, and telephone number of the new  
133 owner to the animal control authority. The new owner must comply  
134 with all of the requirements of this section ~~act~~ and  
135 implementing local ordinances, even if the animal is moved from  
136 one local jurisdiction to another within the state. The animal  
137 control officer must be notified by the owner of a dog  
138 classified as dangerous that the dog is in his or her  
139 jurisdiction.

140 3.~~(4)~~ ~~Not~~ ~~It is unlawful for the owner of a dangerous dog~~  
141 ~~to~~ permit the dog to be outside a proper enclosure unless the  
142 dog is muzzled and restrained by a substantial chain or leash  
143 and under control of a competent person. The muzzle must be made  
144 in a manner that will not cause injury to the dog or interfere  
145 with its vision or respiration but will prevent it from biting a  
146 ~~any~~ person or animal. The owner may exercise the dog in a  
147 securely fenced or enclosed area that does not have a top,  
148 without a muzzle or leash, if the dog remains within his or her  
149 sight and only members of the immediate household or persons 18  
150 years of age or older are allowed in the enclosure when the dog  
151 is present. When being transported, such dogs must be safely and  
152 securely restrained within a vehicle.

153 (b) If a dog is classified as a dangerous dog as the result  
154 of an incident that causes severe injury to a human being, based  
155 upon the nature and circumstances of the injury and the  
156 likelihood of a future threat to the public safety, health, and



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157 welfare, the dog may be destroyed in an expeditious and humane  
158 manner.

159 (6)~~(5)~~ Hunting dogs are exempt from ~~the provisions of this~~  
160 section act when engaged in any legal hunt or training  
161 procedure. Dogs engaged in training or exhibiting in legal  
162 sports such as obedience trials, conformation shows, field  
163 trials, hunting/retrieving trials, and herding trials are exempt  
164 from ~~the provisions of this section act~~ when engaged in any  
165 legal procedures. However, such dogs at all other times in all  
166 other respects shall be subject to this and local laws. Dogs  
167 that have been classified as dangerous may ~~shall~~ not be used for  
168 hunting purposes.

169 ~~(6) This section does not apply to dogs used by law~~  
170 ~~enforcement officials for law enforcement work.~~

171 (7) A Any person who violates ~~any provision of~~ this section  
172 commits ~~is guilty of~~ a noncriminal infraction, punishable by a  
173 fine not to exceed ~~exceeding~~ \$500.

174 Section 3. Subsection (2) of section 767.13, Florida  
175 Statutes, is transferred, renumbered as section 767.135, Florida  
176 Statutes, and amended, to read:

177 767.135 ~~767.13~~ Attack or bite by unclassified ~~dangerous~~ dog  
178 that causes death; penalties; confiscation; destruction.-

179 ~~(2)~~ If a dog that has not been declared dangerous attacks  
180 and causes the severe injury to or death of a ~~any~~ human, the dog  
181 shall be immediately confiscated by an animal control authority,  
182 placed in quarantine, if necessary, for the proper length of  
183 time, or held for 10 business days after the owner is given  
184 written notification under s. 767.12, and thereafter destroyed  
185 in an expeditious and humane manner. This 10-day time period



558638

186 shall allow the owner to request a hearing under s. 767.12. If  
187 the owner files a written appeal under s. 767.12 or this  
188 section, the dog must be held and may not be destroyed while the  
189 appeal is pending. The owner is ~~shall be~~ responsible for payment  
190 of all boarding costs and other fees as may be required to  
191 humanely and safely keep the animal during any appeal procedure.  
192 ~~In addition, if the owner of the dog had prior knowledge of the~~  
193 ~~dog's dangerous propensities, yet demonstrated a reckless~~  
194 ~~disregard for such propensities under the circumstances, the~~  
195 ~~owner of the dog is guilty of a misdemeanor of the second~~  
196 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

197 Section 4. Section 767.136, Florida Statutes, is created to  
198 read:

199 767.136 Attack or bite by unclassified dog that causes  
200 severe injury or death; penalties.—

201 (1) If a dog that has not been declared dangerous attacks  
202 and causes severe injury to, or the death of, a human, and the  
203 owner of the dog had knowledge of the dog's dangerous  
204 propensities but demonstrated a reckless disregard for those  
205 propensities under the circumstances, he or she commits a  
206 misdemeanor of the second degree, punishable as provided in s.  
207 775.082 or s. 775.083.

208 (2) If the dog attacks or bites a person who is engaged in  
209 or attempting to engage in a criminal activity at the time of  
210 the attack, the owner of the dog is not criminally liable under  
211 this section.

212 Section 5. Section 767.14, Florida Statutes, is amended to  
213 read:

214 767.14 Additional local restrictions authorized. ~~Nothing in~~





558638

215 This act does not ~~shall~~ limit any local government from adopting  
216 an ordinance to address the safety and welfare concerns caused  
217 by attacks on persons or domestic animals, placing further  
218 restrictions or additional requirements on owners of ~~dangerous~~  
219 dogs that have bitten or attacked persons or domestic animals,  
220 or developing procedures and criteria for the implementation of  
221 this act, provided that no such regulation is specific to breed  
222 and that the provisions of this act are not lessened by such  
223 additional regulations or requirements. This section does ~~shall~~  
224 not apply to any local ordinance adopted prior to October 1,  
225 1990.

226 Section 6. Section 767.16, Florida Statutes, is amended to  
227 read:

228 767.16 ~~Bite by a~~ Police or service dog; exemption ~~from~~  
229 quarantine.—

230 (1) Any dog that is owned, or the service of which is  
231 employed, by a law enforcement agency, is exempt from this part.

232 (2) ~~or~~ Any dog that is used as a service dog for blind,  
233 hearing impaired, or disabled persons, ~~and~~ that bites another  
234 animal or a human is exempt from any quarantine requirement  
235 following such bite if the dog has a current rabies vaccination  
236 that was administered by a licensed veterinarian.

237 Section 7. This act shall take effect upon becoming a law.

238  
239 ===== T I T L E A M E N D M E N T =====

240 And the title is amended as follows:

241 Delete everything before the enacting clause  
242 and insert:

243 A bill to be entitled



558638

244 An act relating to severe injuries caused by dogs;  
245 providing a directive to the Division of Law Revision  
246 and Information; amending s. 767.12, F.S.; providing  
247 for discretionary quarantine or impoundment of dogs  
248 that cause severe injuries to humans; specifying  
249 responsibility for payment of boarding and other  
250 costs; revising the hearing and final order  
251 procedures, and related confinement requirements, for  
252 dangerous dog actions; specifying circumstances under  
253 which a dangerous dog that has caused severe injury to  
254 a human may be euthanized; deleting an exception;  
255 transferring, renumbering, and amending s. 767.13(2),  
256 F.S.; revising a requirement for automatic euthanasia  
257 for certain dogs that cause severe injury to humans;  
258 deleting a criminal penalty related to severe injury  
259 or death caused by a dog; creating s. 767.136, F.S.;  
260 re-creating an existing criminal penalty related to  
261 severe injury or death caused by a dog in a new  
262 statutory section; amending s. 767.14, F.S.;  
263 authorizing local governments to adopt certain  
264 ordinances pertaining to dogs that have bitten or  
265 attacked persons or domestic animals; amending s.  
266 767.16, F.S.; exempting law enforcement dogs from  
267 regulation under Part II of ch. 767, F.S.; providing  
268 an effective date.

By Senator Montford

3-00397-16

2016334\_\_

1 A bill to be entitled  
 2 An act relating to severe injuries caused by dogs;  
 3 amending s. 767.13, F.S.; specifying circumstances  
 4 under which a dog that has caused severe injury to a  
 5 human may be returned to its owner rather than be  
 6 destroyed; providing an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Subsection (2) of section 767.13, Florida  
 11 Statutes, is amended to read:  
 12 767.13 Attack or bite by dangerous dog; penalties;  
 13 confiscation; destruction.—  
 14 (2) (a) If a dog that has not been declared dangerous  
 15 attacks and causes severe injury to or death of any human, the  
 16 dog shall be immediately confiscated by an animal control  
 17 authority and, placed in quarantine, if necessary, for the  
 18 proper length of time or held for 10 business days after the  
 19 owner is given written notification under s. 767.12, ~~and~~  
 20 ~~thereafter destroyed in an expeditious and humane manner.~~ This  
 21 10-day time period shall allow the owner to request a hearing  
 22 under s. 767.12. The owner ~~is shall be~~ responsible for payment  
 23 of all boarding costs and other fees as may be required to  
 24 humanely and safely keep the animal during any appeal procedure.  
 25 (b) Unless the dog is returned to its owner under paragraph  
 26 (c), it shall be destroyed in an expeditious and humane manner.  
 27 (c) If the death of a human has not occurred and the owner  
 28 requests a hearing under s. 767.12, the hearing officer shall  
 29 consider whether the severe injury was sustained by a person

Page 1 of 2

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

3-00397-16

2016334\_\_

30 who, at the time, was unlawfully on the property or, while  
 31 lawfully on the property, was tormenting, abusing, or assaulting  
 32 the dog, its offspring, its owner, or a family member of the  
 33 owner, or if the dog was protecting or defending a human within  
 34 the immediate vicinity of the dog from an unjustified attack or  
 35 assault. If any one of these factors is found, in lieu of  
 36 ordering that the dog be destroyed under paragraph (b), the  
 37 hearing officer may declare that the dog is a dangerous dog and  
 38 impose the restrictions set forth in s. 767.12(2)-(4) and return  
 39 the dog to its owner, or order that the dog be returned to the  
 40 owner with no restrictions.  
 41 (d) In addition, if the owner of a the dog described in  
 42 paragraph (a) who has had prior knowledge of the dog's dangerous  
 43 propensities, yet demonstrates demonstrated a reckless disregard  
 44 for such propensities under the circumstances, commits the owner  
 45 of the dog is guilty of a misdemeanor of the second degree,  
 46 punishable as provided in s. 775.082 or s. 775.083.  
 47 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Dec 1, 2015

Meeting Date

SB334

Bill Number (if applicable)

Topic SEVERE INJURIES CAUSED BY DOGS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST.

Phone 294-1838

Street

TAL.

City

FL

State

32301

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/11/15  
Meeting Date

SB 334  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Diana Ferguson

Job Title Attorney

Address 195 Monroe St Ste 202

Phone 850-4081-6788

Taco FL 32301  
City State Zip

Email dfergusona@rutledge-ecoria.com

Speaking:  For  Against  Information

→ Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Animal Control Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

*But you will speak  
if need be*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1  
Meeting Date

334  
Bill Number (if applicable)

Topic Dangerous Dog bill / SB 334

Amendment Barcode (if applicable)

Name Cari Roth

Job Title \_\_\_\_\_

Address 215 S. Monroe St. Suite 815  
Street

Phone 850/591/1094

Tallahassee FL 32301  
City State Zip

Email croth@deanmead.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Manatee County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 720

INTRODUCER: Senator Hutson

SUBJECT: Self-storage Facilities

DATE: November 30, 2015      REVISED: 12/02/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maida	Cibula	JU	<b>Favorable</b>
2.			RI	
3.			FP	

---

**I. Summary:**

SB 720 substantially revises the process that the owner of a self-storage facility may advertise and sell the personal property of a delinquent tenant. Under the bill, owners are no longer required to advertise a property sale via a local newspaper; such advertisements may now be posted in any “commercially reasonable manner.” Rather than rely on the courts to determine precisely what “commercially reasonable” means, the bill defines the term itself. If at least three bidders—all of whom are unrelated to the seller—attend the sale or register to bid online at the sale, the advertisement is commercially reasonable. Further, the sale itself may be conducted online.

Beyond altering the advertisement provisions of s. 83.806, F.S., the bill creates additional protections for storage facility owners. Primarily, it provides additional means for storage owners to remove vehicles and watercraft from their property and remain safe from liability. The decision to tow a vehicle or watercraft would create additional space for the owner to rent to other tenants; it may also, however, preclude the sale of that vehicle or watercraft to recover unpaid rent. Thus, as an alternative to towing, a storage facility owner may opt to contact the Florida Department of Highway Safety and Motor Vehicles (“Department”). After contacting the Department to determine the existence of any lienholders of the motor vehicle or watercraft, the owner may, after a written notice and 30 days’ warning, sell the property.

Lastly, the bill provides for a statutorily-defined contract provision interpretation. Any agreed-limit on the value of property storable in the tenant’s storage space is flexible; the limit is, at all times, the maximum value of the property stored in that storage space.

## II. Present Situation:

Self-storage space is governed by the Self-storage Facility Act,<sup>1</sup> contained within Florida's Landlord and Tenant statutory scheme.<sup>2</sup> Under the Act, a tenant<sup>3</sup> leases space from an owner under a rental agreement in order to store personal property.<sup>4</sup> The personal property is subject to a lien—the right to possess property unless or until a debt is paid—held by the owner of the storage facility.<sup>5</sup> This lien attaches to the tenant's property as of the date that the personal property is brought to the facility or, alternatively, as of the date the tenant takes possession of an owner's storage unit.<sup>6</sup>

Should a tenant breach the lease, typically by failing to pay rent, the lien on the tenant's property is activated. Upon the tenant's failure to pay rent, an owner could, for example, deny the tenant's access to his or her property located in the owner's facility.<sup>7</sup> Alternatively, the owner may initiate a sale of the tenant's property to recover amounts owed.<sup>8</sup> The statute imposes a number of requirements on owners during this process, including a mandatory sale advertisement in a newspaper of general circulation in the area where the owner's facility or unit is located.<sup>9</sup> The costs to advertise may vary by newspaper.<sup>10</sup> Nevertheless, a tenant may still redeem his or her property by paying the amount necessary to satisfy the lien.<sup>11</sup>

Notably, these statutory processes are merely additions to, and not the exclusive remedies of, any other contract entered into between a tenant and an owner.<sup>12</sup> In other words, the tenant and owner are free to contract to create additional obligations and duties; the Act simply provides additional remedies, and creates no private cause of action for tenants.<sup>13</sup>

## III. Effect of Proposed Changes

This bill expands the avenues through which the owner of a self-storage facility can advertise and conduct the sale of a delinquent tenant's property.

Under the bill, the owner may advertise the sale of a tenant's property in a “commercially reasonable manner,” and the owner is no longer required to advertise in a newspaper. An

---

<sup>1</sup> See Part III of chapter 83, F.S.

<sup>2</sup> See generally chapter 83, F.S.

<sup>3</sup> Although the Self-storage Facility Act uses the term “tenant” and is codified in chapter 83, F.S., which governs several types of landlord-tenant relationships, the relationship the Act governs is not that of a typical landlord and tenant relationship. In the context of storage facilities and storage units, there is no real property in the possession of a tenant.

<sup>4</sup> Section 83.803, F.S.

<sup>5</sup> Section 83.805, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 83.8055, F.S.

<sup>8</sup> Section 83.806, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 50.061(3), F.S. Where an established “minimum commercial rate” for a given newspaper exceeds the rates provided by statute, that “minimum” rate may be charged instead. There is no statutory, regulatory, or judicial guidance on what constitutes a fair or legal minimum rate.

<sup>11</sup> *Id.*

<sup>12</sup> Sections 83.808 and 809, F.S.

<sup>13</sup> *Shurgard Income Properties Fund 16—Ltd. Partnership v. Muns*, 761 So. 2d 340 (Fla. 4th DCA 1999).



advertisement is commercially reasonable if it results in at least three independent bidders at a sale.<sup>14</sup> Additionally, lien sales may be conducted on a public website.

With respect to motor vehicles and watercraft, the bill authorizes the owner of a self-storage facility to tow or remove a delinquent tenant's motor vehicle or watercraft and sell the vehicle or watercraft in a commercially reasonable manner after notice to the tenant and other lienholders.

Finally, the bill provides that "[i]f the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space." Although the bill does not explain the purpose of the new provision, this provision may serve to limit the liability of the owner of the self-storage facility for damages to a tenant's property.<sup>15</sup> Since these rental agreement offers are likely those of adhesion,<sup>16</sup> Florida courts may look at them more unfavorably.<sup>17</sup>

The bill takes effect on July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

---

<sup>14</sup> The Uniform Commercial Code requires a secured creditor to dispose of a debtor's property in a commercially reasonable manner. However, what is commercially reasonable is not expressly defined in the code. See ss. 679.607-679.615, F.S.; see also Gary D. Spivey, *Uniform Commercial Code: burden of proof as to commercially reasonable disposition of collateral*, 59 A.L.R.3d 369.

<sup>15</sup> See *Allied Van Lines, Inc., v. Bratton*, 351 So. 2d 344 (1977) (finding that a contract which limited the carrier's liability to the shipper to \$1.25 per pound was valid).

<sup>16</sup> Adhesion contracts are standardized contract forms offered to consumers of goods and services on a "take it or leave it" basis without affording the consumer a realistic opportunity to bargain. See, e.g., *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 574 (Fla. 1st DCA 1999).

<sup>17</sup> *Id.* Whether a contract is one of "adhesion" is a factor courts examine in determining a contract's "unconscionability." If a contract is unconscionable, it is unenforceable. See also *Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278 (Fla. 1st DCA 2003).

**B. Private Sector Impact:**

By allowing self-storage facilities to advertise in a “commercially reasonable manner” instead of mandating the use of newspapers to advertise the sale of property, advertising revenues may be shifted from newspapers to other entities. If the bill reduces the costs of advertising the sale of property or increases the revenues from the sale of property, the bill may increase the potential for self-storage facilities to be made whole or result in additional surplus funds to be paid to a tenant.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 83.806 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.



138058

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Joyner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 31 - 64  
and insert:  
facility or self-contained storage unit is located.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to be licensed to post property online for sale pursuant to this section. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one



138058

12 sale.

13 (b)~~(a)~~ The advertisement shall include:

14 1. A brief and general description of what is believed to  
15 constitute the personal property contained in the storage unit,  
16 as provided in paragraph (2) (b) .

17 2. The address of the self-service storage facility or the  
18 address where the self-contained storage unit is located and the  
19 name of the tenant.

20 3. The time, place, and manner of the sale or other  
21 disposition. The sale or other disposition shall take place not  
22 sooner than 15 days after the first publication.

23 (c)~~(b)~~ If there is no newspaper of general circulation in  
24 the area where the self-service facility storage facility or  
25 self-contained storage unit is located, the advertisement shall  
26 be posted at least 10 days before the date of the sale or other  
27 disposition in not fewer than three conspicuous places in the  
28 neighborhood where the self-service storage facility or self-  
29 contained storage unit is located.

30

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

32 And the title is amended as follows:

33 Delete lines 3 - 12

34 and insert:

35 s. 83.806, F.S.; providing that a lien sale may be  
36 conducted on certain websites; providing that a self-  
37 storage facility owner is not required to have a  
38 license to post property for an online sale; providing

By Senator Hutson

6-00814A-16

2016720\_\_

1 A bill to be entitled  
 2 An act relating to self-storage facilities; amending  
 3 s. 83.806, F.S.; providing that advertisement of a  
 4 sale or disposition of property may be in any  
 5 commercially reasonable manner; specifying when  
 6 advertising may be considered to have been conducted  
 7 in a commercially reasonable manner; defining the term  
 8 "independent bidder"; providing that a lien sale may  
 9 be conducted on certain websites; providing that a  
 10 self-storage facility owner is not required to have a  
 11 license to post property for online sale; deleting a  
 12 required alternative form of advertisement; providing  
 13 limits for the maximum valuation of property under  
 14 certain circumstances; providing options for the  
 15 disposition of motor vehicles or watercraft claimed to  
 16 be subject to a lien; requiring specified notice to  
 17 lienholders and owners of motor vehicles or watercraft  
 18 subject to a lien; providing an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22 Section 1. Subsection (4) of section 83.806, Florida  
 23 Statutes, is amended, and subsections (9) and (10) are added to  
 24 that section, to read:

25 83.806 Enforcement of lien.—An owner's lien as provided in  
 26 s. 83.805 may be satisfied as follows:

27 (4) After the expiration of the time given in the notice,  
 28 an advertisement of the sale or other disposition shall be  
 29 published once a week for 2 consecutive weeks in a newspaper of

Page 1 of 4

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

6-00814A-16

2016720\_\_

30 general circulation in the area where the self-service storage  
 31 facility or self-contained storage unit is located or advertised  
 32 in any other commercially reasonable manner. As used in this  
 33 subsection, an advertisement is considered to have been  
 34 advertised in a "commercially reasonable" manner if at least  
 35 three independent bidders attend the sale at the time and place  
 36 advertised or register to bid at an online sale. As used in this  
 37 subsection, the term "independent bidder" means a bidder who is  
 38 not related to and who has no controlling interest in, or common  
 39 pecuniary interest with, the owner or any other bidder.

40 (a) A lien sale may be conducted on a public website that  
 41 customarily conducts personal property auctions. The facility or  
 42 unit owner is not required to be licensed to post property  
 43 online for sale pursuant to this subsection. Inasmuch as any  
 44 sale may involve property of more than one tenant, a single  
 45 advertisement may be used to dispose of property at any one  
 46 sale.

47 (b) ~~(a)~~ The advertisement shall include:

48 1. A brief and general description of what is believed to  
 49 constitute the personal property contained in the storage unit,  
 50 as provided in paragraph (2) (b).

51 2. The address of the self-service storage facility or the  
 52 address where the self-contained storage unit is located and the  
 53 name of the tenant.

54 3. The time, place, and manner of the sale or other  
 55 disposition. The sale or other disposition shall take place not  
 56 sooner than 15 days after the first publication or  
 57 advertisement.

58 ~~(b) If there is no newspaper of general circulation in the~~

Page 2 of 4

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

6-00814A-16 2016720\_\_

59 ~~area where the self-service storage facility or self-contained~~  
 60 ~~storage unit is located, the advertisement shall be posted at~~  
 61 ~~least 10 days before the date of the sale or other disposition~~  
 62 ~~in not fewer than three conspicuous places in the neighborhood~~  
 63 ~~where the self-service storage facility or self-contained~~  
 64 ~~storage unit is located.~~

65 (9) If the rental agreement contains a limit on the value  
 66 of property stored in the tenant's storage space, the limit is  
 67 deemed to be the maximum value of the property stored in that  
 68 space.

69 (10) If a lien is claimed on property that is a motor  
 70 vehicle or a watercraft and rent and other charges related to  
 71 the property remain unpaid or unsatisfied for 60 days after the  
 72 maturity of the obligation to pay the rent and other charges,  
 73 the facility or unit owner may do one of the following:

74 (a) The facility or unit owner may have the property towed.  
 75 If a motor vehicle or watercraft is towed, the facility or unit  
 76 owner is not liable for the motor vehicle or watercraft or any  
 77 damages to the motor vehicle or watercraft once a tower takes  
 78 possession of the property.

79 (b) The facility or unit owner may contact the Florida  
 80 Department of Highway Safety and Motor Vehicles to determine the  
 81 existence and identity of any lienholder and the name and  
 82 address of the owner of the motor vehicle or watercraft. Within  
 83 10 days after receipt of such information concerning a  
 84 lienholder and the owner of such motor vehicle or watercraft,  
 85 the facility or unit owner must send written notice to the  
 86 lienholder and to the owner by verified mail, stating that:

87 1. Such motor vehicle or watercraft is being held by the

6-00814A-16 2016720\_\_

88 facility or unit owner;

89 2. A lien has attached;

90 3. Payment must be made within 30 days after notification  
 91 to satisfy the lien and take possession of the motor vehicle or  
 92 watercraft; and

93 4. The facility or unit owner may sell the motor vehicle or  
 94 watercraft in any commercially reasonable manner, including by  
 95 public auction, if the lien is not satisfied.

96 (c) If an owner or a lienholder who receives notice under  
 97 paragraph (b) does not satisfy the lien, the facility or unit  
 98 owner may sell the motor vehicle or watercraft in any  
 99 commercially reasonable manner, including by public auction.

100 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-1-15

Meeting Date

720

Bill Number (if applicable)

Topic Storage Units - Public Notice

JOYNER AMENDMENT

Amendment Barcode (if applicable)

Name WAYNE MALANEY

138058

Job Title ADVOCATE

Address 32 Via Del Corso  
Street

Phone 850-933-7001

PALM BEACH GARDENS FL 33418  
City State Zip

Email F22DEBY1ST@AOL.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

AMENDMENT

Representing AMERICAN LAWYER MEDIA & BAILEY PUBLISHING & COMMUNICATIONS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/01/2015

*Meeting Date*

SB 720

*Bill Number (if applicable)*

Topic Self Storage Facilities

*Amendment Barcode (if applicable)*

Name Joseph R. Salzverg

Job Title Consultant

Address 301 S. Bronough Street, Suite 500

Phone (850) 577-1403

*Street*

Tallahassee

FL

32301

Email joseph@capitolinsight.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Self Storage Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1/15

*Meeting Date*

SB 720

*Bill Number (if applicable)*

Topic Self-storage Facilities

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

*Street*

Tallahassee

FL

32312

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1/15

*Meeting Date*

SB 720

*Bill Number (if applicable)*

138058

*Amendment Barcode (if applicable)*

Topic Self-storage Facilities

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

*Street*

Phone 224-7173

Tallahassee

FL

32312

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 142

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Student Loans

DATE: December 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			ACJ	
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 142 creates the “For the Greater Good Attorney Student Loan Repayment Program” within the Florida Department of Education. The program provides student loan repayment assistance to eligible attorneys employed in the public sector. Funding for the program is contingent upon a specific appropriation in the General Appropriations Act.

Under the bill, an attorney is eligible for loan repayment assistance for any student loan not in default which was issued or guaranteed by a state or the federal government, if the attorney:

- Is working full-time in the public sector in Florida, by the state or a local government or the Federal Government;
- Is a member of the Florida Bar who has not received any disciplinary action;
- Has completed no more than 10 years of government service;
- Earns less than \$65,000 in salary; and
- Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

The bill authorizes up to \$3,000 in loan payments annually for qualifying attorneys having at least 4 and up to 7 years of government employment. When an attorney reaches 7 years of employment, the amount authorized increases to \$5,000. When the attorney completes 10 years of service, loan payments cease.

An attorney must apply annually to the department for the loan repayment assistance.

## II. Present Situation:

### The Higher Education Act of 1965

Title IV of the Higher Education Act of 1965 established a federal loan program for eligible student and parent borrowers.<sup>1</sup> The program is known as the William D. Ford Federal Direct Loan Program (Direct Loan program).<sup>2</sup>

Today, the U.S. Department of Education oversees a variety of loan programs within the Direct Loan program.<sup>3</sup> These programs include the following offerings:

- Federal Perkins Loan, a loan made by the recipient's school, for undergraduate and graduate students who qualify based on financial need. Total loan amounts are capped.
- Direct Subsidized Loan, a loan available to undergraduate students enrolled at least half-time and with demonstrated financial need. Students are not charged interest during certain time periods, such as while they are attending school.
- Direct Unsubsidized Loan, a loan available to undergraduate and graduate students who are enrolled at least half-time. Financial need is irrelevant. Interest accrues regularly.
- Direct PLUS Loan, a loan for parent borrowers of dependent students attending school as undergraduate or graduate-level students. Interest accrues regularly.
- Direct Consolidation Loan, an optional loan that combines one or more federal student loans into one new loan to streamline billing into a single monthly payment.
- Federal Family Education Loan Program (FFEL), a program in which private lenders provided students loans that the federal government guaranteed. These loans included subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans, FFEL PLUS Loans, and FFEL Consolidation Loans. In 2010, Congress passed the Health Care and Education Reconciliation Act. The Act effectively ended the FFEL, and therefore the practice of the government providing guaranteed loans.<sup>4</sup> As of July 1, 2010, no new FFEL Program loans were made. Still, some loans taken out before this date continue in repayment.<sup>5</sup>

### Law School Costs and Debt

Many law school students in Florida graduate with considerable debt. The table on the next page details debt of recent law school graduates by public and private school attended in Florida.<sup>6</sup> The report from which the information is detailed below does not expressly indicate whether the amount of debt identified includes debt incurred for undergraduate or education other than for law school.

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<sup>1</sup> Pub. L. 89-329 (Nov. 8, 1965).

<sup>2</sup> Federal Student Aid, U.S. Department of Education, *Public Service Loan Forgiveness*, <https://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service> (last visited Oct. 8, 2015).

<sup>3</sup> Federal Student Aid, U.S. Department of Education, *About Us*, <https://studentaid.ed.gov/about> (last visited Oct. 8, 2015).

<sup>4</sup> Federal Student Aid, U.S. Department of Education, *Federal Family Education Loan Program Lender and Guaranty Agency Reports*, <https://studentaid.ed.gov/about/data-center/lender-guaranty> (last visited Oct. 8, 2015).

<sup>5</sup> Federal Student Aid, U.S. Department of Education, *Subsidized and Unsubsidized Loans*, <https://studentaid.ed.gov/types/loans/subsidized-unsubsidized#eligibility> (last visited Oct. 8, 2015).

<sup>6</sup> U.S. NEWS & WORLD REPORT GRAD COMPASS, *Which law school graduates have the most debt?*, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings/> (last visited Oct. 9, 2014).

<b>Name of Institution</b>	<b>Average Indebtedness of 2015 Graduates</b>	<b>Percent of Grads having Debt</b>
<b>Ave Maria School of Law</b>	\$132,236	87%
<b>Nova Southeastern University</b>	\$136,450	86%
<b>Florida Coastal School of Law</b>	\$162,785	93%
<b>Florida International University</b>	\$ 89,815	88%
<b>Florida State University</b>	\$ 80,375	85%
<b>Stetson University</b>	\$148,394	83%
<b>St. Thomas University</b>	\$140,808	91%
<b>University of Florida</b>	\$ 82,410	79%

In fact, the Florida Coastal School of Law ranks fourth in the country for highest average indebtedness of 2015 graduates.<sup>7</sup>

### **Loan Assistance and Forgiveness Programs**

#### ***Federal Program***

Congress created the Public Service Loan Forgiveness (PSLF) Program to encourage individuals to commit to public service, an area typically known for lower pay. The federal government provides loan forgiveness to applicants who work in certain public service jobs, including government organizations at the federal, state, or local level and private, not-for-profit organizations that provide public interest law services.

Loan forgiveness is available for government-held loans that are not in default. Additionally, the applicant must have made 120 monthly payments to qualify. The 120-month payment period started on October 1, 2007, so that the first loans will not be cancelled until October 1, 2017.<sup>8</sup>

Additionally, parents who received a Direct PLUS loan (on behalf of their child's education) may be eligible for loan forgiveness if the parent borrower works for a public service organization.<sup>9</sup>

#### ***The Florida Bar Foundation Loan Repayment Assistance Program (LRAP)***

The Florida Bar Foundation operates a Loan Repayment Assistance Program (LRAP) for attorneys employed at Florida legal aid and legal services organizations. The LRAP serves organizations that receive general support funding from The Florida Bar Foundation. Money is available to assist attorneys with student loan payments through proceeds on the Bar's "Interest on Trust Accounts," or IOTA program. Staff attorneys who qualify for the benefit receive a \$5,000 annual loan to pay down student loan debt. The annual loan issued by The Florida Bar is then forgiven, provided that the attorneys remain employed at qualifying organizations for a minimum of 12 months full-time or part-time (at least 50 percent of the full-time hours).<sup>10</sup>

<sup>7</sup> *Id.*

<sup>8</sup> Federal Student Aid, *supra* note 1.

<sup>9</sup> *Id.*

<sup>10</sup> The Florida Bar Foundation, *General Grant Support Program*, <http://www.flabarfdn.org/grant-programs/lap/loan.aspx> (last visited Oct. 9, 2015).

### *Legislation in Other States*

A total of 7 states have adopted legislation that offers loan assistance to lawyers working in certain public sector jobs. These states are California, Georgia, Illinois, Maryland, Nebraska, New Mexico, and Texas. Of these, only Maryland and New Mexico have funded their programs.<sup>11</sup>

### *Law Schools*

Many law schools offer loan repayment assistance to law school graduates working in the public interest sector. Pursuant to a survey request, 133 law schools responded that they have a loan repayment assistance program. Of the law schools in Florida, only the St. Thomas University School of Law responded affirmatively.<sup>12</sup>

## **III. Effect of Proposed Changes:**

The bill establishes the “For the Greater Good Attorney Student Loan Repayment Program” within the Florida Department of Education (DOE). The program provides student loan repayment assistance to eligible attorneys employed in the public sector. The bill authorizes the DOE to adopt rules to administer the program.

Funding for the program is contingent upon, and funded entirely through appropriations from the General Revenue Fund. As such, even if the bill passes, the program cannot be implemented without funding.

The program is intended to attract more attorneys to public service, and help government agencies retain attorneys, thereby reducing turnover and costs of repeated trainings.

Under the bill, an attorney is eligible for loan repayment assistance for any student loan not in default which was issued or guaranteed by a state or the Federal Government, if the attorney:

- Is working full-time in the public sector in Florida, by the state or a local government or the federal government;
- Is a member of the Florida Bar who has not received any disciplinary action;
- Has completed no more than 10 years of government service;
- Earns less than \$65,000 in salary as reported to the Internal Revenue Service; and
- Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

### **Qualifying Loans and Payments**

To be a qualifying loan, the loan must be secured for a law school education, government-held, and not in default. The bill, however, does not explain how DOE will segregate law school loans that have been consolidated with other education loans.

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<sup>11</sup> American Bar Association, *State Loan Repayment Assistance*, [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/loan\\_repayment\\_assistance\\_programs/state\\_loan\\_repayment\\_assistance\\_programs.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs/state_loan_repayment_assistance_programs.html) (last visited Oct. 9, 2015).

<sup>12</sup> Equal Justice Works, *Law School LRAPS*, <http://www.equaljusticeworks.org/ed-debt/students/loan-repayment-assistance-programs/school-LRAPs/law-school-list> (last visited Oct. 9, 2015).

Loans eligible for repayment are limited to student loans issued or guaranteed by a state or the Federal Government. Loans that are privately-held do not qualify. The bill further declares that the payments are not taxable income.<sup>13</sup>

The annual allowance for loan repayment assistance is:

- \$3,000 if the attorney has at least 4 years, and up to 7 years of employment in the public sector; and
- \$5,000 if the attorney has more than 7, but no more than 10 years of employment in the public sector.

### **Process for Application and Payment**

The Florida Department of Education will administer the program and make payment on the loans.

To apply for loan repayment assistance, an attorney must annually submit a certification affidavit to his or her employer within 30 days after his or her employment anniversary. The affidavit must certify that the attorney is an eligible career attorney with one or more eligible student loans as of his or her last employment anniversary. Within 60 days after the most recent employment anniversary, the employer must submit the affidavit to the DOE.

Once approved, the DOE will make payments to the financial institution that services an attorney's student loan. However, if an attorney has multiple loans, the DOE must prioritize payments to the loan having the highest current interest rate.

Because the program is contingent upon appropriations by the Legislature, the Legislature may choose not to fund the program or to underfund the program. If funds appropriated are insufficient to make full payments for all eligible attorneys, the DOE must uniformly prorate payments.

The bill takes effect July 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>13</sup> The IRS code, not Florida law, likely determines whether loan repayment assistance is taxable income.

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

None.

**B. Private Sector Impact:**

Increasing payments based on years of service provides an incentive for attorneys to make a long-term commitment to public service.

Florida attorneys employed in any public sector position, whether by the state or a local government or the Federal Government may qualify for loan repayment assistance.

**C. Government Sector Impact:**

Employers in the public sector may benefit from this program by having decreased turnover.

As the agency designated to house and administer the program, the DOE will likely incur a fiscal impact from the bill. A fiscal impact may result from costs to operate the program and from rulemaking. The bill does not address funding for DOE.

The appropriation needed to fund this program is unknown at this time due to the broad reach of the program. Under the bill, any attorney in the public sector may qualify for loan repayment. Also, the pool of employers is wide, including any local, state, or federal organization. Finally, the bill excludes from participation attorneys who are eligible for any other kind of repayment program. As a number of other programs offer loan repayment, ascertaining the number of attorneys who do not qualify on this basis is difficult.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Although the Federal Family Education Loan Program (FFEL) no longer exists, some applicants for loan assistance under the bill may have received private loans through the FFEL, which were then consolidated into a Direct Loan. The bill provides that only loans issued through the Higher Education Act (Direct Loan program) qualify for assistance. The Higher Education Act created the FFEL. Therefore, under this bill, borrowers may receive loan assistance for loans that were initially privately-held.

Also, the bill provides that payments on loans are not taxable income. Florida does not tax state income. Therefore, whether loan repayment assistance is taxable income will be determined by federal law.



**VIII. Statutes Affected:**

This bill creates section 1009.675 of the Florida Statutes.

**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 December 1, 2015:**

- Broadens the pool of potential participants from assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors to any attorney employed by the state or a local government or the Federal Government;
- Changes the administering bodies from the Justice Administrative Commission and the Office of the Attorney General to the Department of Education;
- Creates the “For the Greater Good Attorney Student Loan Repayment Program” and houses the Program in the DOE;
- Removes the cap on the dollar amount of payments that can be made for each attorney;
- Requires qualifying attorneys to earn less than \$65,000, be a member of the Florida Bar without prior disciplinary action, and not be eligible for other loan repayment programs;
- Excludes from participation attorneys who are eligible for any other repayment program; and
- Reduces the number of eligible years for repayments by revising the required number of years of work in the public sector from 3 to 12 years, to 4 to 10 years.

**B. Amendments:**

None.



198794

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 1009.675, Florida Statutes, is created  
to read:

1009.675 For the Greater Good Attorney Student Loan  
Repayment Program.—

(1) There is established within the Department of Education  
the For the Greater Good Attorney Student Loan Repayment  
Program. The primary function of the program is to increase



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12 employment and retention of attorneys in the public sector by  
13 making payments that offset student loans issued or guaranteed  
14 by a state or the Federal Government. The department shall  
15 administer the program.

16 (2) To be eligible to participate in this program, an  
17 attorney:

18 (a) Must be a member of The Florida Bar;

19 (b) Must be employed full time by a local, state, or  
20 federal government;

21 (c) Must be employed in this state;

22 (d) Must have completed not more than 10 years of  
23 government service, regardless of whether the attorney had a  
24 break in employment of less than 2 weeks while transferring to  
25 another governmental entity;

26 (e) Must be earning less than \$65,000 in salary as reported  
27 to the Internal Revenue Service;

28 (f) Must not have received any disciplinary action from The  
29 Florida Bar;

30 (g) Must have an unsatisfied student loan that was issued  
31 or guaranteed by a state or the Federal Government; and

32 (h) Is not eligible for any other state, local, or federal  
33 grant or private fund that assists in student loan repayment.

34 (3) Only loans that are not in default and that were issued  
35 pursuant to the Higher Education Act of 1965, 20 U.S.C. ss. 1001  
36 et seq., as amended, to fund an eligible attorney's law school  
37 education shall be covered.

38 (4) From the funds available, the Department of Education  
39 shall make an annual payment as follows:

40 (a) Three thousand dollars if the attorney has at least 4



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41 years, but not more than 7 years, of continuous government  
42 service.

43 (b) Five thousand dollars if the attorney has more than 7  
44 years, but not more than 10 years, of continuous government  
45 service.

46 (5) Each payment is contingent upon an annual receipt of a  
47 certification affidavit. Within 30 days after the employment  
48 anniversary of an eligible attorney, in order to receive a  
49 payment under the program, such attorney must submit to his or  
50 her employer a certification affidavit on a form authorized by  
51 the department which certifies that the attorney was an eligible  
52 attorney as of his or her last employment anniversary. If the  
53 employer signs the affidavit, the employer shall submit the  
54 affidavit to the department within 60 days after the most recent  
55 employment anniversary of the eligible attorney, and each year  
56 thereafter.

57 (6) Payments are not deemed taxable income. Each payment  
58 shall be made directly to the financial institution that  
59 services the loan and, if the eligible attorney holds more than  
60 one eligible loan, for the loan that has the highest current  
61 interest rate.

62 (7) If funds appropriated are insufficient to provide  
63 maximum payment for eligible attorneys, the department shall  
64 prorate payments for all eligible attorneys by an equal  
65 percentage reduction for the year for which funds appropriated  
66 are insufficient.

67 (8) The Department of Education may adopt rules necessary  
68 to administer this program.

69 (9) The Greater Good Attorney Student Loan Repayment



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70 Program may be funded annually contingent upon a specific  
71 appropriation in the General Appropriations Act for the Greater  
72 Good Attorney Student Loan Repayment Program.

73 Section 2. This act shall take effect July 1, 2016.

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

75 And the title is amended as follows:

76 Delete everything before the enacting clause  
77 and insert:

78 A bill to be entitled

79 An act relating to student loans; creating s.  
80 1009.675, F.S.; creating the For the Greater Good  
81 Attorney Student Loan Repayment Program to increase  
82 employment and retention of attorneys in the public  
83 sector; providing eligibility requirements; specifying  
84 the loans that will be covered by the repayment  
85 program; requiring the Department of Education to make  
86 payments to eligible attorneys; providing procedures  
87 to administer the program; providing that a payment is  
88 not taxable income; providing procedures if  
89 appropriated funds are insufficient; authorizing  
90 rulemaking; providing an effective date.

By Senator Ring

29-00063-16

2016142\_\_

1 A bill to be entitled  
 2 An act relating to student loans; creating s. 43.45,  
 3 F.S.; defining terms; requiring the Justice  
 4 Administrative Commission and the Office of the  
 5 Attorney General to implement a student loan  
 6 assistance program to assist a career assistant state  
 7 attorney, assistant public defender, assistant  
 8 attorney general, or assistant statewide prosecutor in  
 9 the repayment of eligible student loans; establishing  
 10 requirements for the administration of the program;  
 11 requiring the administering body to make payments  
 12 based on the length of employment of the eligible  
 13 career attorney and the availability of funds;  
 14 providing for the cessation of payments in certain  
 15 circumstances; providing funding; requiring the  
 16 Justice Administrative Commission and the Office of  
 17 the Attorney General to develop procedures to  
 18 administer the program; providing an effective date.  
 19  
 20 Be It Enacted by the Legislature of the State of Florida:  
 21  
 22 Section 1. Section 43.45, Florida Statutes, is created to  
 23 read:  
 24 43.45 Student loan assistance program; administration.-  
 25 (1) As used in this section, the term:  
 26 (a) "Administering body" means:  
 27 1. If the eligible career attorney is employed as an  
 28 assistant state attorney or assistant public defender, the  
 29 Justice Administrative Commission.

Page 1 of 4

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

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2016142\_\_

30 2. If the eligible career attorney is employed as an  
 31 assistant attorney general or assistant statewide prosecutor,  
 32 the Office of the Attorney General.  
 33 (b) "Eligible attorney" means an assistant state attorney,  
 34 assistant public defender, assistant attorney general, or  
 35 assistant statewide prosecutor.  
 36 (c) "Eligible career attorney" means an eligible attorney  
 37 who has completed at least 3 years, but not more than 12 years,  
 38 of continuous service as an eligible attorney, regardless of  
 39 whether the eligible attorney had a break in employment of less  
 40 than 2 weeks while transferring to another employer of eligible  
 41 attorneys.  
 42 (d) "Eligible student loan" means a loan that is not in  
 43 default and that was issued pursuant to the Higher Education Act  
 44 of 1965, 20 U.S.C. ss. 1001 et seq., as amended, to a person who  
 45 is now an eligible career attorney to fund his or her law school  
 46 education.  
 47 (e) "Employment anniversary" means the anniversary of the  
 48 date that an eligible career attorney commenced employment as an  
 49 eligible attorney.  
 50 (2) The administering body shall implement a student loan  
 51 assistance program for eligible career attorneys. The purpose of  
 52 the program is to provide financial assistance to eligible  
 53 career attorneys for the repayment of eligible student loans.  
 54 (3) The student loan assistance program is administered in  
 55 the following manner:  
 56 (a) Within 30 days after the employment anniversary of an  
 57 eligible career attorney, such attorney must submit to his or  
 58 her employer a certification affidavit on a form authorized by

Page 2 of 4

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

29-00063-16

2016142\_\_

59 the administering body which certifies that the eligible career  
 60 attorney had one or more eligible student loans as of his or her  
 61 last employment anniversary. If the employer signs the  
 62 certification affidavit, the employer shall submit the affidavit  
 63 to the administering body within 60 days after the most recent  
 64 employment anniversary of the eligible career attorney.

65 (b) Upon receipt of a certification affidavit, the  
 66 administering body shall make a maximum payment of:

67 1. If the eligible career attorney has at least 3 years,  
 68 but not more than 6 years, of continuous service as an eligible  
 69 career attorney, \$3,000.

70 2. If the eligible career attorney has more than 6 years,  
 71 but not more than 12 years, of continuous service as an eligible  
 72 career attorney, \$5,000.

73  
 74 If appropriated funds are insufficient to provide the maximum  
 75 payment for each eligible career attorney, the administering  
 76 body shall prorate payments by an equal percentage reduction.

77 (c) A payment under paragraph (b) shall be made by the  
 78 administering body:

79 1. To the lender of the eligible student loan;

80 2. Between July 1 and July 31 of the next fiscal year  
 81 following receipt of the certification affidavit by the  
 82 administering body;

83 3. For the benefit of the eligible career attorney named in  
 84 the certification affidavit and for the purpose of satisfying  
 85 his or her eligible student loan obligation; and

86 4. For the eligible student loan that has the highest  
 87 current interest rate if the eligible career attorney holds more

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

29-00063-16

2016142\_\_

88 than one eligible student loan.

89 (d) Payments under paragraph (b) cease upon totaling  
 90 \$44,000 per eligible career attorney or upon full satisfaction  
 91 of the eligible student loan, whichever occurs first.

92 (4) The student loan assistance program may be funded  
 93 annually contingent upon a specific appropriation in the General  
 94 Appropriations Act for the student loan assistance program.

95 (5) The Justice Administrative Commission and the Office of  
 96 the Attorney General shall develop procedures to administer this  
 97 section.

98 Section 2. This act shall take effect July 1, 2016.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Appropriations Subcommittee on Finance and  
Tax, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR JEREMY RING**  
29th District

September 10, 2015

Honorable Miguel Diaz de la Portilla  
Committee on Judiciary  
515 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Mr. Chairman,

I am writing to respectfully request your cooperation in placing Senate Bill 142, relating to Student Loans, on the Judiciary agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Tom Cibula, Staff Director  
Joyce Butler, Committee Administrative Assistant

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1/15  
Meeting Date

SB 142  
Bill Number (if applicable)

Topic Student Loans

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title Gen Counsel Public Defenders

Address PO Box 1799  
Street

Phone 950-510-2187

Tallahassee FL 32302  
City State Zip

Email RobertTrammell145@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Public Defender Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-1-15  
Meeting Date

SB 142  
Bill Number (if applicable)

Topic Student Loan Program

Amendment Barcode (if applicable)

Name NIKKI Fried

Job Title attorney

Address 3980 W. Broward Blvd #215  
Street

Phone 954-734-3799

Ft. Lauderdale FL 33312  
City State Zip

Email nfried@colodnyfisi.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

12-1-15

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

STRIKEBALL

142

Bill Number (if applicable)

198794

Amendment Barcode (if applicable)

Meeting Date

Topic STUDENT LOANS

Name MONICA HOFHEINZ

Job Title ASSISTANT STATE ATTORNEY - 17th JUDICIAL CIRCUIT

Address 201 SE 6th ST

Phone \_\_\_\_\_

Street

FT LAUD

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing STATE ATTORNEY MIKE SATZ AND FLORIDA PROSECUTORS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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 Committee on Judiciary

---

BILL: CS/CS/SB 308

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Benacquisto

SUBJECT: Unattended Persons and Animals in Motor Vehicles

DATE: December 2, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Maida</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 308 creates immunity from civil liability for property damage that may occur when an individual attempts to rescue a minor, elderly or disabled adult, or domestic animal from a motor vehicle.

In order to qualify for such immunity, the individual must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, vulnerable adult, or animal is in imminent danger of suffering harm;
- Contact a law enforcement agency or 911 before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

## II. Present Situation:

### Current Law: The Good Samaritan Act

The “Good Samaritan Act,” codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>1</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.<sup>2</sup>
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>3</sup>

The Good Samaritan Act, however, does not specifically address immunity from liability for property damage related to the forcible entry of a motor vehicle to rescue an endangered person or animal.

### Legal Risks to Good Samaritans

Under current law, only law enforcement officers may use all reasonable means to protect minors and remove them from vehicles.<sup>4</sup> Ordinary citizens lack this authority. In fact, individuals who forcibly enter motor vehicles for the purpose of rescuing an endangered person or animal do so at the risk of being held civilly liable for damages caused to the vehicle. Additionally, the motor vehicle owner may pursue a civil cause of action for trespass to personal property<sup>5</sup> or conversion<sup>6</sup> against the good Samaritan unless the good Samaritan’s actions are protected under the “Good Samaritan Act.” Further, the good Samaritan who enters another’s vehicle without permission could be charged with a criminal law violation such as trespass.<sup>7</sup>

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<sup>1</sup> Section 768.13(2)(a), F.S.

<sup>2</sup> Section 768.13(2)(d), F.S.

<sup>3</sup> Section 768.13(3), F.S.

<sup>4</sup> See s. 316.6135, F.S.

<sup>5</sup> Trespass to personal property, also known as trespass to chattels, is the intentional use of, or interference with, personal property which is in the possession of another without justification. The measure of damages is the value of the property at the time and place of the wrongful taking or removal. *Coddington v. Staab*, 716 So. 2d 850, 851 (Fla. 4th DCA 1998).

<sup>6</sup> Conversion is an unauthorized act that deprives another of his or her property permanently or for an indefinite time. A defendant may be found liable for conversion if he or she deprived the plaintiff of his or her property by means of such an unauthorized act. The essence of conversion is the exercise of wrongful dominion or control over property to the detriment of the rights of the actual owner. It is interference with the legal rights that is incident to ownership, such as the right to possession. See *Fogade v. ENB Revocable Trust*, 263 F.3d 1274 (11th Cir. 2001); *Compania de Elaborados de Café v. Cardinal Capital Management, Inc.*, 401 F. Supp. 2d 1270 (S.D. Fla. 2003); *U.S. v. Bailey*, 288 F. Supp. 2d 1261 (M.D. Fla. 2003), *aff’d*, 419 F.3d 1208 (11th Cir. 2005).

<sup>7</sup> See tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S.

**Vehicular Heatstroke**

Since 1998, more than 660 children have died from vehicular heatstroke<sup>8</sup> in the United States.<sup>9</sup> Seventy two of those deaths, including 4 in 2015, occurred in Florida.<sup>10</sup> Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.<sup>11</sup> These tragic incidents are often caused when children are left unattended in a motor vehicle by a caregiver - intentionally or unintentionally - or become trapped while playing in an unlocked vehicle.<sup>12</sup>

Although outside temperatures may be mild or relatively cool, the interior temperatures of a motor vehicle can rise significantly and rapidly as the chart below shows.

<b>Estimated Vehicle Interior Air Temperature v. Elapsed Time</b>						
<b>Elapsed time</b>	<b>Outside Air Temperature (F)</b>					
	<b>70</b>	<b>75</b>	<b>80</b>	<b>85</b>	<b>90</b>	<b>95</b>
0 minutes	70	75	80	85	90	95
10 minutes	89	94	99	104	109	114
20 minutes	99	104	109	114	119	124
30 minutes	104	109	114	119	124	129
40 minutes	108	113	118	123	128	133
50 minutes	111	116	121	126	131	136
60 minutes	113	118	123	128	133	138
> 1 hour	115	120	125	130	135	140

Courtesy Jan Null, CCM: Department of Geosciences, San Francisco State University

The effect of such rapid and extreme temperature rise on infants and small children is often deadly because a child’s body temperature heats up three to five times faster than that of an adult.<sup>13</sup>

In addition to fatalities involving children, 17 seniors have died of vehicular heatstroke in Florida since 2010.<sup>14</sup> Elderly adults, disabled individuals, and pets left alone in a motor vehicle are at particular risk of succumbing to vehicular heatstroke, as these groups of individuals may be

<sup>8</sup> Hyperthermia is the condition of having an abnormally high body temperature caused by a failure of the thermoregulation mechanisms of the body to dissipate more heat than it absorbs from the environment. Heat fatigue, heat syncope (sudden dizziness after prolonged exposure to the heat), heat cramps, heat exhaustion, and heat stroke are commonly known forms of hyperthermia. NATIONAL INSTITUTES OF HEALTH, *Hyperthermia: too hot for your health* (June 27, 2012), <http://www.nih.gov/news/health/jun2012/nia-27.htm>.

<sup>9</sup> Jan Null, *Heatstroke Deaths of Children in Vehicles*, Department of Meteorology & Climate Science, San Jose State University, <http://noheatstroke.org> (last visited November 5, 2015).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* From 1998 through 2014, a total of 636 infants and children died of heatstroke inside motor vehicles. 338, or 53%, of these were forgotten by a parent or other caregiver. Of these 338, 98 were linked to the mother and 115 to the father. *See also* Alan G. Breed, *Sentences Vary When Kids Die in Hot Cars*, THE WASHINGTON POST, July 29, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/28/AR2007072800644.html>.

<sup>13</sup> Trisha Corinth, *Children left in cars can die of heatstroke in minutes*, AMERICAN ACADEMY OF PEDIATRICS (July 27, 2015), available at: <http://aapnews.aapublications.org/content/36/8/33.4.full>.

<sup>14</sup> Dan Sweeney, *Bill shielding good Samaritans passes committee*, SUN SENTINEL, Oct. 20, 2015, <http://www.sun-sentinel.com/news/florida/fl-breaking-into-hot-cars-bill-20151020-story.html>.

unable to open car doors or express discomfort verbally (or audibly, inside a closed car). They also may suffer from existing health issues.<sup>15</sup>

### III. Effect of Proposed Changes:

The bill creates s. 768.139, F.S., to protect persons who are acting as good Samaritans from civil liability for any damage resulting from their entry into a motor vehicle to remove a minor, elderly or disabled person, or domestic animal.

To act with immunity from civil liability, the person must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, vulnerable adult, or animal is in imminent danger of suffering harm;
- Contact a law enforcement agency before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

The bill provides definitions for the following terms used in the bill:

- “Domestic animal” is a dog, cat, or other animal that is domesticated and may be kept as a household pet, but not livestock or other farm animals.
- “Vulnerable person” means:
  - A vulnerable adult.<sup>16</sup>
  - A minor.

Although not specified in the bill, the term “minor” is generally defined as any person who has not attained the age of 18 years.<sup>17</sup> “Motor vehicle” is defined by reference to s. 320.01, F.S.<sup>18</sup>

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<sup>15</sup> See also Weather.com, What the Heat Can Mean to Your Dog – Heat Stroke Can Be Fatal. Findout! (Jan. 25, 2015), <http://www.weather.com/safety/heat/news/police-dog-deaths-hot-car> and Weather.com, 11 Police Dogs Have Died of Heat Exhaustion This Summer; 9 We Left in Hot Patrol Cars (Aug. 17, 2015), <http://www.weather.com/pets/news/dog-heat-stroke-20120420>.

<sup>16</sup> Section 415.102, F.S., defines the term “vulnerable adult” as:  
a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

<sup>17</sup> Section 101(13), F.S.

<sup>18</sup> Section 320.01(1), F.S., defines the term “motor vehicle” as:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, special mobile equipment as defined in s. 316.003(48), vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

Good Samaritans who enter a motor vehicle to rescue an endangered person or animal may be subject to criminal penalty for tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S. The immunity provided by the bill does not appear to absolve a good Samaritan of any potential criminal liability in such cases.

The bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **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:**

This bill has an indeterminate<sup>19</sup> financial impact on motor vehicle owners and insurance companies. Generally, “other than collision”<sup>20</sup> automobile insurance, also known as “comprehensive coverage,” covers intentional damage to a motor vehicle by a third party. If insured, the motor vehicle owner is responsible for the cost of repair up to the amount of the policy deductible.<sup>21</sup> The remaining cost is paid by the insurance company pursuant

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<sup>19</sup>The extent and cost of the damage caused by a good Samaritan who is immune under the bill will depend upon the specific circumstances of the event as well as the age, make, and model of the motor vehicle. However, one of the most common methods of forcible entry into a motor vehicle in such cases, breaking a car window, typically involves damages of several hundred dollars. See Safelite AutoGlass, Quick Quote, <https://www.safelite.com/auto-glass-repair-replacement-cost/> (last visited November 6, 2015).

<sup>20</sup> This form of coverage, available under a personal automobile policy, provides a form of “all risks” protection for damage to a covered auto from perils other than collision. Losses include, but are not limited to, fire, theft or larceny, explosion or earthquake, windstorm, hail, water, flood, malicious mischief, vandalism, riot, contact with an animal, and glass breakage. This protection is sometimes referred to as “comprehensive coverage.” Insurance Risk Management Institute, other-than-collision coverable <https://www.irmi.com/online/insurance-glossary/terms/o/other-than-collision-coverage.aspx> (last visited October 13, 2015).

<sup>21</sup> If the damage occurs to the windshield of the motor vehicle, the motor vehicle owner is not required to pay the deductible in order to obtain the benefits of comprehensive coverage. Section 627.7288, F.S.



to the terms of the policy. If uninsured, the motor vehicle owner must pay the entire cost to repair any damage.

Under current law, a motor vehicle owner and an insurance company, as a subrogee<sup>22</sup> to all of the insured's rights to recovery, may recover his or her respective costs from the party that caused the damage. The immunity provided by this bill prevents the motor vehicle owner and the insurance company from recovering such costs.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill lists five criteria that determine whether a person is entitled to immunity from civil liability for damages to a motor vehicle caused during the attempted rescue of a domestic animal or vulnerable adult. The specific wording of the bill implies but does not directly state that the person must satisfy all five criteria to be immune. If the Legislature intends to require a person to satisfy all five criteria, it may wish to revise the bill to more clearly reflect that intent.

However, a rescuer who is not familiar with the five criteria set forth in the bill may be at risk for damages for actions taken in good faith to rescue a vulnerable person or domestic animal. As such, the Legislature may wish to consider revising the bill to state that the immunity granted by the bill applies to a person who substantially complies with the five criteria or otherwise acts in good faith and reasonably under the circumstances.

**VIII. Statutes Affected:**

This bill creates section 768.139 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Judiciary on December 1, 2015:**

Revises the definition of “Vulnerable person” to the definition contained in s. 435.02, F.S. Additionally, the committee substitute extends to a good Samaritan the option of calling 911 in lieu of contacting law enforcement in order to preserve his or her immunity.

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<sup>22</sup> Black’s Law Dictionary (10th ed. 2014) defines subrogation as “the principle under which an insurer [the subrogee] that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured [the subrogor] with respect to any loss covered by the policy.”

**CS by Criminal Justice on November 17, 2015:**

Reorganizes the substance of the bill and places it in a new section of the Florida Statutes.

**B. Amendments:**

None.

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

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221626

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Benacquisto) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 21 - 37

and insert:

(c) "Vulnerable person" has the same meaning as provided in s. 435.02.

(2) IMMUNITY FOR DAMAGE TO MOTOR VEHICLE.—A person who enters a motor vehicle, by force or otherwise, for the purpose of removing a vulnerable person or domestic animal is immune from civil liability for damages to the motor vehicle if the



221626

11 person:

12 (a) Determines the motor vehicle is locked or there is  
13 otherwise no reasonable method for the vulnerable person or  
14 domestic animal to exit the motor vehicle without assistance.

15 (b) Has a good faith and reasonable belief, based upon the  
16 known circumstances, that entry into the motor vehicle is  
17 necessary because the vulnerable person or domestic animal is in  
18 imminent danger of suffering harm.

19 (c) Ensures that law enforcement is notified or 911 is  
20 called before

21

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

23 And the title is amended as follows:

24 Delete lines 5 - 6

25 and insert:

26 for entry into a motor vehicle related to the rescue  
27 of a person or an animal under certain circumstances;  
28 providing

By the Committee on Criminal Justice; and Senator Benacquisto

591-01276-16

2016308c1

1 A bill to be entitled  
 2 An act relating to unattended persons and animals in  
 3 motor vehicles; creating s. 768.139, F.S.; providing  
 4 definitions; providing immunity from civil liability  
 5 for entry into a motor vehicle to remove a person or  
 6 animal under certain circumstances; providing for  
 7 applicability; providing an effective date.  
 8  
 9 Be It Enacted by the Legislature of the State of Florida:  
 10  
 11 Section 1. Section 768.139, Florida Statutes, is created to  
 12 read:  
 13 768.139 Rescue of vulnerable person or domestic animal from  
 14 a motor vehicle; immunity from civil liability.—  
 15 (1) DEFINITIONS.—As used in this section, the term:  
 16 (a) "Domestic animal" means a dog, cat, or other animal  
 17 that is domesticated and may be kept as a household pet. The  
 18 term does not include livestock or other farm animals.  
 19 (b) "Motor vehicle" has the same meaning as provided in s.  
 20 320.01.  
 21 (c) "Vulnerable person" means:  
 22 1. A disabled adult as defined in s. 825.101(3).  
 23 2. An elderly person as defined in s. 825.101(4).  
 24 3. A minor.  
 25 (2) IMMUNITY FOR DAMAGE TO MOTOR VEHICLE.—A person who  
 26 enters a motor vehicle, by force or otherwise, for the purpose  
 27 of removing a vulnerable person or domestic animal is immune  
 28 from civil liability for damages to the motor vehicle if the  
 29 person:

Page 1 of 2

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

591-01276-16

2016308c1

30 (a) Determines the motor vehicle is locked or there is  
 31 otherwise no reasonable method for the vulnerable person or  
 32 domestic animal to exit the motor vehicle without assistance.  
 33 (b) Has a good faith and reasonable belief, based upon the  
 34 known circumstances, that entry into the motor vehicle is  
 35 necessary because the vulnerable person or domestic animal is in  
 36 imminent danger of suffering harm.  
 37 (c) Ensures that law enforcement is notified before  
 38 entering the motor vehicle or immediately thereafter.  
 39 (d) Uses no more force to enter the motor vehicle and  
 40 remove the vulnerable person or domestic animal than is  
 41 necessary.  
 42 (e) Remains with the vulnerable person or domestic animal  
 43 in a safe location, in reasonable proximity to the motor  
 44 vehicle, until law enforcement or other first responder arrives.  
 45 (3) APPLICABILITY.—This section does not limit or expand  
 46 any immunity provided under s. 768.13 for the care or treatment  
 47 of the vulnerable person or domestic animal.  
 48 Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01 DEC 2015  
Meeting Date

308  
Bill Number (if applicable)

221626  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name PAUL JESS

Job Title \_\_\_\_\_

Address 218 S MONROE ST  
Street

Phone 224-9403

TALLAHASSEE FL 32301  
City State Zip

Email pjess@floridajusticeassociation.org

Speaking:  For  Against  Information

AMENDMENT  
Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

WAIVE IN SUPPORT  
Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/1/15

Meeting Date

308

Bill Number (if applicable)

Topic Unattended Persons in Motor Vehicles

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 345 W Madison St

Phone (850) 224-7333

Street

Tallahassee

FL

33201

City

State

Zip

Email rocco.fish@verizon.net

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Florida Professional Firefighters

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

DEC 1, 2015  
Meeting Date

SB 308  
Bill Number (if applicable)

Topic UNATTENDED PERSONS/ANIMALS IN MOTOR VEHICLES

Amendment Barcode (if applicable)

Name LAURA YOUNG

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST  
Street

Phone 294-1838

TAL. PL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 390

INTRODUCER: Judiciary Committee and Senator Simpson

SUBJECT: Public Records/Public Agency Contract for Services

DATE: December 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	<u>FP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 390 revises the procedures a person must follow to obtain public records from a contractor that is acting on behalf of a public agency. Under the bill, a person who seeks a public record possessed by an agency contractor must request the record from the contracting agency. Attorney fees and costs, as under existing law, may be assessed against a contractor who fails to provide access to a public record. However, the requestor, to be entitled to fees and costs, must provide notice to the custodian and contractor, and an opportunity to correct a violation of public records law, at least 8 business days before filing a lawsuit. Additionally, a contractor who fails to provide records to a public agency commits a noncriminal infraction, punishable by a fine, or if the failure was willful and knowing commits a misdemeanor.

The bill also authorizes contractors to retain public records upon the completion of a contract. Under current law, these records must be returned to the contracting agency.

**II. Present Situation:**

**Public Records and Open Meetings Requirements**

The Florida Constitution provides that every individual has a right of access to public records, unless exempted, which are made or received in connection with official public business.<sup>1</sup> This

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<sup>1</sup> Article I, s. 24(a), FLA. CONST.

right applies to records of the legislative, executive, and judicial branches.<sup>2</sup> The Florida Constitution also requires all meetings of a collegial public body of the executive branch or any local government at which official acts are taken or public business is discussed to be open and noticed to the public.<sup>3</sup>

Florida law implements the constitutional right of access to records and meetings by specifying conditions under which qualifying entities must provide public access to government records and meetings. The Public Records Act, codified in chapter 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>5</sup> The Sunshine Law requires all meetings of a board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>6</sup>

An agency may not impose greater conditions on responding to a public records request than that required by law. For example, an agency may not require a person seeking a public record to disclose his or her background.<sup>7</sup> Nor may an agency require an individual to put his or her request in writing as a condition of production.<sup>8</sup> An agency must honor a request whether a person requests records by phone, in writing, or in person, provided that the request is sufficient to identify the records sought.<sup>9</sup>

### **Enforcing Public Records Laws and Attorney Fees**

Article I, Section 24(c), Florida Constitution, requires the Legislature to enact laws governing the enforcement of public records requirements, including the "maintenance, control, destruction, disposal, and disposition of records."

Under s. 119.11, F.S., a person may enforce the right to a public record by a lawsuit against an agency. In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases.<sup>10</sup> If a court orders an agency to open its records for inspection, the agency must

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<sup>2</sup> *Id.*

<sup>3</sup> Article I, s. 24(b), FLA. CONST.

<sup>4</sup> Section 119.011(12), F.S., defines "public record" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32, 36-37 (Fla. 1992).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> Section 286.011(1), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Article III, s. 4(e) of the Florida Constitution.

<sup>7</sup> *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA Fla. 1987).

<sup>8</sup> *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, n.1 (Fla. 3d DCA 2001); Op. Att'y Gen. Informal Opinion (Dec. 16, 2003).

<sup>9</sup> Op. Att'y Gen. Fla. 80-57, pg. 3 (1980).

<sup>10</sup> Section 119.11(1), F.S.

comply within 48 hours.<sup>11</sup> If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay costs and attorney fees.<sup>12</sup> An unjustified delay in turning over public records is considered an unlawful refusal, and a court will award attorney fees even if the delay is not willful or is due to incompetence.<sup>13</sup>

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.<sup>14</sup> Once an enforcement action is filed, the court will require a public agency to pay the requestor's attorney fees even after the agency has produced the records.<sup>15</sup>

The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.<sup>16</sup> In addition, granting attorney fees makes it more likely that public agencies will comply with public records laws.<sup>17</sup>

### **Contracts for Services and Public Records Law**

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services and act on behalf of the agency.<sup>18</sup> Contractors can be individuals or business entities.<sup>19</sup> Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws in the same manner as a public agency.<sup>20</sup>

Every public records contract for services must include a provision that requires the contractor to comply with public records law. Specifically, a contractor must:

- Keep and maintain public records typically required by the public agency to perform the service;
- Provide public access to public records on the same terms and conditions that the public agency would provide the record and at the same cost authorized by law;
- Protect from disclosure records that are exempt from disclosure requirements or confidential; and
- Retain records as required by law and transfer at no cost all public records to the public agency upon termination of the contract.<sup>21</sup>

<sup>11</sup> Section 119.11(2), F.S.

<sup>12</sup> Section 119.12, F.S.

<sup>13</sup> *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

<sup>14</sup> *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

<sup>15</sup> *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

<sup>16</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

<sup>17</sup> *Id.*

<sup>18</sup> Section 119.0701(1)(b), F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>19</sup> Section 119.0701(1)(a), F.S.

<sup>20</sup> Section 119.0701, F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>21</sup> Section 119.0701(2), F.S. Upon termination of a contract, the contractor must destroy any duplicate public records that are exempt or confidential and exempt from disclosure. All records stored electronically must be provided to the public agency in a format compatible with the information technology systems of the public agency. Section 119.0701(2)(d), F.S.

A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.<sup>22</sup> Actions may include unilateral cancellation of the contract by a state agency if a contractor refuses to allow public access to materials the contractor receives in conjunction with the contract.<sup>23</sup>

At times, contractors unlawfully place conditions on the release of records, refuse to provide public records, or unlawfully delay in providing records. If a contractor fails to comply with a public records request, the requestor may sue the contractor to enforce the right to have access to the records.<sup>24</sup> If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.<sup>25</sup> Therefore, once a lawsuit is filed, a contractor may also be held liable for attorney fees even after providing the requested records. The fees provision, however, "was not intended to force private entities to comply with the inspection requirements of [the Public Records Act] by threatening to award attorney's fees against them."<sup>26</sup>

### **When is a Private Contractor an Agency for Public Records Purposes?**

Not all contracts for services subject a contractor to public records requirements. The Attorney General was asked to issue an opinion on whether a contractor who enters into a contract for services with an agency is automatically acting on behalf of the agency and subject to public records law.<sup>27</sup> The issue required the Attorney General to construe the meaning of the term "contractor" which is defined in s. 119.0701(1)(a), F.S., as an "individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency . . . ." The Attorney General Opinion (AGO) concludes that a court must additionally examine the nature and scope of services provided, citing in support *Parsons & Whittemore*, which held that a contract with a public agency alone is insufficient to trigger public records requirements.<sup>28</sup> In another case cited in the AGO, *Stanfield v. Salvation Army*, the Salvation Army had contracted with a county to provide all of the county's probation services. The court held that the Salvation Army took the place of the county, acted on behalf of the county, and was therefore subject to public records law.<sup>29</sup>

In contrast to the Attorney General Opinion, courts have applied a totality of factors test, which asks the following questions:<sup>30</sup>

- Whether the public agency created the contractor?

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<sup>22</sup> Section 119.0701(3), F.S.

<sup>23</sup> Section 287.058(1)(c), F.S., provides that state agency contracts which exceed \$35,000 must include a provision that permits the state to unilaterally cancel the contract if the contractor refuses to permit access to public records. This does not apply to contracts related to certain state employee benefits. Section 287.058(1), F.S.

<sup>24</sup> Sections 119.011(2), 119.0701(1), and 119.11, F.S.

<sup>25</sup> Sections 119.011(2) and 119.12, F.S.; *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

<sup>26</sup> *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

<sup>27</sup> AGO 2014-06 (June 18, 2014).

<sup>28</sup> *Parsons & Whittemore*, 429 So. 2d 343, 346 (Fla. 3d DCA 1983).

<sup>29</sup> *Stanfield v. Salvation Army*, 695 So. 2d 501 (Fla. 5th DCA 1997).

<sup>30</sup> *News and Sun-Sentinel Co. v. Schawb, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992).

- How much public funding was involved?
- How much the public agency regulated the contractor?
- To what extent was there commingling of decision making processes?
- Whether the contractor was performing a government function?
- What are the goals of the contractor?<sup>31</sup>

A contractor's uncertainty as to whether it is an agency for public records purposes is not necessarily considered an unlawful delay or refusal. A court may consider uncertainty to be reasonable, and not impose attorney fees and costs.<sup>32</sup>

### **Specious Requests of Public Records**

Over the past few years, there have been several examples of lawsuits predicated on the failure of a contractor to provide records in response to a public records request, but in reality were attempts to collect attorney fees.

For example, on September 9, 2014, the circuit court in Palm Beach County denied attorney's fees in a public records case in which a contractor denied access to a requestor of a contractor's proof of insurance and contract with the Department of Health. The contractor processed claims for the Department of Health for underserved women aged 50-64 who had breast or cervical cancer. The contractor asserted that he denied the request because he kept the documents in a restricted area where confidential medical records were being processed and because the requestor's behavior made the contractor uncomfortable.<sup>33</sup>

The court ultimately found that the contractor was an agency for public records purposes, but noted that it was reasonable for the contractor "to have safety and security concerns in light of the secure nature of the facility and his responsibility to balance confidentiality concerns and the safety of his employees."<sup>34</sup> Further, the court explained that "A person cannot just show up, demand to see public records of his random choosing, and if he experiences any delay then file suit. The facts of this case show clearly how the Statute can be misused."<sup>35</sup>

The court denied the plaintiff's request for attorney fees based on the court's finding that the denial was reasonable. The parties ultimately settled the matter, and the court dismissed the case with prejudice.<sup>36</sup>

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<sup>31</sup> *Id.* at 1032 – 1033.

<sup>32</sup> *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993); *Stanfield v. Salvation Army*, 695 So. 2d 501, 502 (Fla. 5th DCA 1997).

<sup>33</sup> Other facts of the case are: The plaintiff already had a copy of the contract on his smart phone which he showed the contractor. This was because the plaintiff showed up unannounced, dressed in shorts, with a camera around his neck and refused to identify himself. The plaintiff was recording the encounter but did not inform the contractor that he was doing so. Also, the contractor asked the plaintiff to make a written request for the records.

<sup>34</sup> Order Denying Plaintiff's Complaint to Enforce Florida's Public Records Act and for Declaratory Injunctive and Monetary Relief and Denying Plaintiff's Request for Attorney Fees, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858, pg. 5 (Fla. 15th Cir. Ct. 2014).

<sup>35</sup> Order Denying Plaintiff's Complaint to Enforce Florida's Public Records Act and for Declaratory Injunctive and Monetary Relief and Denying Plaintiff's Request for Attorney Fees, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858, pg. 4 (Fla. 15th Cir. Ct. 2014).

<sup>36</sup> Order of Dismissal with Prejudice, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858 (Fla. 15th Cir. Ct. 2014).

On December 1, 2014, a circuit court in Duval County denied relief to the same plaintiff in a lawsuit to enforce a public records request and assess attorney fees.<sup>37</sup> According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The plaintiff did not provide advance notice or written notice of any kind prior to the request. The contract manager refused to provide a document because the contract manager believed that the document was not a public record. The plaintiff secretly documented the requests and denials on video. The plaintiff also videotaped the time on a clock during the interactions and later admitted to having done so to present as evidence in a subsequent lawsuit.<sup>38</sup> The court found that the manner in which the requestors made the request ensured that “they obtained exactly what they wanted, namely, an initial denial of an unreasonable and bogus request.”<sup>39</sup>

The court ruled the plaintiff’s method of requesting public records an abuse of public records laws and “nothing more than a scam.”<sup>40</sup> The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”<sup>41</sup> Generally, an attorney may not share his or her fees with someone who is not a lawyer.<sup>42</sup> The court noted that in 2014, the plaintiff had filed 18 public records lawsuits in Duval County and the same attorney represented the plaintiff in approximately 13 of those cases.<sup>43</sup> The case is currently on appeal, although the First District Court of Appeal has denied the plaintiff’s request for oral argument.<sup>44</sup>

In addition to the court cases discussed above, a 2014 article in the *Miami Herald* details this kind of scam. Two organizations and a law firm allegedly partnered to target unsuspecting businesses that were unaware that public records laws applied to them. In one case, the requestors emailed requests over a weekend, and when the businesses failed to comply, the requestors filed a lawsuit and demanded a settlement in excess of costs and fees. The requestors implemented a quota of generating 25 new lawsuits per week. The group filed more than 140 lawsuits in 27 counties. In fact, industry groups such as the Florida Engineering Society sent out a warning to its members due to the frequency of legal actions filed against engineers.<sup>45</sup>

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<sup>37</sup> Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647 (Fla. 4th Cir. Ct. 2014).

<sup>38</sup> *Id.* at 4.

<sup>39</sup> *Id.* at 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 4.

<sup>42</sup> R. Regulating Fla. Bar 4-5.4.

<sup>43</sup> Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647, pg. 7 (Fla. 4th Cir. Ct. 2014). The court further opined, “If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the Act for financial gain.”

<sup>44</sup> A Notice of Appeal was filed with the First District Court of Appeal in Case Number 1D14-5793 (December 19, 2014). The last action on this case occurred on September 28, 2015, when the court denied oral arguments.

<sup>45</sup> Tristram Korten and Trevor Aaronson, *In Lawsuits Statewide, Questions of Profits and Public Records*, FLORIDA CENTER FOR INVESTIGATIVE REPORTING, MIAMI HERALD, Nov. 9, 2014, <http://www.miamiherald.com/news/state/florida/article3683176.html>.

### III. Effect of Proposed Changes:

The bill establishes the custodian of records at a public agency as the point of contact for both the requestor of public records and a contractor that has questions about its duties under the public record laws. The bill also authorizes an agency contractor to retain public records after the completion of a contract instead of returning them to the agency. These revised duties and responsibilities must be set forth in contracts between the agency and the contractor, and all agency contracts must be revised accordingly by October 1, 2016.

Of the five revised contract requirements, the first requires a contract to contain a statement that the contractor may contact the agency public records custodian if the contractor has questions about the application of the public records law to the contract. By implication, this statement requires an agency to make information and legal advice readily available to contractors.

Second, the contract must require the contractor “[k]eep and maintain public records required by the public agency to perform the service.”<sup>46</sup> Third, the contract must require the contractor to provide the contracting agency with a copy of requested records or allow the records to be copied or inspected within a reasonable time. Fourth, the contractor must prevent the disclosure of confidential and exempt records after the completion of the contract of the records that are not transferred to the contracting agency. Fifth, the contract must require a contractor that retains public records after the completion of a contract to continue to make records available to the contracting agency upon its request.

The bill specifies penalties that apply to a contractor who fails to timely provide public records to the agency. A contractor who fails to provide public records within a reasonable time commits a noncriminal infraction punishable by up to a \$500 fine. A contractor who willfully and knowingly fails to comply commits a first degree misdemeanor, punishable by up to a year in jail and up to a \$1,000 fine.

Similarly, the bill provides that a contractor may be sued for failing to respond to a public records request. To be entitled to attorney fees and costs, however, the requestor must meet certain requirements. The requestor must send a written notice of the public records request and the failure to comply to the custodian and the contractor at least 8 business days before filing suit. The notice must be sent by common carrier, registered, Global Express Guaranteed, or certified mail. A contractor who complies with the public records request within 8 business days after the notice is sent is not liable for attorney fees or costs.

The bill, in s. 119.0701(4)(d), F.S., also allows the “reasonable costs of enforcement” to be assessed against a public agency. The bill, however, does not indicate what act or omission would subject an agency to liability or authorize a lawsuit against the agency.<sup>47</sup>

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<sup>46</sup> Article I, s. 24 of the Florida Constitution provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.” As such, an agency may not authorize a contractor to maintain fewer documents than the Constitution requires.

<sup>47</sup> The potential bases of an agency’s liability which might be implied by the bill include: failing to immediately forward a public records request to a contractor, improperly directing a contractor to withhold access to a public record, failing to

The bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

The bill makes it possible for former private contractors to be public records custodians even when the contractor is no longer acting on behalf of an agency.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill by placing prerequisites to the entitlement to attorney fees and costs in an action to compel compliance with the public record laws may encourage the resolution of disputes before the initiation of lawsuits. The requestor, however, may incur attorney fees that cannot be recovered from the contractor if the contractor provides records within the 8 day period after pre-suit notice is sent.

##### **C. Government Sector Impact:**

###### **Agencies that Contract for Services**

If the contractor retains public records upon termination of a contract, an agency may have to rely on the former contractor to provide records upon request. An agency may be liable for attorney fees because the contractor failed to produce records in a timely manner.

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terminate the agency's contract with a contractor that fails to provide access to a record, or making an agency vicariously liable for the misconduct of a contractor, including the destruction of public records.



## Department of Management Services

The Department of Management Services indicates that the Department does not expect a fiscal impact from the provisions of the bill.<sup>48</sup>

### VI. Technical Deficiencies:

Under the bill, the service contractor is permitted to retain the public records after the completion of the contract. The bill is silent on what duties, if any, a terminated contractor has regarding retained records if the contractor goes out of business. Most likely the public agencies can address this issue in the contract.

The bill, in s. 119.0701(4)(d), F.S., also allows the “reasonable costs of enforcement” to be assessed against a public agency. The bill, however, does not indicate what act or omission would subject an agency to liability or authorize a lawsuit against the agency.

### VII. Related Issues:

None.

### VIII. Statutes Affected:

This bill substantially amends section 119.0701, Florida Statutes.

### 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 December 1, 2015:**

- Revises the penalties that apply to a contractor who fails to comply with a public records request;
- Clarifies that a plaintiff’s written notice of a public records violation must be provided to the custodian of records and the contractor; and
- Relieves from liability for costs of enforcement a contractor who complies with a public records request within 8 business days after a pre-suit notice is sent.

- B. **Amendments:**

None.

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

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<sup>48</sup> Department of Management Services, *2016 Legislative Bill Analysis* (Nov. 12, 2015) (on file with the Senate Committee on Judiciary).



453772

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 101 - 118  
and insert:

(c) A contractor who fails to provide the public records to the public agency within a reasonable time commits a noncriminal infraction, punishable by a fine not to exceed \$500. A contractor who willfully and knowingly fails to provide the public records to the public agency within a reasonable time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



453772

12 (4) CIVIL ACTION.-

13 (a) If a civil action is filed to compel production of  
14 public records relating to the public agency's contract for  
15 services, the court shall assess and award against the  
16 contractor the reasonable costs of enforcement, including  
17 reasonable attorney fees, if:

18 1. The court determines that a contractor unlawfully  
19 refused to comply with the public records request within a  
20 reasonable time; and

21 2. At least 8 business days before filing the action, the  
22 plaintiff provided written notice of the public records request,  
23 including a statement that the contractor has not complied with  
24 the request, to the public agency and to the contractor.

25 (b) A notice complies with subparagraph (a)2. if it is sent  
26 to the public agency's records custodian and to the contractor  
27 at the contractor's address listed on its contract with the  
28 public agency or to the contractor's registered agent. Such  
29 notices must also be sent by common carrier delivery service or  
30 by registered, Global Express Guaranteed, or certified mail,  
31 with postage or shipping paid by the sender and with evidence of  
32 delivery, which may be in an electronic format.

33 (c) A contractor who complies with a public records request  
34 within 8 business days after the notice is sent is not liable  
35 for the reasonable costs of enforcement.

36 (d) An award of the reasonable costs of enforcement against

37  
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:

40 Delete lines 15 - 19



453772

41 and insert:  
42       specified circumstances; providing penalties;  
43       specifying circumstances under which a court must  
44       assess the reasonable costs of enforcement against a  
45       contractor; specifying what constitutes sufficient  
46       notice; providing that a contractor who takes certain  
47       actions is not liable for the reasonable costs of  
48       enforcement; specifying

By Senator Simpson

18-00211A-16

2016390\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.0701, F.S.; requiring that a public agency  
 4 contract for services include a statement providing  
 5 the contact information of the public agency's  
 6 custodian of records; prescribing the form of the  
 7 statement; revising required provisions in a public  
 8 agency contract for services regarding a contractor's  
 9 compliance with public records laws; requiring that a  
 10 public records request relating to records for a  
 11 public agency's contract for services be made directly  
 12 to the public agency; requiring a contractor to  
 13 provide requested records to the public agency or  
 14 allow inspection or copying of requested records under  
 15 specified circumstances; specifying applicable  
 16 penalties for a contractor who fails to provide  
 17 requested records; specifying circumstances under  
 18 which a court must assess reasonable costs of  
 19 enforcement against a contractor; specifying  
 20 applicable law for determining the reasonable costs of  
 21 enforcement assessed against a public agency;  
 22 requiring a public agency to amend a contract for  
 23 services by a time certain to comply with the act;  
 24 providing an effective date.

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

27  
 28 Section 1. Section 119.0701, Florida Statutes, is amended  
 29 to read:

Page 1 of 5

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

18-00211A-16

2016390\_\_

30 119.0701 Contracts; public records.-  
 31 (1) DEFINITIONS.-For purposes of this section, the term:  
 32 (a) "Contractor" means an individual, partnership,  
 33 corporation, or business entity that enters into a contract for  
 34 services with a public agency and is acting on behalf of the  
 35 public agency as provided under s. 119.011(2).  
 36 (b) "Public agency" means a state, county, district,  
 37 authority, or municipal officer, or department, division, board,  
 38 bureau, commission, or other separate unit of government created  
 39 or established by law.  
 40 (2) CONTRACT REQUIREMENTS.-In addition to other contract  
 41 requirements provided by law, each public agency contract for  
 42 services must include:  
 43 (a) The following statement, in substantially the following  
 44 form, identifying the contact information of the public agency's  
 45 custodian of public records in at least 14-point boldfaced type:  
 46  
 47 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF  
 48 SECTION 119.0701, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO  
 49 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT  
 50 ...(custodian of public records)... AT ...(telephone number, e-  
 51 mail address, and mailing address)....  
 52  
 53 (b) A provision that requires the contractor to comply with  
 54 public records laws, specifically to:  
 55 1.(a) Keep and maintain public records that ordinarily and  
 56 necessarily would be required by the public agency in order to  
 57 perform the service.  
 58 2.(b) Upon request from the public agency's custodian of

Page 2 of 5

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

18-00211A-16

2016390\_\_

59 public records, provide the public agency with a copy of the  
 60 requested records or allow the access to public records to be  
 61 inspected or copied within a reasonable time on the same terms  
 62 and conditions that the public agency would provide the records  
 63 and at a cost that does not exceed the cost provided in this  
 64 chapter or as otherwise provided by law.

65 ~~3.(e)~~ Ensure that public records that are exempt or  
 66 confidential and exempt from public records disclosure  
 67 requirements are not disclosed except as authorized by law for  
 68 the duration of the contract term and following completion of  
 69 the contract if the contractor does not transfer the records to  
 70 the public agency.

71 ~~4.(d)~~ Upon completion of the contract, Meet all  
 72 requirements for retaining public records and transfer, at no  
 73 cost, to the public agency all public records in possession of  
 74 the contractor or keep and maintain public records required by  
 75 the public agency to perform the service. If the contractor  
 76 transfers all public records to the public agency upon  
 77 completion of the contract, the contractor shall upon  
 78 termination of the contract and destroy any duplicate public  
 79 records that are exempt or confidential and exempt from public  
 80 records disclosure requirements. If the contractor keeps and  
 81 maintains public records upon completion of the contract, the  
 82 contractor shall meet all applicable requirements for retaining  
 83 public records and provide requested records to a public agency  
 84 pursuant to the requirements of this section. All records stored  
 85 electronically must be provided to the public agency, upon  
 86 request from the public agency's custodian of public records, in  
 87 a format that is compatible with the information technology

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

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88 systems of the public agency.

89 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.-

90 (a) A request to inspect or copy public records relating to  
 91 a public agency's contract for services must be made directly to  
 92 the public agency. If the public agency does not possess the  
 93 requested records, the public agency shall immediately notify  
 94 the contractor of the request, and the contractor must provide  
 95 the records to the public agency or allow the records to be  
 96 inspected or copied within a reasonable time.

97 (b) If a contractor does not comply with the public  
 98 agency's a public records request for records, the public agency  
 99 shall enforce the contract provisions in accordance with the  
 100 contract.

101 (c) A contractor who fails to provide the public records to  
 102 the public agency within a reasonable time may be subject to  
 103 penalties under s. 119.10.

104 (4) CIVIL ACTION.-

105 (a) If a civil action is filed to compel production of  
 106 public records relating to the public agency's contract for  
 107 services, the court shall assess and award against the  
 108 contractor the reasonable costs of enforcement, including  
 109 reasonable attorney fees, if the party filing the action  
 110 provides written notice of the public records request, including  
 111 a statement that the contractor has not complied with the  
 112 request. The notice must be sent by common carrier delivery  
 113 service or by registered, Global Express Guaranteed, or  
 114 certified mail, with postage or shipping paid by the sender and  
 115 with evidence of delivery, which may be in an electronic format.  
 116 The notice must be sent by the plaintiff at least 8 business

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117 days before the plaintiff files the civil action.

118 (b) An award of the reasonable costs of enforcement against  
119 a public agency must be in accordance with s. 119.12.

120 Section 2. A public agency has until October 1, 2016, to  
121 amend a public agency contract for services, if needed, in order  
122 to comply with the amendment made by this act to section  
123 119.0701, Florida Statutes.

124 Section 3. This act shall take effect upon becoming a law.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓  
**COMMITTEES:**  
Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**  
18th District

November 17, 2015

Senator Miguel Diaz de la Portilla  
Committee on Judiciary  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Diaz de la Portilla,

Please place Senate Bill 390 relating to Public Records/Public Agency Contract for Services, on the next Committee on Judiciary agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson  
Senator, 18<sup>th</sup> District

CC: Tom Cibula, Staff Director

**REPLY TO:**

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Judiciary Committee

Case No.:  
Judge:

Type:

Started: 12/1/2015 4:03:25 PM

Ends: 12/1/2015 5:26:17 PM

Length: 01:22:53

4:03:25 PM Meeting called to order  
4:03:38 PM Roll call  
4:03:43 PM Quorum present  
4:04:02 PM Senators Brandes and Soto are excused today  
4:04:11 PM CS/SB 232 Presented by Senator Detert--Guardianship  
4:05:40 PM Senator Stargel question  
4:06:40 PM Senator Detert response  
4:07:02 PM Amendment 256734 presented by Senator Detert  
4:08:03 PM Karen Campbell of the Office of the Public Guardian waives in support of amendment  
4:08:57 PM Senator Detert closes on the amendment  
4:09:05 PM Amendment 256734 adopted  
4:09:11 PM Amendment 125352 presented by Senator Detert  
4:09:51 PM Amendment 125352 adopted  
4:09:57 PM Chris Card of Lutheran Services Florida recognized to speak  
4:10:23 PM Senator Stargel recognized to speak  
4:11:09 PM Senator Detert recognized to close on the bill  
4:11:40 PM Roll call on CS/SB 232  
4:11:53 PM CS/SB 232 reported favorably  
4:12:01 PM SB 7018 presented by Senator Detert-- Child Welfare  
4:13:03 PM Christina Spudeas of Florida's Children First waives in support of the bill  
4:14:14 PM Senator Detert waives close on SB 7018  
4:14:20 PM Roll call on SB 7018  
4:14:28 PM SB 7018 reported favorably  
4:14:35 PM SB 498 presented by Senator Sobel-- Repeal of Prohibition on Cohabitation  
4:15:34 PM Senator Sobel waives close on SB 498  
4:16:19 PM Roll call on SB 498  
4:16:23 PM SB 498 reported favorably  
4:16:36 PM SB 334 presented by Senator Montford-- Severe Injuries Caused by Dogs  
4:18:07 PM Amendment 558638 presented by Senator Montford  
4:19:08 PM Amendment 558638 adopted  
4:19:52 PM Cari Roth of Manatee County waives in support  
4:20:06 PM Diane Ferguson of FL Animal Control Assoc waives in support  
4:20:12 PM Laura Youman of FL Assoc. of Counties waives in support  
4:20:18 PM Senator Montford waives close on SB 334  
4:20:32 PM Roll call on SB 334  
4:20:37 PM SB 334 reported favorably  
4:20:45 PM SB 720 presented by Senator Hutson-- Self-storage Facilities  
4:22:10 PM Senator Joyner recognized with question  
4:22:17 PM Senator Hutson response  
4:22:46 PM Senator Joyner follow-up question  
4:23:02 PM Senator Hutson response  
4:23:13 PM Senator Joyner with follow-up question  
4:23:52 PM Senator Hutson response  
4:24:49 PM Senator Joyner with follow-up question  
4:25:50 PM Senator Hutson response  
4:26:00 PM Senator Stargel with question  
4:26:55 PM Senator Hutson with response  
4:27:10 PM Amendment 138058 presented by Senator Joyner  
4:29:26 PM Sam Morley of the FL Press Assoc. recognized to speak on the amendment  
4:33:04 PM Senator Stargel with question for Sam Morley  
4:34:03 PM Sam Morley with response  
4:34:27 PM Senator Stargel with follow-up question

4:34:59 PM Sam Morley with response to Senator Stargel  
4:35:15 PM Senator Diaz de la Portilla with question  
4:36:12 PM Sam Morley with response  
4:36:25 PM Senator Diaz de la Portilla with follow-up  
4:37:09 PM Sam Morley with response  
4:37:13 PM Senator Stargel with question  
4:37:31 PM Sam Morley with response  
4:37:43 PM Wayne Malaney of the American Lawyer Media and Bailey Publishing rec. to speak  
4:43:13 PM Senator Stargel with question for Wayne Malaney  
4:44:14 PM Wayne Malaney with response to Senator Stargel  
4:44:42 PM Brewster Bevis with the Associated Industries of FL recognized to speak  
4:46:35 PM Jeff Kottkamp of the Florida Right to Know Alliance recognized to speak  
4:50:59 PM Senator Simpson with question for Jeff Kottkamp  
4:52:18 PM Jeff Kottkamp with response  
4:52:49 PM Senator Simpson with follow-up  
4:53:28 PM Jeff Kottkamp with response  
4:54:09 PM Senator Joyner recognized to close on Amendment 138058  
4:57:34 PM Vote on Amendment 138058  
4:58:34 PM Senator Joyner requests roll call vote on Amendment 138058  
4:58:48 PM Roll call on Amendment 138058  
4:58:53 PM Amendment 138058 not adopted  
4:59:15 PM Senator Ring recognized to speak  
4:59:57 PM Brewster Bevis of the Associated Industries of Florida waives in opposition of bill  
5:00:58 PM Joseph Salzverg of the Self Storage Assoc. recognized to speak  
5:01:39 PM Senator Simmons recognized to speak  
5:03:36 PM Senator Stargel recognized to speak  
5:05:17 PM Senator Joyner recognized to speak  
5:07:58 PM Senator Diaz de la Portilla with comments  
5:08:59 PM Senator Hutson recognized to close on SB 720  
5:10:20 PM Roll call on SB 720  
5:11:20 PM SB 720 reported favorably  
5:11:43 PM SB 142 presented by Senator Ring-- Student Loans  
5:12:09 PM Strike-all Amendment 198794 presented by Senator Ring  
5:12:52 PM Senator Benacquisto recognized with question  
5:13:24 PM Senator Ring with response  
5:13:32 PM Senator Bean recognized to speak  
5:14:06 PM Senator Ring with response  
5:14:41 PM Monica Hofheinz representing State Attorney Mike Satz and FL Prosecutors waives in suppo  
5:15:01 PM Nikki Fried of FL Bar waives in support  
5:15:10 PM Robert Trammell of Public Defenders Assoc waives in support  
5:15:18 PM Amendment 198794 waived close by Senator Ring  
5:15:35 PM Amendment 198794 adopted  
5:15:38 PM Senator Ring recognized to close on SB 142  
5:16:15 PM Roll call on SB 142  
5:16:20 PM SB 142 reported favorably  
5:16:39 PM SB 308 presented by Senator Benacquisto-- Unattended Persons and Animals in Motor Vehicles  
5:17:25 PM Senator Ring with question  
5:17:43 PM Senator Benacquisto with response  
5:18:00 PM Senator Ring with response  
5:18:23 PM Senator Benacquisto with response  
5:19:14 PM Amendment 221626 presented by Senator Benacquisto  
5:19:47 PM Paul Jess of the FL Justice Assoc. waives in support of the amendment  
5:20:15 PM Amendment 221626 adopted  
5:20:27 PM Laura Youmans of FL Assoc. of Counties waives in support  
5:20:41 PM Rocco Salvatori of FL Professional Firefighters waives in support  
5:20:48 PM Senator Benacquisto closes on CS/SB 308  
5:21:02 PM Roll call on CS/SB 308  
5:21:06 PM CS/SB 308 reported favorably  
5:21:12 PM SB 390 presented by Senator Simpson  
5:22:04 PM Senator Joyner recognized with question  
5:22:21 PM Senator Simpson response  
5:22:25 PM Amendment 453772 presented by Senator Simpson

**5:22:38 PM** Amendment 453772 adopted  
**5:23:09 PM** Greg Pound recognized to speak  
**5:24:07 PM** Marney George waives in support  
**5:24:45 PM** Warren Husband waives in support  
**5:25:07 PM** Kenya Cory waives in support  
**5:25:16 PM** Justin Thames waives in support  
**5:25:22 PM** Cameron Yarbrough waives in support  
**5:25:32 PM** Brewster Bevis waives in support  
**5:25:37 PM** Senator Simpson waives close  
**5:25:48 PM** Roll call on SB 390  
**5:25:52 PM** SB 390 reported favorably  
**5:26:08 PM** meeting adjourned



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Transportation, *Chair*  
Community Affairs, *Vice Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Criminal Justice  
Education Pre-K - 12  
Judiciary

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR JEFF BRANDES**  
22nd District

November 30, 2015

Senator Miguel Diaz de la Portilla  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla,

I respectfully request that I be excused from the Committee on Judiciary meeting on Tuesday, December 1<sup>st</sup>. Please contact me should you have any questions.

Kind regards,

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Jeff Brandes

**REPLY TO:**

- 9800 Fourth Street North, Suite 200, St. Petersburg, Florida 33702 (727) 563-2100
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Rules, *Vice Chair*  
Judiciary  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Finance and Tax  
Environmental Preservation and Conservation  
Ethics and Elections

### SELECT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR DARREN SOTO

*Minority Caucus Rules Chair*  
14th District

December 1, 2015

The Honorable Miguel Diaz de la Portilla  
Committee on Judiciary  
515 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

### RE: Requested Excuse for Absence

Dear Chair Diaz de la Portilla,

I respectfully request to be excused from the Committee on Judiciary meeting which is scheduled to meet today, December 1<sup>st</sup>, at 4 p.m. I have some matters in the district that I need to attend to. I fully intend to be present at all future meetings of this committee.

If you have any questions, please contact me directly at 321-332-5308.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

#### REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore