

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 Criminal and Civil Justice Appropriations Committee

BILL: CS/CS/CS/SB 1298

INTRODUCER: Criminal and Civil Justice Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; Senators Wise and Gaetz

SUBJECT: Supervised Visitation

DATE: April 13, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Fav/CS
2.	Daniell	Maclure	JU	Fav/CS
3.	Hendon	Sadberry	JA	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates additional provisions in Florida’s supervised visitation statute. Specifically, a hierarchy for referring cases for supervised visitation or exchange monitoring is created for both non-dependency cases, where the courts are the primary source of referrals, and dependency cases, where referrals are made by child-placing agencies.

Additionally, the bill:

- Provides for standards for programs to follow and requires that programs affirm annually in a written agreement with court that they abide by those standards;
- Provides that programs that have accepted referrals may petition the court in writing when there is a problem with a case;
- Requires background checks to be conducted on all volunteers and employees of a supervised visitation or supervised exchange program;
- Assumes persons providing services at a supervised visitation or exchange monitoring program are acting in good faith and are immune from liability; and

- Provides that after January 1, 2011, only programs that have written agreements with the court may receive state funding.

The effective date of the bill is October 1, 2010.

This bill creates the following sections of the Florida Statutes: 753.06, 753.07, 753.08, and 753.09.

II. Present Situation:

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. Use of a caseworker, relative, or other third party to oversee such contact has long been recognized as essential in child maltreatment cases where the child has been removed from the home. Other purposes of supervised visitation include:

- To prevent child abuse;
- To reduce the potential for harm to victims of domestic violence and their children;
- To facilitate appropriate child/parent interaction during supervised contact;
- To help build safe and healthy relationships between parents and children;
- To provide written factual information to the court relating to supervised contact, where appropriate;
- To reduce the risk of parental kidnapping;
- To assist parents with juvenile dependency case plan compliance; and
- To facilitate reunification, where appropriate.¹

The first supervised visitation program in Florida opened in 1993.² By 1996, there were 15 programs in the state, and by 2004, over 60 programs had been established. Currently, every judicial circuit in the state has at least one supervised visitation program.³

The Clearinghouse on Supervised Visitation (clearinghouse)⁴ was created in 1996 through an appropriation from the Office of the State of Courts Administrator (OSCA) to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or department). Since 1996, the clearinghouse has received contracts on an annual basis from the

¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, *Purposes of Supervised Visitation*, <http://familyvio.csw.fsu.edu/CHVPG.php> (last visited Mar. 24, 2010.)

² The Family Nurturing Center of Jacksonville.

³ Karen Oehme and Sharon Maxwell, *Florida's Supervised Visitation Programs: The Next Phase*, 79 FLA. B.J. 44, 44 (Jan. 2004).

⁴ The Clearinghouse on Supervised Visitation is housed within the Institute for Family Violence Studies in the College of Social Work of the Florida State University, and serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research. See <http://familyvio.csw.fsu.edu/CHV.php> (last visited Mar. 24, 2010).

department to continue this provision of technical assistance.⁵ Chapter 753, F.S., relating to supervised visitation, was created in 1996.⁶

The Florida Supreme Court's Family Court Steering Committee (committee) began developing a skeletal set of standards for supervised visitation programs in 1998. In an attempt to create uniformity relating to staff training, terminology, and basic practice norms, the committee presented standards to Chief Justice Harding. Justice Harding endorsed the minimum standards and crafted an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to which trial judges referred cases that agreed to comply with the standards.⁷

In 2007, the Florida Legislature created s. 753.03 F.S., to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program.⁸ The clearinghouse was also required to recommend a process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs.⁹ A final report containing the recommendations of the clearinghouse was received by the Legislature in December 2008.

Until standards for supervised visitation programs are developed and a certification and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Florida Supreme Court on November 17, 1999.¹⁰ In 1999, the chief justice requested to the Legislature that it develop security protocols, certify programs, and monitor them to ensure compliance. Specifically, the chief justice told the Speaker of the House of Representatives and the President of the Senate:

The lack of guidelines or standards for these programs and lack of oversight of these programs, particularly as to staff and visitor safety and staff training, is of great concern. . . . It does not appear that this is an appropriate function for the chief judge, but, rather, is better suited to an executive branch agency. . . . I urge the legislature to consider establishing a certification process, and designate an entity outside of the judicial branch to be responsible for oversight of supervised visitation programs.¹¹

⁵ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University, *History of the Clearinghouse on Supervised Visitation*, <http://familyvio.csw.fsu.edu/CHVH.php> (last visited Mar. 24, 2010.)

⁶ Chapter 96-402, Laws of Fla.

⁷ Oehme and Maxwell, *supra* note 3, at 44.

⁸ Chapter 2007-109, Laws of Fla.

⁹ *Id.*

¹⁰ Chapter 2007-109, Laws of Fla. The minimum standards can be found at: http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf (last visited Mar. 24, 2010).

¹¹ Oehme and Maxwell, *supra* note 3, at 47.

III. Effect of Proposed Changes:

The bill provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., shall be the basis for state standards for supervised visitation and exchange monitoring programs. The standards may only be modified by the advisory board¹² no more than once a year.

The bill also implements four out of the 10 recommendations contained in the final report to the Legislature from the Clearinghouse on Supervised Visitation (clearinghouse), which was created in 2007 to develop new standards for Florida supervised visitation programs. Specifically:

- Chapter 753, F.S., is amended to allow programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address these problems. Programs regularly report that they have difficulty accessing the court to report problems related to the supervised visitation process, including:
 - Children's unwillingness to participate in visits;
 - Parental substance abuse;
 - Parental mental illness issues interfering with visits;
 - Parental misconduct on-site;
 - Parental misconduct off-site reported to visitation staff, including but not limited to, parental arrests, additional litigation in family, dependency, or criminal court, and violations of probation, stalking, and threats; and
 - Parental noncompliance with program rules, including no-shows and cancellations without cause.
- Courts and child-placing agencies are required to adhere to a recommended hierarchy when referring cases to supervised visitation in both dependency and non-dependency cases. Specifically:
 - In chs. 61 or 741, F.S., cases, the court is to direct referrals for supervised visitation or exchange monitoring as follows:
 - A program that has a written agreement with the court;
 - A local mental health profession.
 - In ch. 39, F.S., cases, the child-placing agency is to direct referrals for supervised visitation or exchange monitoring as follows:
 - If the agency having primary responsibility determines that there are safety risks present during parent-child contact, the agency shall direct parties to a program that has affirmed in writing that it adheres to the state standards.
 - If there are no safety risks present, the child protective investigator or case manager may:
 - Supervise the parent-child contact him or herself;
 - Designate a foster parent or relative to supervise the parent-child visits.

¹² Section 753.03(3), F.S., creates the advisory board to assist in developing standards.

- If a program that adheres to the state standards does not exist and the child protective investigator or case manager cannot supervise the visit, or designate a foster parent or relative to supervise the visit, the agency having primary responsibility over the case may refer the case to other qualified staff within the agency to supervise.
- The agency having primary responsibility for the case may only refer the case to a subcontractor or other agency if the subcontractor or agency has reviewed or received training on the clearinghouse's supervised visitation programs.

A court is still permitted to allow a litigant's relatives or friends supervise the visits if the court decides such supervision is safe.

- Chapter 753, F.S., is amended to provide a presumption that any person providing services at a supervised visitation or exchange monitoring program, who has affirmed to the court that he or she is abiding by the state standards, is acting in good faith and is therefore immune from liability. This is similar to the immunity provision that currently protect Guardians ad Litem.¹³
- The bill restricts funding so that only programs with a written agreement with the court that they abide by the standards are eligible for state funding after January 1, 2011.

Additionally, the bill requires supervised visitation and supervised exchange programs to conduct a security background investigation on all volunteers and employees prior to hiring an employee or certifying a volunteer to serve. The security background investigation must include:

- Employment history checks;
- Checks of references;
- Local criminal history records checks through local law enforcement agencies; and
- Statewide criminal history records checks through the Department of Law Enforcement.

If requested, an employer must submit the personnel file of the employee or former employee who is the subject of the background investigation. The bill provides immunity to an employer who has released a copy of an employee's or former employee's personnel record in good faith.

The purpose of the security background investigation is to ensure that a person is not hired as an employee or certified as a volunteer of a supervised visitation or supervised exchange program if the person has:

- An arrest awaiting final disposition for,
- Been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or
- Has been adjudicated delinquent and the record has not been sealed or expunged for,

¹³ Section 39.822(1), F.S.

any offense prohibited under s. 435.04, F.S.¹⁴ The bill provides that all employees hired or volunteers certified after July 1, 2010, must undergo a level 2 background screening.¹⁵ When analyzing the information obtained in the security background investigation, the supervised visitation or supervised exchange program must give particular emphasis to past activities involving children. Finally, the bill provides that the supervised visitation or supervised exchange program has the sole discretion in determining whether to hire or certify a person based on the person's security background investigation.

The bill's requirement for a security background investigation is substantially similar to the background check requirement for guardians ad litem.¹⁶

The effective date of the bill is October 1, 2010.

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:

Article I, section 21 of the Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” The test for assuring the right of access to the courts was established in *Kluger v. White*, in which the Florida Supreme Court held that:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show

¹⁴ Section 435.04, F.S., provides that all employees in positions of trust or responsibility must undergo a security background investigation, and the statute lists specific crimes that the employee undergoing the investigation must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty.

¹⁵ Section 435.04, F.S., provides the standards for level 2 background screenings.

¹⁶ See s. 39.821, F.S.

an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.¹⁷

Because the bill provides all persons responsible for providing services at a supervised visitation or exchange monitoring program who have affirmed that they are abiding by the state standards immunity, it raises questions about possible infringements on the right of access to the courts. A parent may argue that the limitation denies the person his or her access to courts if the service provider acts negligently. To the extent that such a tort action may be pursued under Florida law, the immunity provision would have to meet the constitutional test established in *Kluger v. White*. The Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an additional cost to supervised visitation and supervised exchange programs for conducting the required security background investigation on all employees and volunteers prior to hiring an employee or certifying a volunteer to serve; however, the exact fiscal impact is unknown at this time.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, the bill may have a minimal impact on the judiciary and court staff.¹⁸

The Department of Children and Family Services (department) stated that the bill will help remove any current fiscal impact on the department by providing flexibility in who can supervise visits.¹⁹

VI. Technical Deficiencies:

None.

¹⁷ *Kluger v. White*, 281 So. 2d 1, 4 (1973).

¹⁸ Office of the State Courts Adm'r, *Judicial Impact Statement SB 1298* (Feb. 12, 2010) (on file with the Senate Committee on Judiciary).

¹⁹ Florida Dep't of Children and Family Servs., *Court Ordered Supervision* (Mar. 9, 2010) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

The bill requires that supervised visitation and supervised exchange programs conduct security background investigations on employees or volunteers prior to hiring or certifying them. The language in the bill is substantially similar to the background check requirement for guardians ad litem found in s. 39.821, F.S. However, s. 39.821, F.S., provides that the information collected on a guardian ad litem pursuant to the background security investigation is confidential and exempt under Florida's public records law. The bill does not provide the same confidential and exempt language for the information collected on employees or volunteers of supervised visitation or supervised exchange programs. To the extent that supervised visitation and supervised exchange programs may be subject to Florida's constitutional and statutory public records requirements, the Legislature may wish to explore whether they would need a similar public records exemption.

VIII. Additional Information:

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

CS/CS/CS by Criminal and Civil Justice Appropriations on April 13, 2010:

- Makes conforming changes to chapter 435, F.S.
- Allows for alternative background checks using the Volunteer and Employee Criminal History System under the National Child Protection Act of 1993.

CS/CS by Judiciary on March 26, 2010:

The committee substitute requires supervised visitation and supervised exchange programs to conduct security background investigations before hiring an employee or certifying a volunteer to serve. Additionally, it:

- Provides standards for the security background investigation;
- Requires an employer to furnish a copy of the personnel record for the employee or former employee upon request;
- Provides immunity to an employer who has released a copy of an employee's or former employee's personnel record in good faith; and
- Requires that all applicants hired or certified by a supervised visitation or supervised exchange program after July 1, 2010, undergo a level 2 background screening.

CS by Children, Families, and Elder Affairs on March 9, 2010:

The committee substitute makes substantial changes to ch. 753, F.S., relating to supervised visitation programs, including:

- Provides for standards for supervised visitation and exchange monitoring programs and requires programs to affirm annually in a written agreement with the court that they abide by those standards;

- Retains the referral hierarchy for both cases that are referred to programs by the court and cases that are referred by child-placing agencies, but references programs that “have an agreement with court” rather than “certified” programs;
- Clarifies that foster parents and relatives may be used to supervise parent-child visits;
- Requires that individuals who are agency staff and who supervise parent-child visits must receive training from the clearinghouse’s free online training program and affirm to his or her agency that he or she has completed the training and understands the state standards for visitation or exchange monitoring;
- Requires that an individual who is a relative or friend and who supervise parent-child visits must be made aware of the training from the clearinghouse’s free online training program which he or she may voluntarily choose to review;
- Provides immunity from liability to all persons providing services at programs that have affirmed to the court that they abide by state standards; and
- After January 1, 2011, restricts state funding to only those programs that have written agreements with the court.

B. Amendments:

None.