2024 Regular Session 01/18/2024 12:20 PM

Tab 1	SB 4	46 by Stev	wart; (Ide	ntical to H 00315) Reading Ac	nievement Initiative for Scholastic Exce	ellence Program	
Tab 2	SB 4	446 by Si r	non (CO-	INTRODUCERS) Harrell; (Id	lentical to H 00073) Supported Decisio	nmaking Authority	
Tab 3	SB !	536 by Ga	rcia; (Sim	ilar to H 01061) Community-ba	ased Child Welfare Agencies		
433858	D	S	RCS	CF, Garcia	Delete everything after	01/17 09:44 AM	
Tab 4	SB 550 by Rouson; (Identical to H 00313) Transparency for Autism-related Services						
784930	Α	S	RCS	CF, Rouson	Delete L.13 - 20	01/17 09:44 AM	
176916	Α	S	RCS	CF, Rouson	Delete L.27 - 28:	01/17 09:44 AM	
Tab 5	SB 1486 by Collins; (Similar to H 01083) Child Permanency						
951078	D	S	TP	CF, Collins	Delete everything after	01/17 09:20 AM	
Tab 6	SPB	7034 by	CF ; OGSR,	Information Regarding Persor	s Seeking Mental Health Treatment ar	nd Services	
Tab 7	SPB	7036 by	CF; OGSR,	'Identifying Information of Per	sons Reporting Child Abuse, Abandonr	ment, or Neglect	

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS Senator Garcia, Chair Senator Thompson, Vice Chair

MEETING DATE: Wednesday, January 17, 2024

TIME: 8:30—10:30 a.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Garcia, Chair; Senator Thompson, Vice Chair; Senators Avila, Baxley, Book, Bradley, and

Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 46 Stewart (Identical H 315)	Reading Achievement Initiative for Scholastic Excellence Program; Providing that tutoring provided through the tutoring program established as part of the Reading Achievement Initiative for Scholastic Excellence Program may be provided after the school day; authorizing school districts that participate in the tutoring program to provide a stipend to instructional personnel and high school students who serve as tutors under the program, etc. ED 01/10/2024 Favorable CF 01/17/2024 Favorable RC	Favorable Yeas 6 Nays 0
2	SB 446 Simon (Identical H 73)	Supported Decisionmaking Authority; Requiring a circuit court to consider certain needs and abilities of a person with a developmental disability when determining whether to appoint a guardian advocate; defining the term "supported decisionmaking agreement"; prohibiting such agreement from acting as a durable power of attorney; requiring a petition to determine incapacity of a person to include specified information relating to the alleged incapacitated person's use of assistance, etc.	Favorable Yeas 6 Nays 0
		JU 01/09/2024 Favorable CF 01/17/2024 Favorable RC	
3	SB 536 Garcia (Similar H 1061)	Community-based Child Welfare Agencies; Revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; requiring the lead agency's board of directors to disclose any known or potential conflicts of interest; revising community-based care lead agency duties; making technical changes; requiring that the allocation of core services funds be based on a three-tiered payment model; revising requirements for lead agency practices in the procurement of commodities and contractual services, etc.	Fav/CS Yeas 6 Nays 0
		CF 01/17/2024 Fav/CS AHS FP	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs Wednesday, January 17, 2024, 8:30—10:30 a.m.

AB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 550 Rouson (Identical H 313)	Transparency for Autism-related Services; Requiring the Agency for Persons with Disabilities or its designee to provide specified information when notifying an applicant of his or her eligibility determination, etc.	Fav/CS Yeas 6 Nays 0
		CF 01/17/2024 Fav/CS AHS FP	
5	SB 1486 Collins (Similar H 1083)	Child Permanency; Requiring the Department of Children and Families to conduct a records check through the Comprehensive Child Welfare Information System on all persons being considered for placement of a child; allowing any person to have access to certain identifying child records under specified circumstances; revising a criterion for guardianship assistance payments made to guardians who have entered into a guardianship assistance agreement; authorizing the court to review the department's denial of an application to adopt a child, etc.	Temporarily Postponed
	Consideration of proposed bill:	CF 01/17/2024 Temporarily Postponed AHS FP	
	Consideration of proposed bill.		
6	SPB 7034	OGSR/Information Regarding Persons Seeking Mental Health Treatment and Services; Amending a provision which provides an exemption from public records requirements for petitions for voluntary and involuntary admission for mental health treatment, court orders, related records, and personal identifying information regarding persons seeking mental health treatment and services; abrogating the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bi Yeas 6 Nays 0
	Consideration of proposed bill:		
7	SPB 7036	OGSR/Identifying Information of Persons Reporting Child Abuse, Abandonment, or Neglect; Amending a provision which provides a public records exemption for identifying information of persons reporting child abuse, abandonment, or neglect; abrogating the scheduled repeal of the exemption and the reversion of specified statutory text, etc.	Submitted and Reported Favorably as Committee Bi Yeas 6 Nays 0

S-036 (10/2008) Page 2 of 2

CourtSmart Tag Report

Room: SB 37 Case No.: Type: Caption: Senate Committee on Children, Families, and Elder Affairs Judge:

Started: 1/17/2024 8:30:51 AM

Ends: 1/17/2024 8:51:13 AM Length: 00:20:23

8:30:52 AM Chair Garcia calls meeting to order

8:31:23 AM Roll call

8:31:38 AM Senator Avila excused

8:31:54 AM SB 1486 Child Permancey by Collins temporarily postponed **8:32:14 AM** Tab 2, SB 446 by Simon, Supported Decisionmaking Authority

8:32:49 AM Senator Simon explains the bill

8:34:17 AM Chair Garcia recognizes public appearances

8:35:11 AM Senator Simon closes on the bill

8:35:18 AM Roll call

8:35:45 AM Chair Garcia passes the gavel to Vice Chair Thompson

8:35:55 AM Tab 3, SB 536 on Community Based Child Welfare Agencies by Senator Garcia

8:36:44 AM Amendment #433858 by Senator Garcia **8:37:09 AM** Senator Garcia explains the amendment

8:39:39 AM Chair Thompson recognizes public appearances **8:39:53 AM** Senator Garcia waives close on the amendment

8:40:12 AM Roll call

8:40:24 AM Senator Garcia waives close on the bill

8:40:32 AM Roll call

8:40:44 AM Vice Chair Thompson passes the gavel back to Chair Garcia

8:41:37 AM Tab 6, SPB 7034, Information Regarding Persons Seeking Mental Health Treatment

8:42:39 AM Chair Garcia recognizes public appeareances

8:42:52 AM Roll call

8:43:37 AM Tab 7, SPB 7036, Identifying Information of Persons Reporting Child Abuse

8:44:43 AM Roll call

8:44:46 AM Tab 1, SB 46 by Senator Stewart, Reading Achievment Intiative for Scholastic Excellence Program

8:44:50 AM Senator Stewart explains the bill Senator Stewart closes on the bill

8:45:58 AM Roll call

8:46:12 AM Tab 4, SB 550 Transparency for Autism-related Services

8:46:39 AM Senator Rouson explains the bill

8:48:46 AM Amendment #784930

8:48:59 AM Senator Rouson explains the amendment

8:49:09 AM Senator Rouson waives close

8:49:15 AM Roll call

8:49:17 AM Amendment #176916

8:49:31 AM Senator Rouson explains the amendment

8:49:37 AM Senator Rouson waives close

8:49:44 AM Roll call

8:49:47 AM Back on the bill as amended

8:50:08 AM Chair Garcia recognizes public appeareances

8:50:25 AM Senator Rouson closes on the bill

8:50:32 AM Roll call

8:50:44 AM Senator Book moves to adjourn

8:51:04 AM Meeting adjourned

By Senator Stewart

17-00223-24 202446

A bill to be entitled

An act relating to the Reading Achievement Initiative for Scholastic Excellence Program; amending s. 1008.365, F.S.; providing that tutoring provided through the tutoring program established as part of the Reading Achievement Initiative for Scholastic Excellence Program may be provided after the school day; authorizing school districts that participate in the tutoring program to provide a stipend to instructional personnel and high school students who serve as tutors under the program; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (8) of section 1008.365, Florida Statutes, is amended to read:

1008.365 Reading Achievement Initiative for Scholastic Excellence Act.—

(8) As part of the RAISE Program, the department shall establish a tutoring program and develop training in effective reading tutoring practices and content, based on evidence-based practices grounded in the science of reading and aligned to the English Language Arts standards under s. 1003.41, which prepares eligible high school students to tutor students in kindergarten through grade 3 in schools identified under this section, instilling in those students a love of reading and improving their literacy skills.

17-00223-24 202446

(a) To be eligible to participate in the tutoring program, a high school student must be a rising junior or senior who has a cumulative grade point average of 3.0 or higher, has no history of out-of-school suspensions or expulsions, is on track to complete all core course requirements to graduate, and has written recommendations from at least two of his or her present or former high school teachers of record or extracurricular activity sponsors.

- (b) School districts that wish to participate in the tutoring program must recruit, train, and deploy eligible high school students using the materials developed under this section. Tutoring must occur during or after the school day on school district property in the presence and under the supervision of instructional personnel who are school district employees. A parent must give written permission for his or her child to receive tutoring through the program.
- (c) Tutoring may be part of a service-learning course adopted pursuant to s. 1003.497. Students may earn up to three elective credits for high school graduation based on the verified number of hours the student spends tutoring under the program. The hours of volunteer service must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and an administrator or designee of the school in which the tutoring occurred. <u>Unpaid The</u> hours that a high school student devotes to tutoring may be counted toward meeting community service requirements for high school graduation and community service requirements for participation in the Florida Bright Futures Scholarship Program as provided in s. 1003.497(3) (b). The department shall designate a high school

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17-00223-24 202446___ student who provides at least 75 verified hours of tutoring

under the program as a New Worlds Scholar and award the student with a pin indicating such designation.

(d) School districts participating in the tutoring program may provide a stipend to instructional personnel and high school students serving as tutors for after-school tutoring.

Section 2. This act shall take effect July 1, 2024.

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 Pi	ofessional Staff	of the Committee o	n Education Pre-K -1:	2
BILL:	SB 46					
INTRODUCER:	Senator Ste	ewart				
SUBJECT: Reading Achievement Initiative for Scholastic Excellence Program						
DATE:	January 15	, 2024	REVISED:			
ANAL	YST	STAF	F DIRECTOR	REFERENCE	A	CTION
. Brick		Bouck		ED	Favorable	
2. Rao		Tuszy	nski	CF	Favorable	
3.				RC		

I. Summary:

SB 46 authorizes school districts participating in the Reading Achievement Initiative for Scholastic Excellence (RAISE) tutoring program to offer the tutoring program after the school day and to provide a stipend to instructional personnel and high school students serving as tutors during after-school hours.

The bill limits to unpaid hours the tutoring hours that count towards meeting community service requirements for high school graduation and the Florida Bright Futures Scholarship Program.

The bill takes effect July 1, 2024.

II. Present Situation:

Reading Achievement Initiative for Scholastic Excellence Act

In 2021, the Florida Legislature established the Reading Achievement Initiative for Scholastic Excellence (RAISE) program within the Florida Department of Education (DOE). The program provides instructional supports to school districts, school administrators, and instructional personnel in implementing evidence-based reading instruction and interventions in order to improve student reading achievement.²

¹ Chapter 2021-9, s. 17, Laws of Fla., codified at s.1008.365, F.S.

² Section 1008.365(2), F.S.

Under the RAISE program, the DOE operates 20 literacy support regions and regional support teams in Florida to assist schools in improving low reading scores.³ The DOE may establish eligibility criteria for participating schools, but schools that must be included are:⁴

- Schools serving students in kindergarten through grade 5 where 50 percent or more of the students score below a Level 3 on the statewide, standardized English Language Arts (ELA) assessment; and
- Schools where 50 percent or more of students in kindergarten through grade 3 are not on track to pass the grade 3 ELA assessment based on data from the coordinated screening and progress monitoring system.

Identified schools are required to implement a school improvement plan with strategies to improve reading performance.⁵ The DOE has identified 1,184 schools for support as RAISE schools in the 2023-2024 academic year.⁶

Tutoring Program

As part of the RAISE program, the DOE established a tutoring program and developed training to prepare eligible high school students to tutor students in kindergarten through grade 3.7

To be eligible to participate in the tutoring program, a student must be a rising high school junior or senior and meet the following requirements:⁸

- Have a cumulative grade point average of 3.0 or higher;
- Have no history of out-of-school suspensions or expulsions;
- Be on track to complete all core course requirements to graduate; and
- Have written recommendations from at least two present or former high school teachers of record or extracurricular activity sponsors.

High school students that participate as tutors must be recruited, trained, and deployed by the school district. Tutoring must occur during the school day, on school district property, and under the supervision of instructional personnel.⁹

A high school student may earn up to three elective credits for high school graduation based on the verified number of hours the student spends tutoring. The hours may be counted towards community service requirements for high school graduation and the Florida Bright Futures Scholarship Program.¹⁰

³ Section 1008.365(3), F.S.; Florida Department of Education, *Raise Regions*, *available at* https://www.fldoe.org/core/fileparse.php/7539/urlt/JRFSRLDFINALMAP.pdf.

⁴ Section 1008.365(4), F.S.

⁵ Section 1008.365(4), F.S.

⁶ Florida Department of Education, *RAISE Schools Identified for 2023-2024*, *available at* https://www.fldoe.org/core/fileparse.php/7539/urlt/2223RAISE-SchID.pdf.

⁷ Section 1008.365(8), F.S.; Florida Department of Education, *RAISE High School Tutoring Program*, available at https://www.fldoe.org/academics/standards/just-read-fl/tutoring.stml (last visited Jan. 12, 2024).

⁸ Section 1008.365(8)(a), F.S.

⁹ Section 1008.365(8)(b), F.S.

¹⁰ Section 1008.365(8)(c), F.S.

The DOE must designate a high school student who provides at least 75 verified hours of tutoring in the RAISE program as a New Worlds Scholar and award him or her a commemorative pin for this designation.¹¹

Florida Bright Futures Scholarship Program

The Florida Bright Futures Scholarship Program (Bright Futures Program) is a lottery-funded scholarship program to reward any Florida high school graduate who merits recognition of high academic achievement and who enrolls in a degree program, certificate program, or applied technology program at an eligible Florida public or private postsecondary education institution.¹²

The Bright Futures Program consists of the:13

- Florida Academic Scholarship (FAS), which provides for an award equal to the amount necessary to pay 100 percent of tuition and applicable fees and an additional stipend for textbooks as specified in the General Appropriations Act.¹⁴;
- Florida Medallion Scholarship (FMS), which provides for an award equal to the amount necessary to pay 75 percent of tuition and fees; however, an eligible FMS recipient enrolled at a Florida College System institution is eligible for an award amount equal to the amount necessary to pay 100 percent of tuition and fees.¹⁵;
- Florida Gold Seal Vocational Scholarship (FGSV) and the Florida Gold Seal Career and Professional Education Scholarship (CAPE), which provide for an award for a maximum of 100 percent of the number of credit hours or equivalent clock hours required to complete an applied technology diploma, associate in applied science or associate in science degree, or a postsecondary career certificate program.¹⁶

Bright Futures Program Eligibility Requirements - Volunteer and Paid Work Hours

A Florida high school student who wishes to qualify for a Bright Futures Program award must graduate from a Florida public high school with a standard high school diploma, graduate from a private high school registered with the DOE, earn a general education diploma, complete a home education program, or graduate from a non-Florida high school.¹⁷ The various awards also have separate requirements for completed credits, grade-point average, and scores on college entrance exams.¹⁸

(Aug. 2023), at 3-8, available at https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf.

¹¹ Section 1008.365(8)(c), F.S.

¹² Section 1009.53(1), F.S.

¹³ Section 1009.53(2), F.S.

¹⁴ Section 1009.534(2), F.S.

¹⁵ Section 1009.535(2), F.S.

¹⁶ Section 1009.532(5)(a)1., F.S.; see also 2023-24 Bright Futures Student Handbook, Chapter 2: What You Need to Know Now That You Are Eligible (July 1, 2023), at 3, available at https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter2.pdf.

¹⁷ Florida Department of Education, 2023-24 Bright Futures Student Handbook, Chapter 1: Initial Eligibility Requirements (Aug. 2023), at 2-3, available at https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf. A student living with a parent who is on military or public service assignment may graduate from a non-Florida high school.

¹⁸ Florida Department of Education, 2023-24 Bright Futures Student Handbook, Chapter 1: Initial Eligibility Requirements

In addition to initial eligibility requirements, the awards require the following volunteer and paid work hours:

- FAS 100 hours of volunteer service hours or paid work hours, or a combination of both.
- FMS 75 hours of volunteer service hours, or 100 hours of paid work hours, or a combination of volunteer and paid work hours totaling 100 hours.
- FGSV and CAPE 30 volunteer service hours, 100 paid work hours, or a combination of 100 total hours. 19

For the 2022-2023 academic year, a total of \$598,468,957 was disbursed to 33,062 students receiving a Bright Futures Program award.²⁰

III. Effect of Proposed Changes:

SB 46 authorizes school districts participating in the Reading Achievement Initiative for Scholastic Excellence (RAISE) tutoring program to offer the tutoring program after the school day and to provide a stipend to instructional personnel and high school students serving as tutors during after-school hours.

The bill limits to unpaid hours the tutoring hours that count towards meeting community service requirements for high school graduation and the Florida Bright Futures Scholarship Program.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A.	Municipality/County Mandates Restrictions:
	None.
B.	Public Records/Open Meetings Issues:

C. Trust Funds Restrictions:

None.

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified

¹⁹ Section 1009.536(1)(e), F.S.

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²⁰ Florida Bright Futures Scholarship Program, *Florida Bright Futures Student Counts and Total Costs* (Sep. 2023), *available at* https://www.floridastudentfinancialaidsg.org/PDF/PSI/BFReportsA.pdf.

v. i iscai illipact Statcilicit	٧.	Fiscal	Impact	Statement	t:
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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 1008.365 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simon

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3-00860-24 2024446

A bill to be entitled

An act relating to supported decisionmaking authority; amending s. 393.12, F.S.; requiring a circuit court to consider certain needs and abilities of a person with a developmental disability when determining whether to appoint a guardian advocate; providing requirements for a petition to appoint a guardian advocate for a person with a developmental disability and for a court order if the court finds that such person requires such appointment; amending s. 709.2201, F.S.; authorizing an agent acting for a principal to grant a supported decisionmaking agreement; creating s. 709.2209, F.S.; defining the term "supported decisionmaking agreement"; prohibiting such agreement from acting as a durable power of attorney; authorizing specified authority to a supported decisionmaking agreement; providing that certain communications shall be recognized as a communication of the principal under certain circumstances; amending s. 744.3201, F.S.; requiring a petition to determine incapacity of a person to include specified information relating to the alleged incapacitated person's use of assistance; amending s. 744.331, F.S.; providing requirements for an examining committee member when determining the alleged incapacitated person's ability to exercise his or her rights; amending s. 744.464, F.S.; authorizing a suggestion of capacity to include certain capabilities of the ward; amending s. 1003.5716, F.S.; revising the requirements

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for a specified process relating to individual education plans for certain students to include supported decisionmaking agreements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2), paragraph (a) of subsection (3), and subsection (8) of section 393.12, Florida Statutes, are amended to read:

393.12 Capacity; appointment of guardian advocate.-

- (2) APPOINTMENT OF A GUARDIAN ADVOCATE.-
- (a) A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities, if the person lacks the decisionmaking ability to do some, but not all, of the decisionmaking tasks necessary to care for his or her person or property or if the person has voluntarily petitioned for the appointment of a guardian advocate. In determining whether to appoint a guardian advocate, the court shall consider the person's unique needs and abilities, including, but not limited to, the person's ability to independently exercise his or her rights with appropriate assistance, and may only delegate decisionmaking tasks that the person lacks the decisionmaking ability to exercise. Except as otherwise specified, the proceeding shall be governed by the Florida Rules of Probate Procedure.
 - (3) PETITION.—
 - (a) A petition to appoint a guardian advocate for a person

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with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified and must:

- 1. State the name, age, and present address of the petitioner and his or her relationship to the person with a developmental disability;
- 2. State the name, age, county of residence, and present address of the person with a developmental disability;
- 3. Allege that the petitioner believes that the person needs a guardian advocate and specify the factual information on which such belief is based;
- 4. Specify the exact areas in which the person lacks the decisionmaking ability to make informed decisions about his or her care and treatment services or to meet the essential requirements for his or her physical health or safety;
- 5. Specify the legal disabilities to which the person is $\operatorname{subject}$; and
- 6. Identify any other type of guardian advocacy or alternatives to guardian advocacy that the person has designated, is in currently, or has been in previously and the reasons why alternatives to guardian advocacy are insufficient to meet the needs of the person;
- 7. State whether the person uses assistance to exercise his or her rights, including, but not limited to, supported decisionmaking, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights; and
- 8. State the name of the proposed guardian advocate, the relationship of that person to the person with a developmental

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disability; the relationship that the proposed guardian advocate had or has with a provider of health care services, residential services, or other services to the person with a developmental disability; and the reason why this person should be appointed. The petition must also state if a willing and qualified guardian advocate cannot be located.

- (8) COURT ORDER.—If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the court shall enter a written order appointing the guardian advocate and containing the findings of facts and conclusions of law on which the court made its decision, including:
- (a) The nature and scope of the person's lack of decisionmaking ability;
- (b) The exact areas in which the individual lacks decisionmaking ability to make informed decisions about care and treatment services or to meet the essential requirements for his or her physical health and safety;
- (c) The specific legal disabilities to which the person with a developmental disability is subject;
- (d) The identity of existing alternatives and a finding as to the validity or sufficiency of such alternative to alleviate the need for the appointment of a guardian advocate;
- $\underline{\text{(e)}}$ (d) The name of the person selected as guardian advocate and the reasons for the court's selection; and
- $\underline{\text{(f)}}$ (e) The powers, duties, and responsibilities of the guardian advocate, including bonding of the guardian advocate, as provided in s. 744.351.
 - Section 2. Paragraph (d) is added to subsection (2) of

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section 709.2201, Florida Statutes, to read:

709.2201 Authority of agent.-

- (2) As a confirmation of the law in effect in this state when this part became effective, such authorization may include, without limitation, authority to:
- (d) If such authority is specifically limited, grant a supported decisionmaking agreement as defined in s. 709.2209(1).
- Section 3. Section 709.2209, Florida Statutes, is created to read:
 - 709.2209 Supported decisionmaking agreements.-
- (1) For purposes of this section, "supported decisionmaking agreement" means an agreement in which the power of attorney grants an agent the authority to receive information and to communicate on behalf of the principal without granting the agent the authority to bind or act on behalf of the principal on any subject matter.
- (2) A supported decisionmaking agreement is not a durable power of attorney under s. 709.2104. Any language of durability in a supported decisionmaking agreement is of no effect.
- (3) A supported decisionmaking agreement may only include the authority to:
- (a) Obtain information on behalf of the principal, including, but not limited to, protected health information under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended; educational records under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g; or information protected under 42 U.S.C. s. 290dd-2 or 42 C.F.R. part 2.
 - (b) Assist the principal in communicating with third

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parties, including conveying the principal's communications,

decisions, and directions to third parties on behalf of the

principal.

(4) A communication made by the principal with the assistance of or through an agent under a supported decisionmaking agreement that is within the authority granted to the agent may be recognized as a communication of the principal.

Section 4. Subsection (2) of section 744.3201, Florida Statutes, is amended to read:

744.3201 Petition to determine incapacity.-

- (2) The petition must be verified and must:
- (a) State the name, age, and present address of the petitioner and his or her relationship to the alleged incapacitated person;
- (b) State the name, age, county of residence, and present address of the alleged incapacitated person;
- (c) Specify the primary language spoken by the alleged incapacitated person, if known;
- (d) State whether the alleged incapacitated person uses assistance to exercise his or her rights, including, but not limited to, supported decisionmaking, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights;
- (e) (d) Allege that the petitioner believes the alleged incapacitated person to be incapacitated and specify the factual information on which such belief is based and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observations;
 - (f) (e) State the name and address of the alleged

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incapacitated person's attending or family physician, if known;

(g) (f) State which rights enumerated in s. 744.3215 the alleged incapacitated person is incapable of exercising, to the best of petitioner's knowledge. If the petitioner has insufficient experience to make such judgments, the petition must so state; and

(h) (g) State the names, relationships, and addresses of the next of kin of the alleged incapacitated person, so far as are known, specifying the dates of birth of any who are minors.

Section 5. Paragraph (e) of subsection (3) of section 744.331, Florida Statutes, is amended to read:

744.331 Procedures to determine incapacity.-

- (3) EXAMINING COMMITTEE. -
- (e) Each member of the examining committee shall examine the person. Each examining committee member must determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. An examining committee member may allow a person to assist in communicating with the alleged incapacitated person when requested by the court-appointed counsel for the alleged incapacitated person and shall identify the person who provided assistance and describe the nature and method of assistance provided in his or her report. In addition to the examination, each examining committee member must have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee must file his or her report with the clerk of the court within 15 days after

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appointment.

Section 6. Paragraph (a) of subsection (2) of section 744.464, Florida Statutes, is amended to read:

744.464 Restoration to capacity.-

- (2) SUGGESTION OF CAPACITY.-
- (a) Any interested person, including the ward, may file a suggestion of capacity. The suggestion of capacity must state that the ward is currently capable of exercising some or all of the rights which were removed, including the capability to independently exercise his or her rights with appropriate assistance.

Section 7. Paragraph (d) of subsection (1) of section 1003.5716, Florida Statutes, is amended to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education. As used in this section, the term "IEP" means individual education plan.

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, during the student's seventh grade year or when the student attains the age of 12, whichever occurs first, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school or attains the age of 14 years, whichever occurs first, in order for his or her postsecondary goals and career goals to be identified. The plan must be operational and in place to begin implementation on the first day of the student's first year in high school. This

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process must include, but is not limited to:

- (d) At least 1 year before the student reaches the age of majority, provision of information and instruction to the student and his or her parent on self-determination and the legal rights and responsibilities regarding the educational decisions that transfer to the student upon attaining the age of 18. The information must include the ways in which the student may provide informed consent to allow his or her parent to continue to participate in educational decisions, including:
- 1. Informed consent to grant permission to access confidential records protected under the Family Educational Rights and Privacy Act (FERPA) as provided in s. 1002.22.
 - 2. Powers of attorney as provided in chapter 709.
 - 3. Guardian advocacy as provided in s. 393.12.
 - 4. Guardianship as provided in chapter 744.
- 5. Supported decisionmaking agreements as provided in s. 709.2209.

The State Board of Education shall adopt rules to administer this paragraph.

Section 8. This act shall take effect July 1, 2024.

The Florida Senate

115124			SB 446
Meeting Date Who & FAN W + E	Deliver both copie W M Wenate professional staff of	es of this form to conducting the meeting	Bill Number or Topic
Committee			Amendment Barcode (if applicable)
ALAN A	BRAMOWI PE	Phone	850-241-3232
	1+W	Email	CEO@ arcfbrish. Ung
Street Tallabue		-308	
City	State Zip		
Speaking: For A	gainst 🗌 Information O	R Waive Speaki	ng: In Support
	PLEASE CHECK ONE	OF THE FOLLOWIN	G:
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	Committee ALAN A 2818 MA Street Tullulul City Speaking: For A	Meeting Date The Frank Fllv All Senate professional staff of Committee ALAN ABRAMONI PZ 2811 MAHAM Street Tullum FL 32 City State Zip PLEASE CHECK ONE of Company without preparation or sponsorship.	Committee ALAN ABRAMONIPE Phone 2811 MALAN Street TILLUL FL 32318 City State Zip PLEASE CHECK ONE OF THE FOLLOWING appearing without PLEASE CHECK ONE OF THE FOLLOWING Against I am a registered lobbyist,

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

				The Florida	Senat	e				
Janu	ary 17, 2	2024	ΔPF	EARANC	ERI	ECOR	RD	446		
Meeting Date Children Families			Deliver both copies of this form to Senate professional staff conducting the meeting			Bill Number or Topic				
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NI	Barney	Bisho	p III			Phone	850-5	10-9922		
Name										
Address	1454 Vi	eux C	arre Drive			Email	Barne	y@Barney	Bishop.cor	n
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Florida Smart Justice Alliance

I am a registered lobbyist,

representing:

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I am appearing without

compensation or sponsorship.

S-001 (08/10/2021)

something of value for my appearance

(travel, meals, lodging, etc.),

sponsored by:

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The Florida Senate

APPEARANCE RECORD

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Bill Number or Topic



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Committee		Amendment Barcode (if applicable)
Name Victoria		833-618-8180
Address 310 W.	College Ave Email	victoria@team180.con
Tallahass	ee FL 32301 State Zip	
Speaking: For	Against Information OR Waive Speaking	ng: In Support Against
	PLEASE CHECK ONE OF THE FOLLOWING	G:
I am appearing without compensation or sponsorship.	I am a registered lobbyist, representing: Childrens Mome Network	I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules, pdf (flsenate.gov)

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S-001 (08/10/2021)

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Name	Margaret)	Hooper	Phone	850-294	t-005	2
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I am a registered lobbyist, representing:

FL. Dev. Dis. 2 ouncil

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

I am appearing without

compensation or sponsorship.

S-001 (08/10/2021)

I am not a lobbyist, but received

(travel, meals, lodging, etc.),

sponsored by:

something of value for my appearance

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Name	Laura - Lee	Minutalo	Phone <u>3</u>	-945	-SM					
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S-001 (08/10/2021)

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: SB 446									
INTRODUCER:	Senator Simon								
SUBJECT:	Supported	Decisionn	naking Author	rity					
DATE:	January 1:	5, 2024	REVISED:						
ANAL	YST	STAFF DIRECTOR		REFERENCE	ACTION				
1. Collazo		Cibula		JU	Favorable				
2. Hall		Tuszyr	nski	CF	Favorable				
3.				RC					

I. Summary:

SB 446 explicitly incorporates the concepts of supported decision-making (SDM) and SDM agreements into state law. SDM is a tool that allows people with disabilities to retain their decision-making capacity by choosing supporters to help them make choices, instead of relying upon court-appointed guardians or guardian advocates to make choices for them.

In summary, the bill:

- Amends the statute governing the appointment of guardian advocates for persons with developmental disabilities to require:
 - Courts to consider the specific needs and abilities of individuals when delegating decision-making tasks.
 - Petitions and court orders to identify and assess the sufficiency of guardian advocacy alternatives like SDM.
- Amends the powers of attorney statute to authorize the granting of SDM agreements as a form of a power of attorney.
- Creates a statute defining, authorizing, and regulating SDM agreements.
- Amends statutes governing adjudications of incapacity and the appointment of guardians to:
 - Require petitions to state whether alleged incapacitated persons use assistance, including SDM, and if so, why it is insufficient for them to exercise their rights.
 - o Authorize examining committee members to facilitate, when requested by appointed counsel, communication between supporters and allegedly incapacitated persons.
 - Clarify that suggestions of capacity must address whether the ward has the ability to exercise removed rights on his or her own or with appropriate assistance.
- Amends the statute regulating the development of an individual education plan (IEP) for the purpose of accommodating students with disabilities in public schools, to include SDM agreements as one method by which students may provide informed consent to allow his or her parents to continue to participate in educational decisions.

II. Present Situation:

Guardianship

If a court finds that a person does not have the ability to safely manage the things that belong to him or her, or the ability to meet his or her basic health, safety, and self-care needs, the court will rule that this person is incapacitated. In many cases, after a court decides that a person is incapacitated, it will choose someone else to make some or all the decisions for the incapacitated person. This is called a guardianship.²

Being placed in a guardianship results in the loss of an individual's right to make his or her own life choices. The rights that a person can lose include the right to contract, vote, travel, marry, work, consent to treatment, sue or defend lawsuits, choose living arrangements, make decisions about their social life, have a driver's license, personally apply for benefits, and manage money or property.³

Guardianships must be specific to the abilities and needs of the individual and should not be any more restrictive than necessary.⁴ Consequently, there are different types of guardianships under state law. They include:⁵

- Preneed guardian.⁶
- Voluntary guardianship.⁷
- Emergency temporary guardianship.8
- Limited guardianship.⁹
- Guardian advocate for individuals who have a developmental disability. 10
- Guardian advocate for individuals receiving mental health treatment. 11
- Full (*i.e.* plenary) guardianship. 12

The powers and duties of a court-appointed guardian include, but are not limited to:

- Filing an initial plan and annual reports. 13
- Making provision for the medical, mental, rehabilitative, and personal care of the person. ¹⁴
- Making residential decisions on behalf of the person. 15

³ See 744.1012(1), F.S.; see also Disability Rights Florida, Types of Guardianship, available at <a href="https://disabilityrightsflorida.org/disability-topics/disability-t

¹ See generally Part V, Ch. 744, F.S.

² See id.

⁴ Section 744.1012(2), F.S.; *see also* Disability Rights Florida, *Types of Guardianship*, available at <a href="https://disabilityrights florida.org/disability-topics/dis

⁵ See generally Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Jan. 12, 2024).

⁶ Sections 744.3045 and 744.3046, F.S.

⁷ Section 744.341, F.S.

⁸ Section 744.3031, F.S.

⁹ Section 744.441, F.S.; see also s. 744.102(9)(a), F.S. (defining "limited guardian").

¹⁰ Sections 744.3085 and 393.12, F.S.

¹¹ Sections 744.3085 and 394.4598, F.S.

¹² Section 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining "plenary guardian").

¹³ Section 744.361(6)-(7), F.S.

¹⁴ Section 744.361(13)(f), F.S.

¹⁵ Section 744.361(13)(h), F.S.

Advocating on behalf of the person in institutional and other residential settings.¹⁶

Making financial decisions on behalf of the person.¹⁷

Any resident of the state who is 18 years old and of sound mind is qualified to act as a guardian. Additionally, a non-resident may serve if he or she is related to the person with a developmental disability by blood, adoption, or law. Certain individuals, however, cannot be appointed to act as a guardian. at a guardian.

Guardians must file an initial guardianship report with the court within 60 days after appointment.²¹ The initial guardianship report must consist of an initial guardianship plan,²² which must include certain specified information for the person for whom the guardianship is being established. For example, the initial guardianship plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the person, as well as the place and kind of residential setting best suited for the needs of the person.²³

Guardians must also file an annual guardianship report with the court.²⁴ The annual guardianship report must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. The annual guardianship report must include an annual guardianship plan²⁵ containing information regarding the residence of the person for whom the guardianship has been established; the medical and mental health conditions, treatment, and rehabilitation needs of the person; the social condition of the person; and a list of any preexisting orders not to resuscitate, or preexisting advance directives.²⁶

Incapacity

The term "incapacitated person" means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.²⁷

The process to determine incapacity and appoint a guardian begins with the filing of a petition in the appropriate circuit court. The petition must be served on, and read to, the alleged incapacitated person. Notice and copies of the petition must also be provided to the attorney for the alleged incapacitated person and served on all next of kin identified in the petition.²⁸

¹⁶ Section 744.361(13)(i), F.S.

¹⁷ Section 744.361(12), F.S.

¹⁸ Section 744.309(1), F.S.

¹⁹ Section 744.309(2), F.S.

²⁰ See generally ss. 744.309(3), (6), F.S.

²¹ Sections 744.361(6) and 744.362(1), F.S.

²² Section 744.362(1), F.S.

²³ See s. 744.363(1)(a)-(f), F.S.

²⁴ Section 744.367(1), F.S.

²⁵ Section 744.367(3)(a), F.S.

²⁶ See generally s. 744.3675, F.S.

²⁷ Section 744.102(12), F.S.

²⁸ Section 744.331(1), F.S.

At hearing, the partial or total incapacity of the person must be established by clear and convincing evidence.²⁹ After finding that a person is incapacitated with respect to the potential exercise of one or more rights, the court must enter a written order of incapacity. A person is deemed incapacitated only as to those rights specified in the court's order.³⁰ If the order provides that the person is incapable of exercising delegable rights (described below), the court must next consider whether there are any alternatives to guardianship which will sufficiently address the incapacitated person's problems. If not, a guardian will be appointed.³¹

Rights of Incapacitated Persons

A person who has been determined to be incapacitated retains certain rights, regardless of the determination of incapacity, including (among others) the right to be treated humanely and with dignity and respect; the right to be protected against abuse, neglect, and exploitation; the right to receive visitors and communicate with others; and the right to privacy.³²

Certain rights may be removed from a person by an order determining incapacity, but not delegated to a guardian. They include the right to marry (if the right to enter into a contract has been removed, the right to marry is subject to court approval); the right to vote; the right to personally apply for government benefits; the right to have a driver license; the right to travel; and the right to seek or retain employment.³³

Additionally, certain other "delegable" rights may be removed from a person by an order determining incapacity, and also delegated to a guardian. They include the rights to:

- Contract.
- Sue and defend lawsuits.
- Apply for government benefits.
- Manage property or to make any gift or disposition of property.
- Determine his or her residence.
- Make health care decisions.
- Make decisions about his or her social environment or other social aspects of his or her life.³⁴

Advance Directives

State law defines an advance directive as a witnessed, oral statement or written instruction that expresses a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.³⁵ Designation of each of these can serve different purposes and have their own unique requirements and specifications under the law.³⁶

²⁹ Section 744.331(5)(c), F.S.

³⁰ Section 744.331(6), F.S.

³¹ Section 744.331(6)(b), F.S.

³² See s. 744.3215(1)(a)-(o), F.S. (specifying all retained rights).

³³ Section 744.3215(2)(a)-(f), F.S.

³⁴ Section 744.3215(3)(a)-(g), F.S.

³⁵ Section 765.101(1), F.S.

³⁶ See id.

One type of advance directive, an "order not to resuscitate" or a "do not resuscitate order," results in the withholding of cardiopulmonary resuscitation from an individual if the order is presented to the health care professional treating the patient. ³⁷ For the order to be valid, it must be on the yellow form adopted by the Department of Health, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or agent under a durable power of attorney. ³⁸

A power of attorney is a writing that grants authority to an agent to act in the place of the principal.³⁹ A "durable" power of attorney is a kind of power of attorney that is not terminated by the principal's incapacity.⁴⁰ Among many other things, a durable power of attorney may be used to allow another person to make health care decisions on behalf of an incapacitated principal.⁴¹

Guardian Advocates

A "guardian advocate" is a person appointed by a written order of the court to represent a person with developmental disabilities. ⁴² A "developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. ⁴³

Guardian advocacy is a circuit court process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if:

- The person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property; or
- The person has voluntarily petitioned for the appointment of a guardian advocate.⁴⁴

State law recognizes the appointment of a guardian advocate as a less restrictive alternative to guardianship. ⁴⁵ A guardian advocate can be appointed without having to declare the person with a developmental disability incapacitated. ⁴⁶ The process of becoming a guardian advocate of a person with a developmental disability does not require the hiring of an attorney, although during

³⁷ See Fla. Admin. Code R. 64J-2.018(1).

³⁸ Section 401.45(3), F.S.; see also Fla. Admin. Code R. 64J-2.018(1)-(3).

³⁹ Section 709.2102(9), F.S.

⁴⁰ Section 709.2102(4), F.S.; see also s. 709.2104 (specifying that a power of attorney is durable if it contains the words:

[&]quot;This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes," or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity).

⁴¹ See id.; see also The Florida Bar, Consumer Pamphlet: Florida Power of Attorney, About the Power of Attorney, available at https://www.floridabar.org/public/consumer/pamphlet13/#about (last visited Jan. 13, 2024).

⁴² Sections 393.063(20), F.S.; *see also* s. 393.12, F.S. (regulating the appointment of guardian advocates for persons with developmental disabilities).

⁴³ Section 393.063(11), F.S.

⁴⁴ See s. 393.12(2)(a), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, Florida Guardian Advocate Law and Information (Jul. 2017), at 1, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf (last visited Jan. 13, 2024).

⁴⁵ Section 744.3085, F.S.

⁴⁶ Section 393.12(2)(a), F.S.

the proceedings the court will appoint an attorney for the person with the developmental disability to ensure that his or her best interests are protected.⁴⁷

If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person's behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated. Additionally, the person petitioning to become a plenary guardian must have an attorney.⁴⁸

A guardian advocate for a person with a developmental disability has the same powers, duties, and responsibilities required of a guardian under the guardianship statute or as defined by court order issued under the statute governing the appointment of guardian advocates.⁴⁹

The qualifications to serve as a guardian advocate are the same as those required of any guardian under the guardianship statute. ⁵⁰ The court will also consider the wishes expressed by a developmentally disabled person as to whom will be appointed as his or her guardian advocate. ⁵¹ A guardian advocate need not be the caregiver of the person with a disability. ⁵²

Supported Decision-making

Generally

Supported decision-making (SDM) is a tool that allows people with disabilities to retain their decision-making capacity by choosing supporters to help them make choices.⁵³ SDM assumes that people commonly seek advice and guidance with respect to decision-making and, so long as people have the ability to communicate, they should also have the ability and right to make choices, and to have those choices honored by third parties.⁵⁴

A person using SDM selects trusted advisors, such as friends, family members, or professionals, to serve as supporters. The supporters then agree to help the person with a disability understand,

⁴⁷ Section 393.12(2)(b), F.S.; *see also* Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at https://flcourts18.org/docs/sem/Florida Guardian Advocacy Law and information Guide.pdf (last visited Jan. 13, 2024).

⁴⁸ Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf (last visited Dec. 22, 2023).

⁴⁹ Section 393.12(10), F.S.

⁵⁰ Fifth Judicial Circuit, Lake County, Florida, Florida Law and Guardian Advocacy: A Guide for Families and Friends of Developmentally Disabled Individuals (Oct. 2014), at 2, available at https://www.lakecountyclerk.org/forms/Guardianship/DavisGuardianAdvocacyManual.pdf (last visited Jan. 13, 2024).

⁵² Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at https://flourts18.org/docs/sem/Florida Guardian Advocacy Law and information Guide.pdf (last visited Jan. 13, 2024).

⁵³ American Civil Liberties Union, *Supported Decision-Making: Frequently Asked Questions*, available at https://www.aclu.org/wp-content/uploads/legal-documents/faq_about_supported_decision_making.pdf (last visited Jan. 13, 2024).

⁵⁴ Blanck, P., and Martinis, J., *The Right to Make Choices: The National Resource Center for Supported Decisionmaking*, 3 INCLUSION 24 (2015), available at www.bbi.syr.edu/publications/2015/SDM Overview.pdf.

consider, and communicate decisions, giving the person with a disability the tools to make his or her own informed decisions.⁵⁵ For example, supporters can help a person using SDM by:

- Collecting and communicating information that is related to the decision.
- Helping to understand a problem and explore options.
- Explaining the risks and benefits of options.
- Giving guidance and recommendations.
- Assisting in communicating and carrying out decisions.⁵⁶

Although there is a structure and a process to SDM, it is also flexible and can be adapted to meet an individual's situation and needs. While SDM can vary from place to place and from individual to individual, it generally follows a four-step process:⁵⁷

- The individual identifies the areas where he or she needs decision-making assistance e.g. health care, employment, relationships, finances, etc. – and the type of support he or she needs.
- The individual chooses supporters he or she trusts.
- Supporters commit to providing information to the individual so that he or she can make his or her own decisions, and honoring the individual's decisions.
- The individual and supporters execute an SDM agreement.⁵⁸

SDM Agreements

An SDM agreement is a written document evidencing an agreement between a disabled person and at least one supporter that describes, in detail, the type of help the person needs. The agreement outlines the terms and conditions of both parties and asks that third parties, including courts, recognize and respect the agreement. In an SDM agreement, those who can help in making decisions are called supporters; supporters agree to help explain information, answer questions, weigh options, and let others know about the decisions that are made. The supporter does not make the decisions. Although signed writings are not necessarily required, SDM agreements can be beneficial in helping doctors, bankers, lawyers, and other third parties to feel confident in accepting the decisions of people with disabilities without fearing lawsuits or malpractice claims.⁵⁹

⁵⁵ Disability Rights Florida, What is Supported Decision-Making?, https://disabilityrightsflorida.org/disability-topics/disabi

⁵⁷ Center for Public Representation, *About Supported Decision-Making: Does Supported Decision-Making work?*, https://supporteddecisions.org/about-supported-decision-making/ (last visited Jan. 13, 2024).

⁵⁹ Disability Rights Florida, *What is Supported Decision-Making?*, available at https://disabilityrightsflorida.org/disability-topics/

disability topic info/what is supported decision making (last visited Jan. 13, 2024); American Civil Liberties Union, Supported Decision-Making: Frequently Asked Questions, available at https://www.aclu.org/wp-content/uploads/legal-documents/faq_about_supported_decision_making.pdf (last visited Jan. 13, 2024); see also National Resource Center for Supported Decision-Making, Supported Decision-Making Model Agreements, available at https://supporteddecisionmaking.org/resource_library/sdm-model-agreements/ (last visited Jan. 13, 2024) (providing model agreements from various jurisdictions).

State Legislation

SDM is gaining support at both state and federal levels of government. As of June 2023, 27 states and the District of Columbia have adopted some kind of SDM legislation. ⁶⁰ SDM has also been recognized and endorsed by the Administration for Community Living of the U.S. Department of Health and Human Services, which funds the National Resource Center for Supported Decision-Making, ⁶¹ and has gained international recognition, notably in the United Nations Convention on Rights of Persons with Disabilities. ⁶²

III. Effect of Proposed Changes:

Although existing law already allows SDM,⁶³ it neither specifically regulates SDM agreements, nor expressly requires consideration of SDM in connection with the appointment of a guardian or guardian advocate. Accordingly, the bill amends several statutes, and also creates a new statute, in order to explicitly require consideration of SDM and SDM agreements as less restrictive alternatives to appointing a guardian or guardian advocate.

Considering SDM in Connection with the Appointment of Guardian Advocates

Section 1 of the bill amends the developmental disabilities statute⁶⁴ in connection with the appointment of guardian advocates.

When determining whether to appoint a guardian advocate, the bill amends the statute to require circuit courts to:

- Consider the person's unique needs and abilities, including, but not limited to, the person's ability to independently exercise his or her rights with appropriate assistance.
- Only delegate decision-making tasks that the person lacks the decision-making ability to exercise.

With respect to petitions to appoint a guardian advocate for persons with developmental disabilities, the bill amends the statute to require petitions to:

• Identify any other type of guardian advocacy or alternatives to guardian advocacy that the person has designated, is in currently, or has been in previously and the reasons why alternatives to guardian advocacy are insufficient to meet the needs of the person.

⁶⁰ American Bar Association, *Supported Decision-Making: A Statutory Chart*, Jun. 2023, available at https://www.americanbar.org/content/dam/aba/administrative/law_aging/2022-sdm-lst-rstctd-altntvs.pdf (identifying the 27 states as Alabama, Alaska, Arkansas, Arizona, California, Colorado, Delaware, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).

⁶¹ The National Resource Center for Supported Decision-Making provides many resources on SDM including, among other things, tools, state-level information, and newsletters and webinars. *See generally* National Resource Center for Supported Decision-Making, *Home*, available at https://supporteddecisionmaking.org/ (last visited Jan. 13, 2024).

⁶² American Bar Association, Less Restrictive Options, Nov. 21, 2023, available at

https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/supported-decision-making/.

⁶³ See, e.g., s. 765.523(1)(a), F.S. (identifying SDM services as one of several "auxiliary aids and services" for purposes of ensuring access to anatomical gifts and organ transplants).

⁶⁴ Section 393.12, F.S.

• State whether the person uses assistance to exercise his or her rights, including, but not limited to, SDM, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights.

The bill also amends the statute to require court orders appointing a guardian advocate to identify existing alternatives, and to include a finding as to the validity or sufficiency of such alternatives, to alleviate the need for the appointment of a guardian advocate.

Authorization and Regulation of SDM Agreements

Section 2 of the bill amends the powers of attorney statute⁶⁵ to include explicit authority to grant an SDM agreement as defined under the bill, if such authority is specifically limited.

Section 3 of the bill creates s. 709.2209, F.S., entitled "Supported decisionmaking agreements," to authorize and regulate SDM agreements. Specifically, the new statute:

- Defines the term "supported decisiomaking agreement" to mean an agreement in which the power of attorney grants an agent the authority to receive information and to communicate on behalf of the principal without granting the agent the authority to bind or act on behalf of the principal on any subject matter.
- Provides that an SDM agreement is not a durable power of attorney under state law, and that any language of durability in an SDM agreement is of no effect.
- Provides that an SDM agreement may only include the authority to:
 - Obtain information on behalf of the principal, including, but not limited to, protected health information under the Health Insurance Portability and Accountability Act of 1996, as amended;⁶⁶ educational records under the Family Educational Rights and Privacy Act of 1974;⁶⁷ or information protected under certain provisions of federal law.⁶⁸
 - Assist the principal in communicating with third parties, including conveying the principal's communications, decisions, and directions to third parties on behalf of the principal.
- Provides that a communication made by the principal with the assistance of or through an agent under an SDM agreement that is within the authority granted to the agent may be recognized as a communication of the principal.

Considering SDM in Connection with the Adjudication of Incapacity and Appointment of Guardians

Section 4 of the bill amends s. 744.3201, F.S., which identifies the information that must be included in a petition to determine incapacity, to require the petition to state whether the alleged incapacitated person uses assistance to exercise his or her rights, including, but not limited to, SDM, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights.

⁶⁵ Section 709.2201, F.S.

^{66 42} U.S.C. s. 1320d.

^{67 20} U.S.C. s. 1232g.

⁶⁸ 42 U.S.C. s. 290dd-2; 42 C.F.R. pt. 2.

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Section 5 of the bill amends s. 744.331, F.S., which identifies the procedures to determine incapacity, to provide that an examining committee member may allow a person to assist in communicating with the alleged incapacitated person when requested by the court-appointed counsel for the alleged incapacitated person. The examining committee member must identify the person who provided assistance and describe the nature and method of assistance provided in his or her report.

Section 6 of the bill amends s. 744.464, F.S., which addresses how a ward may be restored from an adjudication of incapacity to capacity, to clarify that a suggestion of capacity must state that the ward is currently capable of exercising some or all of the rights which were removed, including the capability to independently exercise his or her rights with appropriate assistance.

Considering SDM in Connection with Accommodating Students with Disabilities in Public Schools

Section 7 of the bill amends s. 1003.5716, F.S., which regulates the development of an individual education plan for the purpose of accommodating students with disabilities in public schools, to include SDM agreements as one method by which students may provide informed consent to allow his or her parents to continue to participate in educational decisions.

Effective Date

Section 8 of the bill provides that it takes effect on July 1, 2024.

IV. Constitutional Issues:

A.	Municipality/County Mandates Restrictions					
	None.					

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Supported decision-making agreements will result in fewer expenditures relating to guardianships and guardian advocates to the extent that the SDM agreements substitute for the more costly arrangements.

C. Government Sector Impact:

The bill will reduce costs to the court system for guardianship and guardian advocate proceedings to the extent that those proceedings are replaced by supported decision-making agreements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.12, 709.2201, 744.3201, 744.331, 744.464, and 1003.5716.

This bill creates section 709.2209 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Garcia

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36-00994-24 2024536___ A bill to be entitled

An act relating to community-based child welfare agencies; amending s. 409.987, F.S.; revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; revising requirements for an entity to serve as a lead agency; revising the definition of the term "conflict of interest"; defining the term "related party"; requiring the lead agency's board of directors to disclose any known or potential conflicts of interest; prohibiting a lead agency from entering into a contract or being a party to a transaction that creates a conflict of interest; requiring a lead agency to submit to the department for approval any contract involving related parties; imposing civil penalties for lead agency contracts having undisclosed conflicts of interest; amending s. 409.988, F.S.; revising community-based care lead agency duties; making technical changes; amending s. 409.990, F.S.; requiring a lead agency to submit to the department a spending plan approved by its board of directors which satisfies certain requirements before funds may be released; specifying requirements for the spending plan; requiring the lead agency to submit a revised spending plan to the department if the lead agency's actual expenditures project an end-of-year deficit;

amending s. 409.991, F.S.; revising the definition of

the term "core services funds"; deleting definitions;

requiring that the allocation of core services funds

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be based on a three-tiered payment model; providing specifications for the payment model; requiring that reports be submitted annually to the Governor and the Legislature by a specified date; requiring that all funding for core services be based on the department's methodology; amending s. 409.992, F.S.; revising requirements for lead agency practices in the procurement of commodities and contractual services; requiring the department to impose certain penalties for a lead agency's noncompliance with applicable procurement law; requiring lead agencies to comply with established purchasing practices for the procurement of real property and professional services; revising certain limitations on the salaries of community-based care lead agency administrative employees and the amount of federal grant funds that may be used for executive salaries; amending s. 409.994, F.S.; authorizing the department to petition a court for the appointment of a receiver if the secretary of the department determines that certain conditions endanger the dependent children under a lead agency's care; providing that a written certification by the secretary of the department of the dangerous conditions satisfies certain evidentiary requirements; authorizing the department to petition the court for the appointment of a receiver if the lead agency is unlikely to meet its current financial obligations; amending s. 409.996, F.S.; revising requirements for contracts between the department and

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lead agencies; revising the actions the department may take under certain circumstances; amending s. 409.997, F.S.; deleting the requirement for an annual performance report; amending s. 409.988, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 409.987, Florida Statutes, are amended, and paragraphs (g) and (h) are added to subsection (7) of that section, to read:

409.987 Lead agency procurement; boards; conflicts of interest.—

- (3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies. The 5-year contract must be reprocured at the end of each 5-year contract term. The contract may be extended at the discretion of the department for up to 1 year, based on department needs.
 - (4) In order to serve as a lead agency, an entity must:
- (a) Be organized as a Florida corporation or a governmental entity.
- (b) Be governed by a board of directors or a board committee composed of board members. Board members shall provide oversight and ensure accountability and transparency for the system of care. The board of directors shall provide fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal

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funding from misuse. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must be composed consist of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

- 1. At least 75 percent of the membership of the board of directors must <u>be composed</u> consist of persons residing in this state, and at least 51 percent of the membership of the board of directors must <u>be composed</u> consist of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must <u>be composed</u> consist of persons residing within the service area of the lead agency.
- 2. The powers of the board of directors or board committee include, but are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.
- (c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.
 - (7) (a) As used in this subsection, the term:

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1. "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with a lead agency for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.

- 2. "Conflict of interest" means when <u>an employee</u>, a board member or an officer, or a relative of a board member or an officer, of a lead agency does any of the following:
- a. Enters into a contract or other transaction for goods or services with the lead agency.
- b. Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the lead agency or proposes to enter into a contract or other transaction with the lead agency. For purposes of this paragraph, the term "indirect interest" has the same meaning as in s. 112.312.
- c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such employee, board member or officer, or relative of the board member or officer, with the lead agency. For purposes of this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members or officers of the lead agency in connection with their service on the board.
- 3. "Related party" means any entity of which a director or an executive of the entity is also directly or indirectly related to, or has a direct or indirect financial or other

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material interest in, the lead agency. The term also includes any subsidiary, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity.

- $\underline{4.3.}$ "Relative" means a relative within the third degree of consanguinity by blood or marriage.
- (b) 1. The lead agency's board of directors is responsible for all activity and contractual obligations of the lead agency and must disclose to the department any known or potential conflicts of interest. This duty to disclose is ongoing for the duration of each contract or relevant activity of the lead agency For any activity that is presented to the board of a lead agency for its initial consideration and approval after July 1, 2021, or any activity that involves a contract that is being considered for renewal on or after July 1, 2021, but before January 1, 2022, a board member or an officer of a lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or a contract is renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted on by the board without prior notice as required under paragraph (c).
- 2. A lead agency may not enter into a contract or be a party to any transaction that creates a conflict of interest.

 The lead agency must submit to the department, for their review and approval, any proposed contract for allowable services

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involving related parties, prior to contract award and
execution. For contracts with a lead agency which are in
existence on July 1, 2021, and are not subject to renewal before
January 1, 2022, a board member or an officer of the lead agency
shall disclose to the board any activity that may reasonably be
construed to be a conflict of interest under this section by
December 31, 2021.

- (g) Civil penalties in the amount of \$5,000 per occurrence shall be imposed for each known and potential conflict of interest which is not disclosed to the department.
- (h) A contract procured for which there was a conflict of interest that was not disclosed shall result in:
- 1. A civil penalty in the amount of \$50,000 for a first offense.
- $\underline{\text{2. A civil penalty in the amount of $100,000 for a second}}$ or subsequent offense.
- (i) Any contract procured in this manner must be reprocured.
- Section 2. Subsection (1) of section 409.988, Florida Statutes, is amended to read:
- 409.988 Community-based care lead agency duties; general provisions.—
 - (1) DUTIES.—A lead agency:
 - (a) 1. Shall serve:
- a. All children referred as a result of a report of abuse, neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high

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risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred.

- b. Children who were adopted from the child welfare system and whose families require postadoption supports.
- 2. May also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.
- (b) Shall provide accurate and timely information necessary for oversight by the department pursuant to the child welfare results-oriented accountability system required by s. 409.997.
- (c) Shall follow the financial guidelines developed by the department and shall comply with regular, independent auditing of its financial activities, including any requests for records associated with such financial audits within the timeframe established by the department or its contracted vendors provide for a regular independent auditing of its financial activities. The results of the financial audit must Such financial information shall be provided to the community alliance established under s. 20.19(5).
- (d) Shall prepare all judicial reviews, case plans, and other reports necessary for court hearings for dependent children, except those related to the investigation of a referral from the department's child abuse hotline, and shall submit these documents timely to the department's attorneys for review, any necessary revision, and filing with the court. The lead agency shall make the necessary staff available to

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department attorneys for preparation for dependency proceedings, and shall provide testimony and other evidence required for dependency court proceedings in coordination with the department's attorneys. This duty does not include the preparation of legal pleadings or other legal documents, which remain the responsibility of the department. Timely submission of documents by the lead agency to the department's attorneys includes the following parameters:

- 1. All documents prepared and kept by the lead agency must be made available at the request of the department's attorneys within 1 business day.
- 2. Before each court hearing, the department's attorneys and the case manager must confer on any case to be heard in court. For dependency and termination of parental rights adjudicatory hearings, the department's attorneys and the case manager must confer no fewer than 3 days before the hearing.
- 3. For judicial review hearings, the department's attorneys and the case manager must confer no fewer than 3 days before the hearing, provided that the attorneys receive from the case manager the judicial review social study report 10 business days before the hearing.
- (e) Shall ensure that all individuals providing care for dependent children receive:
- 1. Appropriate training and meet the minimum employment standards established by the department. Appropriate training shall include, but is not limited to, training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age developed by the Child Protection Team Program within the Department of Health.

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2. Contact information for the local mobile response team established under s. 394.495.

- (f) Shall maintain eligibility to receive all available federal child welfare funds.
- (g) Shall adhere to all best child welfare practices under ss. 39.4087, 39.523, 409.1415, and 409.145.
- (h) Shall maintain written agreements with Healthy Families Florida lead entities in its service area pursuant to s. 409.153 to promote cooperative planning for the provision of prevention and intervention services.
- (i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services. Any subcontract in excess of the simplified acquisition threshold specified in 2 C.F.R. part 200 must comply with the competitive procurement process in chapter 287.
- excluding administrative and management functions, required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need, within the lead agency's geographic service area, to exceed this threshold. The local community alliance in the geographic service area in which the lead agency's justification for need and recommend to the department whether the department should approve or deny the

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lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and recommendation shall be made by representatives of local stakeholders, including at least one representative from each of the following:

- 1. The department.
- 2. The county government.
- 3. The school district.
- 4. The county United Way.
- 5. The county sheriff's office.
- 6. The circuit court corresponding to the county.
- 7. The county children's board, if one exists.
- (k) Shall publish on its website by the 15th day of each month at a minimum the data specified in subparagraphs 1.-9. 1.-5., calculated using a standard methodology determined by the department, for the preceding calendar month regarding its case management services. The following information must shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:
- 1. The average caseload of case managers, including only filled positions;
- 2. The total number and percentage of case managers who have 25 or more cases on their caseloads;
- 3. The turnover rate for case managers and case management supervisors for the previous 12 months;
 - 4. The percentage of required home visits completed; and

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5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months;

- 6. The number of unlicensed placements for the previous month;
- 7. The percentages and trends for foster parent and group home recruitment and licensure for the previous month;
- 8. The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and
- 9. The percentage of cases that converted from nonjudicial to judicial for the previous month.
- (1) Shall identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating with the lead agency or offering services or other assistance on a volunteer basis to the children and families served by the lead agency. The lead agency shall ensure that appropriate lead agency staff and subcontractors, including, but not limited to, case managers, are informed of the specific services or assistance available from community-based and faith-based organizations.
- (m) Shall include the statement "...(community-based care lead agency name)... is a community-based care lead agency contracted with the Department of Children and Families" on its website and, at a minimum, in its promotional literature, lead agency-created documents and forms provided to families served by the lead agency, business cards, and stationery letterhead.
- (n) Shall ensure that it is addressing the unique needs of the fathers of children who are served by the lead agency.
 - 1. The lead agency shall:

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a. Conduct an initial assessment of its engagement with such fathers and provision of and referral to father-oriented services.

- b. Create an action plan to address any gaps identified through the assessment and implement the action plan.
- c. Employ a father-engagement specialist to, at a minimum, build relationships with fathers, help identify their needs, assist them in accessing services, and communicate with the lead agency about the challenges faced by these fathers and how to appropriately meet their unique needs. The lead agency shall prioritize individuals who have faced experiences similar to the fathers who are being served by the lead agency for selection as a father-engagement specialist.
- 2. The department shall annually review how the lead agency is meeting the needs of fathers, including, at a minimum, how the lead agency is helping fathers establish positive, stable relationships with their children and assisting fathers in receiving needed services. The lead agency shall provide any relevant information on how it is meeting the needs of these fathers to the department, which must be included in the report required under s. 409.997.

Section 3. Present subsections (2) through (8) of section 409.990, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

409.990 Funding for lead agencies.—A contract established between the department and a lead agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources.

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(2) Before the release of funds, each lead agency shall submit a detailed spending plan, approved by its board of directors, to the department for all projected expenditures for the fiscal year. The spending plan must demonstrate that core expenditures will not exceed the appropriated amount of core services funds and that the plan reserves a certain amount of funding for unanticipated expenses. Each lead agency must receive its statutory 2-month advance; however, the department may not release additional funds until it has reviewed and approved the lead agency's spending plan. At any point during the year, if a lead agency's actual expenditures project an end-of-year deficit, the lead agency must submit a revised spending plan to the department. The revised spending plan must reflect actions the lead agency will take to remain within appropriated core services fund amounts for the remainder of the fiscal year.

Section 4. Section 409.991, Florida Statutes, is amended to read:

409.991 Allocation of funds for community-based care lead agencies.—

- (1) As used in this section, the term:
- (a)—"core services funds" means all funds allocated to community-based care lead agencies operating under contract with the department pursuant to s. 409.987. The term does not include any of, with the following exceptions:
 - (a) 1. Funds appropriated for independent living services. +
- (b) 2. Funds appropriated for maintenance adoption subsidies.;
- <u>(c)</u> 3. Funds allocated by the department for <u>child</u> protective <u>investigation service</u> <u>investigations</u> training.;

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(d) 4. Nonrecurring funds. + (e) 5. Designated mental health wrap-around service services funds.+ (f) 6. Funds for special projects for a designated community-based care lead agency.; and (g) 7. Funds appropriated for the Guardianship Assistance Program established under s. 39.6225. (b) "Equity allocation model" means an allocation model that uses the following factors: 1. Proportion of the child population; 2. Proportion of child abuse hotline workload; and 3. Proportion of children in care. (c) "Proportion of child population" means the proportion of children up to 18 years of age during the previous calendar year in the geographic area served by the community-based care lead agency. (d) "Proportion of child abuse hotline workload" means the weighted average of the following subcomponents: 1. The average number of initial and additional child abuse reports received during the month for the most recent 12 months based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 20 percent of the factor. 2. The average count of children in investigations in the most recent 12 months based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 40 percent of the factor. 3. The average count of children in investigations with a

most serious finding of verified abuse in the most recent 12

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months based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 40 percent of the factor.

- (e) "Proportion of children in care" means the proportion of the number of children in care receiving in-home services over the most recent 12-month period, the number of children whose families are receiving family support services over the most recent 12-month period, and the number of children who have entered into out-of-home care with a case management overlay during the most recent 24-month period. This subcomponent shall be weighted as follows:
- 1. Fifteen percent shall be based on children whose families are receiving family support services.
- 2. Fifty-five percent shall be based on children in out-of-home care.
- 3. Thirty percent shall be based on children in in-home care.
- (2) Allocation of core services funds must be based on an actuarially sound, tiered payment model. The tiered model's purpose is to achieve the overarching goals of a stable payment model that adjusts to workload and incentivizes prevention, family preservation, and permanency.
- (a) Tier 1 provides operational base costs, including administrative and other expenses that do not vary based on the number of children and families served. Tier 1 payments may vary by geographic catchment area and cost of living differences. The department shall establish and annually update Tier 1 payment rates to maintain cost expectations that are aligned with the population served, services provided, and environment.

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(b) Tier 2 is a per-child, per-month payment designed to provide funding for lead agencies' expenses that vary based on the number of children served for a particular month. The payment rate blends out-of-home rates and in-home rates specific to each lead agency to create a rate that provides a financial incentive to lead agencies to provide services in the least restrictive safe placement. The department shall establish and annually update Tier 2 payment rates to maintain cost expectations that are aligned with the population served, services provided, and environment. Tier 2 rates must be set annually.

- (c) Tier 3 provides financial incentives that the department shall establish to reward lead agencies that achieve performance measures aligned with the department's goals of prevention, family preservation, and permanency.
- (2) The equity allocation of core services funds shall be calculated based on the following weights:
- (a) Proportion of the child population shall be weighted as 5 percent of the total.
- (b) Proportion of child abuse hotline workload shall be weighted as 35 percent of the total.
- (c) Proportion of children in care shall be weighted as 60 percent of the total.
- (3) By December 1 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes each lead agency's actual performance in attaining the previous fiscal year's targets, recommendations for adjustments to lead agency funding, and adjustments to the tiered payment model, if

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necessary Beginning in the 2015-2016 state fiscal year, 100 percent of the recurring core services funding for each community-based care lead agency shall be based on the prior year recurring base of core services funds.

- (4) Unless otherwise specified in the General Appropriations Act, the department shall allocate all funding for core services, based on the department's methodology any new core services funds shall be allocated based on the equity allocation model as follows:
- (a) Seventy percent of new funding shall be allocated among all community-based care lead agencies.
- (b) Thirty percent of new funding shall be allocated among community-based care lead agencies that are funded below their equitable share. Funds allocated pursuant to this paragraph shall be weighted based on each community-based care lead agency's relative proportion of the total amount of funding below the equitable share.

Section 5. Subsections (1) and (3) of section 409.992, Florida Statutes, are amended to read:

409.992 Lead agency expenditures.-

- (1) The procurement of commodities or contractual services by lead agencies <u>is</u> shall be governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.
- (a) Lead agencies shall competitively procure all contracts, consistent with the simplified acquisition threshold as specified in 2 C.F.R. part 200. Financial penalties or

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sanctions, as established by the department and incorporated into the contract, shall be imposed by the department for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services.

- (b) Notwithstanding s. 402.73, for procurement of real property or professional services, lead agencies shall comply with established purchasing practices, including the provisions of s. 287.055, as required, for professional services, including engineering or construction design. Upon termination of the lead agency's contract, the department shall immediately retain all rights to and ownership of real property procured.
- (3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This limitation applies regardless of the number of contracts a community-based care lead agency may execute with the department. Additionally, the amount of federal grant funds that may be used for an executive salary may not exceed the Executive Level II salary level, as directed by the federal Health Resources and Services

 Administration. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

Section 6. Paragraphs (c) and (d) of subsection (1) of section 409.994, Florida Statutes, are amended to read:

409.994 Community-based care lead agencies; receivership.-

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(1) The Department of Children and Families may petition a court of competent jurisdiction for the appointment of a receiver for a community-based care lead agency established pursuant to s. 409.987 if any of the following conditions exist:

- (c) The secretary of the department determines that conditions exist in the lead agency which present a an imminent danger to the health, safety, or welfare of the dependent children under that agency's care or supervision. A written certification of such conditions by the secretary of the department constitutes prima facie evidence that this requirement is satisfied. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.
- (d) The lead agency cannot meet, or is unlikely to meet, its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities constitutes shall constitute prima facie evidence that the lead agency lacks the financial ability to meet its financial obligations.

Section 7. Paragraph (d) of subsection (1) of section 409.996, Florida Statutes, is amended to read:

409.996 Duties of the Department of Children and Families.—
The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state

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statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

- (1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:
- (d) Provide for <u>contractual actions</u> tiered interventions and graduated penalties for failure to comply with contract terms or in the event of performance deficiencies, as determined appropriate by the department. Such interventions and penalties must shall include, but are not limited to:
 - 1. Enhanced monitoring and reporting.
 - 2. Corrective action plans.
- 2.3. Requirements to accept technical assistance and consultation from the department under subsection (6).
- 3.4. Financial penalties, which shall require a lead agency to direct reallocate funds from administrative costs to the department. The department shall use the funds collected to support service delivery of quality improvement activities for children in the lead agency's care to direct care for children. These penalties may be imposed for failure to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the department. Financial penalties may include liquidated damages.
- 4. The department shall include in each lead agency contract executed a provision that requires payment to the department of sanctions or disincentives for failure to comply with contractual obligations. The department shall establish a

36-00994-24 2024536 610 schedule of daily monetary sanctions or disincentives for lead 611 agencies, which schedule shall be incorporated by reference into the contract. Contracts must, at a minimum, include sanctions or 612 613 disincentives for failure to comply with the following: 614 (I) A corrective action plan; 615 (II) A child placement agreement that includes all required 616 safety and care precautions and behavior management plans needed 617 to keep the children and others safe; 618 (III) State and federal law requirements for the 619 procurement of commodities or contractual services; 620 (IV) State and federal law requirements for related parties 621 which address conflicts of interest; 622 (V) Disclosure or reporting of any conflict of interest to 623 the department; 624 (VI) Provision of timely data and information as requested 625 by the department or its contracted vendors; and 626 (VII) Maintenance of an adequate network of placement 627 arrangements based on the needs of the children in the lead 628 agency's care, including placement locations that are licensed 629 or that provide an authorized setting or stable nightly 630 placements. 631 632 The department is solely responsible for determining the 633 monetary value of liquidated damages. 634 5. Early termination of contracts, as provided in s. 635 402.1705(3)(f). 636 Section 8. Paragraph (q) of subsection (2) of section 637 409.997, Florida Statutes, is amended to read:

409.997 Child welfare results-oriented accountability

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program.-

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(2) The purpose of the results-oriented accountability program is to monitor and measure the use of resources, the quality and amount of services provided, and child and family outcomes. The program includes data analysis, research review, and evaluation. The program shall produce an assessment of individual entities' performance, as well as the performance of groups of entities working together on a local, judicial circuit, regional, and statewide basis to provide an integrated system of care. Data analyzed and communicated through the accountability program shall inform the department's development and maintenance of an inclusive, interactive, and evidencesupported program of quality improvement which promotes individual skill building as well as organizational learning. The department may use data generated by the program regarding performance drivers, process improvements, short-term and longterm outcomes, and quality improvement efforts to determine contract compliance and as the basis for payment of performance incentives if funds for such payments are made available through the General Appropriations Act. The information compiled and utilized in the accountability program must incorporate, at a minimum:

(g) An annual performance report that is provided to interested parties including the dependency judge or judges in the community-based care service area. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 15 of each year.

Section 9. Paragraph (n) of subsection (1) of section

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409.988, Florida Statutes, is amended to read:

409.988 Community-based care lead agency duties; general provisions.—

- (1) DUTIES.—A lead agency:
- (n) Shall ensure that it is addressing the unique needs of the fathers of children who are served by the lead agency.
 - 1. The lead agency shall:
- a. Conduct an initial assessment of its engagement with such fathers and provision of and referral to father-oriented services.
- b. Create an action plan to address any gaps identified through the assessment and implement the action plan.
- c. Employ a father-engagement specialist to, at a minimum, build relationships with fathers, help identify their needs, assist them in accessing services, and communicate with the lead agency about the challenges faced by these fathers and how to appropriately meet their unique needs. The lead agency shall prioritize individuals who have faced experiences similar to the fathers who are being served by the lead agency for selection as a father-engagement specialist.
- 2. The department shall annually review how the lead agency is meeting the needs of fathers, including, at a minimum, how the lead agency is helping fathers establish positive, stable relationships with their children and assisting fathers in receiving needed services. The lead agency shall provide any relevant information on how it is meeting the needs of these fathers to the department, which must be included in the report required under s. 409.997.
 - Section 10. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

536

January 17, 2024

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Child	Meeting Date Iren Families	Delive Senate profes	Deliver both copies of this form to Senate professional staff conducting the meeting			Bill Number or Topic	
Name	Committee Barney Bishop	o III		Pho	850 ne	Amendment Barcode (if applicable) -510-9922	
Address		arre Drive	Drive		Bar	rney@BarneyBishop.com	
	Tallahassee City	FL State	32308	}			
	Speaking: For	parkermonering promotion p	on OR	Waive S	peaking:	In Support	
	m appearing without mpensation or sponsorship.	I am a re represe	egistered lobbyis enting: Smart Just	t,		I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:	

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules. pdf (flsenate.gov)

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

S-001 (08/10/2021)

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.)

Pr	epared By: The	Professiona	Staff of the C	Committee on Childr	en, Families, ar	nd Elder Affairs	
BILL:	CS/SB 536						
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Garcia						
SUBJECT:	Community	y-based Chi	ild Welfare A	Agencies			
DATE:	January 18,	, 2023	REVISED:				
ANAL	YST	STAFF I	DIRECTOR	REFERENCE		ACTION	
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Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong economically self-sufficient families, and advance personal and family recovery and resiliency. The DCF must delivery services by contract through private providers, including community-based care lead agencies (CBCs) delivering child welfare services. The DCF is responsible for program oversight and the overall performance of the child welfare system

CS/SB 536 amends laws related to DCF contracts with CBCs to increase transparency and accountability of the services provided by the CBCs. Specifically, the bill:

- Requires DCF to reprocure contracts with CBCs every five years to incentivize performance, encourage competition within the provider network, and require competitive procurement of all CBC subcontracts above \$250,000.
- Limits executive compensation funded through CBC contracts to a capped total amount regardless of how many contracts the CBC has with DCF.
- Requires a CBC's board of directors to ensure accountability and transparency of operations in addition to providing fiduciary oversight and complete annual training related to their responsibilities.
- Prohibits a CBC from contracting out administrative and management functions with a related party and requires DCF's approval prior to a CBC entering a contract with a related party.

• Prohibits a CBC from directly providing more than 35 percent of child welfare services in its catchment area unless there is a lack of viable providers available to provide such services and limits the approval to exceed the 35 percent threshold to two years.

- Expands those who may have a conflict of interest to include a CBC director and includes a financial penalty on a CBC for failure to disclose known conflicts of interest.
- Requires DCF to retain ownership of real property purchased through a CBC contract.
- Revises the criteria for corrective action plans to allow more timely action by DCF for performance deficiencies and allows DCF to petition for receivership when DCF's secretary determines there is a danger to children under the CBC's care.
- Requires CBCs to comply with all financial audits and request for records.
- Requires DCF to include monetary sanctions or disincentives for performance deficiencies in CBC contracts.
- Expands the information a CBC must publish on its website to include the number of unlicensed placements, foster parent recruiting and licensing efforts, and other information.
- Amends the current statutory funding model for the allocation of funds to CBCs from an equity model to an actuarially sound model using a tiered methodology.

The bill has no fiscal impact on state government and an indeterminate fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline (hotline) and child protective investigations. The Department of Children and Families (DCF) and community-based care lead agencies (CBCs) work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for children.

The child welfare system includes the following key elements:

- A report to the hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent, if the child is determined to need such protection.
- Case planning to address the problems resulting in the child's dependency.
- Reunification with the child's parents or another option to establish permanency, such as adoption.

The DCF is responsible for program oversight and the overall performance of the child welfare system.¹

¹ Office of Program Policy Analysis & Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report No. 06-50, June 2006, available at: https://oppaga.fl.gov/Documents/Reports/06-50.pdf.

Department of Children and Families

The DCF's mission is to work in partnerships with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.² The DCF must develop a strategic plan to fulfil this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure DCF is accountable to taxpayers.³

The DCF must deliver services by contract through private providers to the extent allowed by law and funding.⁴ These private providers include Community-Based Care Lead Agencies (CBC) delivering child welfare services.

The total agency budget is \$4,847,138,852.5

Community-Based Care Lead Agencies

Community-based care combines the outsourcing of foster care and related services to local nonprofits with an increased local community ownership of service delivery and design. CBCs are responsible for providing foster care and related services, including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption. Because CBCs are to partner with community providers to meet the needs of children and families in its service area, the CBCs contract with subcontractors for case management and direct care services to children and families. The CBCs are to plan, administer, and coordinate the delivery of client services, ensure compliance with federal and state laws, rules, and regulations, and monitor subcontractors. There are 17 CBCs statewide, which serve the state's 20 judicial circuits.

A CBC is statutorily limited from directly providing more than 35 percent of all child welfare services in its catchment area unless it can demonstrate a justification for need to exceed the 35 percent threshold.¹¹ The local community alliance¹² in the CBC's service area must review the

² Section 20.19(1), F.S.

 $^{^3}$ Id.

⁴ *Id*.

⁵ Governor Ron Desantis, *Focus on Florida's Future*, available at http://www.bolderbrighterbetterfuture.com/web%20forms/Budget/BudgetAgency.aspx (last visited Jan 10, 2024).

⁶ Florida Department of Children and Families, *Community-Based Care*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care (last visited Jan. 10, 2024).

⁷ Section 409.145(1), F.S.

⁸ *Id*.

⁹ Section 409.988, F.S.

¹⁰ Florida Department of Children and Families, *Lead Agency Information*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 13, 2024).

¹¹ Section 409.988(1)(j), F.S.

¹² Section 20.19(5), F.S., requires the DCF, in consultation with local communities, to establish community alliances of the stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services.

CBC's justification for need to exceed the threshold and recommend whether DCF should approve or deny the justification. ¹³ Currently, nine CBCs utilize the waiver to exceed the 35 percent threshold. ¹⁴

CBCs are obligated to perform several duties, including:

- Serve children referred to the CBC as a result of abuse, neglect, or abandonment hotline reports.
- Provide DCF with accurate and timely information necessary for DCF oversight.
- Follow financial guidelines developed by DCF and provide for regular independent audits.
- Prepare and file all necessary court documents and attend dependency court proceedings.
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements.
- Maintain eligibility to receive all available federal child welfare funds.
- Adhere to all best child welfare practices.
- Maintain written agreements with Healthy Families Florida entities in its service area to promote cooperative planning for the provision of prevention and intervention services.
- Comply with federal and state statutory requirements and agency rules in the provision of contractual services.
- Use authority to subcontract for the provision of services provided CBCs contribute to services and meet specified criteria.
- Identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating or offering services or other assistance on a volunteer basis to the children and families served by the CBC.
- Ensure that appropriate CBC staff and subcontractors are informed of the specific services or assistance available from local community-based and faith-based organizations.
- Identify it as a DCF contractor on its website and promotional literature.
- Ensure that it is addressing the unique needs of the fathers of children who are served by the CBC by employing a father-engagement specialist.
- Post information regarding case management services on its website by a specified date, including the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.¹⁵

There are minimum requirements with which CBCs must comply to be eligible to contract with DCF, including:

Being organized as a Florida corporation or a governmental entity.¹⁶

¹³ Supra note 11.

¹⁴ Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.

¹⁵ Section 409.988(1), F.S.

¹⁶ Section 409.987(4)(a), F.S.

 Having a board of directors or board committee with authority to approve the CBC budget and hire a CBC executive director.¹⁷

• Demonstrating financial responsibility by having a plan for regular fiscal audits and securing performance bond. 18

The DCF must ensure contracts with CBCs:

- Provide for the services as required under s. 409.988, F.S.
- Provide relevant information to DCF related to a quality assurance program and the child welfare results-oriented accountability system.
- Include tiered interventions and graduated penalties for failure to comply with contract or performance deficiencies.
- Require CBCs to provide current and accurate information about activities related to case records in the statewide automated child welfare information system.
- Require CBCs to annually provide written and published operating procedures on specific topics.
- Require CBCs to gather all information to complete the requirements for the child-specific section of the unified home study and enter data into the statewide automated child welfare information system no later than 90 days after the filing of a petition for termination of parental rights.
- Specify the procedures to resolve differences in interpreting the contract or to resolve a disagreement amongst the parties regarding compliance with the contract.¹⁹

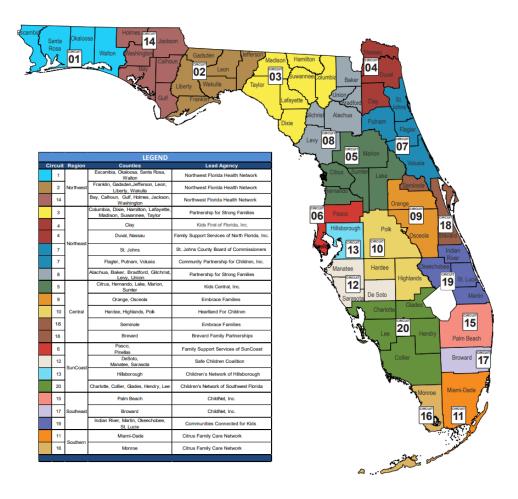
The DCF contracts with the following CBCs as illustrated in the following map:²⁰

¹⁷ Section 409.987(4)(b), F.S.

¹⁸ Section 409.987(4)(c), F.S.

¹⁹ Section 409.996(1), F.S.

²⁰ Supra note 10.



The DCF must develop and maintain written policies and procedures for monitoring compliance with the services the CBCs provide under contract. The DCF is required to evaluate each CBC's programmatic, operation, and fiscal operations at least once annually.²¹

The DCF typically enters into 5-year contracts with CBCs, with the option for an extension or a renewal of up to 5-years or for the original term of the contract, whichever period is longer.²² While entering into 5-year contracts has provided stability within the CBC system, it has also had the effect of reducing competition. For example, since the creation of CBCs, the DCF has conducted 19 procurements; for 11 of these procurements, only one entity submitted a bid for the contract.²³ The DCF is currently in the process of procuring CBC services in 12 circuits, which includes 11 CBC service areas.²⁴

Funding allocated to the CBCs during the 2023-24 state fiscal year totaled over \$1.3 billion.²⁵

²¹ Section 409.996(19)(a), F.S.

²² Section 409.987(3), F.S.

²³ *Supra* note 14, pg. 3.

²⁴ Florida Department of Children and Families, Invitation to Negotiate, Community-Based Care Lead Agencies, DCF ITN 2324 063

²⁵ Chapter 2023-239, L.O.F., General Appropriations Act FY 2023-2024, specific appropriations 328, 329, and 330.

Funding

Section 409.990, F.S., requires that funding for a contract between DCF and CBC be through general revenue or other applicable state or federal funding sources. The DCF allocates core funding²⁶ to CBCs based on a statutory "equity model", which considers the proportion of child population, child abuse hotline workload, and children in care.²⁷

In addition to annually evaluating CBC fiscal operations, current law requires DCF to do several things to ensure that the CBCs are providing services within its allocated budget:

- Section 409.996, F.S., requires DCF to annually conduct a comprehensive, multi-year review of the revenues, expenditures and financial positions of all CBCs that cover the most recent two consecutive fiscal years. The review must include a comprehensive system-of-care analysis and the CBCs must develop and maintain a plan to achieve financial viability to accompany DCF's review. The DCF must submit the review to the Governor, the Senate President, and the Speaker of the House of Representatives by November 1 each year.
- The 2023-2024 General Appropriations Act required each CBC to submit a detailed spending plan, approved by its board of directors, to DCF for all projected expenditures for the current fiscal year. The spending plan must demonstrate that core expenditures will not exceed the appropriated amount of core funding and reserve a certain amount of funding for unanticipated expenses. The DCF cannot release addition funds outside the two-month advance until it has reviewed and approved a CBC's spending plan. At any point during the year, if a CBC's actual expenditures project an end of year deficit, the CBC must submit a revised spending plan to DCF that reflects actions to be taken to remain within appropriated core funding for the remained of the fiscal year. ²⁸

The following table includes the total allocated funding amount (state and federal dollars) for each CBC for FY 23-24 and the total contract amount for each CBC.²⁹

CBC Lead Agency	Circuit	FY 23-24 Allocation	Total Contract Amount
Northwest Florida Health	2, 14	\$56,369,236	\$238,526,446
Network (Big Bend)	1	\$82,885,014	\$405,072,361
Partnership for Strong Families	3, 8	\$54,767,819	\$393,779,654

²⁶ Section 409.997(1)(a), defines "core services funds" as all funds allocated to CBCs operating under contract with the DCF, with the following exceptions: funds appropriated for independent living; funds appropriated for maintenance adoption subsidies; Funds allocated by the DCF for protective investigations training; nonrecurring funds; designated mental health wrap-around services funds; funds for special projects for a designated CBC; and funds appropriated for the Guardianship Assistance Program under s. 39.6225, F.S.

²⁷ Section 409.991, F.S. provides that core services funds are calculated based on the proportion of the (a) child population weighted as five percent of the total; (b) child abuse hotline workload weighted as 35 percent of the total; and (c) children in care weighted as 60 percent of the total. Section 409.991(3), F.S., provides that beginning in the 2015-16 FY, 100 percent of the recurring core services funding must be based on the prior year recurring base core services funds, and any new funding be allocated as: (a) 70 percent of new funding among all CBCs and (b) 35 percent of new funding to CBCs below their equitable share.

²⁸ Supra note 25, specific appropriation 328.

²⁹ Information on a CBC's FY 2023-24 allocation can be found in the respective CBC contract; *See* Florida Accountability Contract Tracking System, available at https://facts.fldfs.com/Search/ContractSearch.aspx (last visited Dec. 7, 2023).

CBC Lead Agency	Circuit	FY 23-24 Allocation	Total Contract Amount
Family Support Services of North Florida	4 (Duval, Nassau)	\$39,569,518	\$637,352,496
Kids First of Florida	4 (Clay)	\$17,989,867	\$113,824,668
St. Johns County Board of Commissioners	7 (St. Johns)	\$11,029,295	\$75,361,163
Community Partnership for Children	7 (Flagler, Volusia, Putnam)	\$63,794,188	\$306,403,794
Safe Children Coalition	12	\$51,438,346	\$255,500,845
Family Support Services of Suncoast	6 (Pasco, Pinellas)	\$132,525,326	\$658,177,868
Kids Central	5	\$76,436,349	\$369,953,294
Embrace Families	9, 18 (Orange, Osceola, Seminole)	\$96,434,878	\$432,245,145
Heartland for Children	10	\$66,958,780	\$492,511,758
Brevard Family Partnerships	18 (Brevard)	\$22,163,788 ³⁰	\$296,691,729
Communities Connected for Kids	19	\$21,164,340 ³¹	\$326,868,835
ChildNet	15 (Palm Beach)	\$60,203,225	\$509,655,207
Ciliditet	17 (Broward)	\$90,672,980	\$437,235,275
Children's Network of	20	\$74,963,612	\$373,815,208
Southwest Florida			
Children's Network of Hillsborough	13	\$114,169,279	\$563,336,139
Citrus Family Care Network	11, 16	\$118,092,501	\$563,973,467
TOTA	\$1,251,628,34	\$7,450,285,352	

Because the core services funding for each CBC was established based on the total expenditures by DCF when the CBCs were created, significant core funding inequities have been institutionalized in the system of care. To mitigate financial risk, the Legislature created a CBC Risk Pool that allows CBCs to apply to DCF for additional funding.³² A committee that includes DCF's secretary and three nonapplicant CBC representatives review the risk pool applications.³³ The DCF may authorize risk pool funding to address:

- Significant changes in the number or composition of clients eligible to receive services.³⁴
- Significant changes in the services that are eligible for reimbursement.³⁵

³⁰ This reflects six months of payments (07/01/2023-12/31/2023) because the contract end date is Dec. 31, 2023.

³¹ This reflects six months of payments (07/01/2023-12/31/2023) because the contract end date is Dec. 31, 2023.

³² Section 409.990(8), F.S.

³³ *Id*.

³⁴ Section 409.990(8)(c)1., F.S.

³⁵ Section 409.990(8)(c)2., F.S.

• Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a CBC.³⁶

• Significant changes in the mix of available funds.³⁷

The Legislature added the "equity model" CBC funding model into statute in 2011 because the allocation of state or federal funds to CBCs was based primarily on the number of children in care with funding direction to DCF through proviso in the General Appropriations Act (GAA).³⁸ In 2019, the Legislature directed DCF and the CBCs to develop an alternative funding model.³⁹ This produced the Florida Funding Model for Children (FMC) that calculated the cost of providing services by setting case worker caseload ratios, an incentive for prevention spending, and a target to reduce use of group care and a per child cost calculation.⁴⁰ The Legislature, through proviso in the GAA, used the FMC methodology to allocate increases in CBC core services funding of \$25 million in 2020 and \$150 million in 2022.⁴¹ However, the current "equity model" and the FMC allocation methodology do not use an actuarially-sound model that many other programs in the state utilize; therefore, the DCF contracted with Mercer, a government human services consulting firm, to assist it in developing an actuarially sound model. The DCF released the initial report with a proposed model and draft rates on September 30, 2022. The DCF expects to release a final report by January 2024.⁴²

Oversight and Monitoring

The DCF has the responsibility to monitor and oversee CBCs to ensure that CBCs are delivering services in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in its strategic plan. The DCF must, at a minimum, evaluate each of the CBCs under contract annually. The evaluation must cover the programmatic, operational, and fiscal operations of the CBC.

The DCF Office of Quality (Office) ensures that CBCs and other contracted providers meet high levels of performance. The duties of the Office include, at a minimum:

³⁶ Section 409.990(8)(c)3., F.S.

³⁷ Section 409.990(8)(c)4., F.S.

³⁸ Chapter 2011-62, s. 1, L.O.F. In fiscal year 2010-11, the allocation was based on four weighted factors: the number of children in poverty (30 percent); the number of reports the DCF's central abuse hotline that are either referred for investigation or whose findings have been verified (30 percent); the number of children in out-of-home care (30 percent); and contribution to a safe reduction in out-of-home care (10 percent).

³⁹ Chapter 2019-115, L.O.F., General Appropriations Act FY 2019-2020, specific appropriation 326.

⁴⁰ *Supra* note 14, pg. 5.

⁴¹ In 2022, the Florida Legislature addressed the funding inequities by appropriating \$150 million in increases to core funding to bring all CBCs up to 100 percent funding levels to ensure that each CBC has the tools to best serve the children and families in their respective service area. [*Supra* note 40] Even with this \$150 million increase in core funding, last fiscal year, at the request of certain CBCs, the Legislature appropriated an addition \$18.5 million dollars in Back of Bill funding to address CBC funding deficits incurred in the 2022-23 fiscal year. [*Supra* note 25, Section 88.]

⁴² *Supra* note 14, pg. 5.

⁴³ Section 409.996, F.S.

⁴⁴ Section 409.996(21)(a), F.S.

⁴⁵ *Id*.

• Identifying performance standards and metrics for DCF programs and all service providers. The performance standards and metrics must be included in DCF's strategic plan and must, at minimum, have the same child welfare results-oriented performance standards.

- Strengthening DCF's data and analytic capabilities to identify systemic strengths and deficiencies.
- Recommending initiatives to correct any deficiencies.
- Reporting consistent performance failures to DCF's secretary for corrective action.
- Engaging and collaborating with stakeholders to improve quality, efficiency, and effectiveness of the DCF's programs and services.

CBC contracts specify required performance measures that generally align with the state and federal measures. ⁴⁶ The DCF contract manager must periodically identify whether any gaps exist between actual and required CBC performance. If contractor performance is insufficient, the DCF may allow a reasonable time for correction. If the deficiencies are not resolved and there are no extenuating circumstances, DCF must terminate the contract and it may not contract again with the same provider during the next 24 months. ⁴⁷

Section 409.996(1)(d), F.S., requires CBC contracts to include tiered interventions DCF may use if CBCs fail to comply with contractual terms or in the event of performance deficiencies. Such interventions include, but are not limited to:

- Enhanced monitoring and reporting;
- Corrective action plans;
- Requirements for contracted providers to accept technical assistance and consultations from the DCF;
- Financial penalties that require a CBC to reallocate funds from administrative costs to direct care for children; and
- Early termination of contracts.

The DCF may provide technical assistance and consultation to CBCs as necessary for the achievement of performance standings, including, but not limited to, providing additional resources to assist a CBC to implement best practices or institute operation efficiencies.⁴⁸

The DCF may impose financial penalties on a CBC that does not comply with a DCF corrective action plan.⁴⁹ The DCF must request corrective action on a provider when the delivery of services is unacceptable or the provider is not in compliance with contractual terms and conditions. The DCF can impose financial penalties for failure to comply with a corrective action plan, unless the DCF determines that extenuating circumstances exist.⁵⁰ The imposed financial

⁴⁶ November 2022 CBC Services Contract, Contract AJ500, pp. 40-44, available at: https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=600000&ContractId=AJ500&Tab=4.

⁴⁷ Section 402.7305(3)(f), F.S.

⁴⁸ Section 409.996(6), F.S.

⁴⁹ Section 402.73(1), F.S.; *See also* R. 65C-29.001, F.A.C. All contracts entered into by the DCF for services shall contain a notice that penalties shall be imposed for failure to implement or to make acceptable progress on corrective action plans develop as a result of noncompliance, non-performance, or unacceptable performance with the terms and conditions of a contract.

⁵⁰ Rule 65C-29.001(3)(a), F.A.C.

penalties are based on the severity of the noncompliance, nonperformance, or unacceptable performance that generated the need for the corrective action plan.⁵¹ A provider is prohibited from paying a financial penalty with funds intended to be used, or which are budgeted, to provide services to clients and cannot reduce the amount of quality of services delivered to clients as a result of the imposition of a financial penalty.⁵²

The DCF may also petition a court for the appointment of a receiver for a CBC if:

- The CBC is operating without a license as a child-placing agency;
- The CBC has given less than 120 days' notice of its intent to cease operations, and arrangements have not been made for another CBC or DCF to continue the uninterrupted provision of services;
- The DCF determines that conditions exist in the CBC which present an imminent danger to the health, safety, or welfare of the dependent children under the CBC's care or supervision; or
- A CBC is struggling to meet its financial obligations to its employees, contractors, or foster
 parents as supported by issuance of bad checks or the existence of delinquent obligations for
 payment of salaries, utilities, or invoices for essential services or commodities.⁵³

Audits

Over the years, the Governor's Office of Inspector General (OIG) and the DCF's Office of Inspector General (DCF OIG) have conducted audits due to concerns about CBC executive compensation and related parties within the CBC structure.

On February 20, 2020, Florida's Governor issued an executive order requiring the OIG to review entities which had sole-source, public-private agreements with state agencies; received more than 50 percent or more of their budget from state and federal funds; and had compensation totals exceeding federal or state law and regulations.⁵⁴ The OIG issued a report finding nine CBCs⁵⁵

⁵¹ Rule 65C-29.001(3)(b), F.A.C. The penalty, if imposed, shall not exceed ten percent of the total contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance that is determined to have a direct effect on client health and safety shall result in the imposition of a ten percent penalty of the total contract payments during the period in which the corrective action plan was has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance involving the provision of service not having a direct effect on client health and safety shall result in the imposition of a five percent penalty. Noncompliance as a result of unacceptable performance of administrative tasks shall result in the imposition of a two percent penalty.

⁵² Rule 65C-29.001(5), F.A.C.

⁵³ Section 409.994(1), F.S.

⁵⁴ Executive Order Number 20-44. The executive order arose from the Florida Coalition Against Domestic Violence, Inc., using funds from the DCF to subsidize exorbitant executive leadership team compensation payouts.

⁵⁵ Big Bend Community Based Care [d/b/a North West Florida Health Network (NWFHN)]; ChildNet, Inc.; Citrus Health Network, Inc.; Community Based Care of Brevard, Inc.; Eckerd Youth Alternatives (d/b/a Eckerd Connects); Embrace Families Community Based Care, Inc.; Florida Support Services of North Florida (FSSNF); Lakeview Center, Inc.; and Safe Children Coalition, Inc. *See* Executive Office of the Governor, Office of the Chief Inspector General, Executive Order Number 20-44, *Data Compilation and Statutory Compensation Limit Review*, CIG Number 2021-01-25-0017, June 30, 2021, pg. vi, available at https://www.flgov.com/wp-content/uploads/2021/06/Final-Report-with-Responses-6.30.21-2.pdf.

had compensation that potentially exceeded statutory limits.⁵⁶ The report also identified additional areas of concern related to employees and related parties.⁵⁷ At the request of the OIG, the DCF OIG conducted a review of the nine CBCs and identified two CBCs⁵⁸ for which executive leadership compensation appeared to exceeded state limits.⁵⁹

On December 3, 2021, the DCF OIG issued a report focused on the creation of management companies and other related parties within the CBCs. The report found that "the purposes and functions of these related organizations are not clear and pose risks to DCF fulfilling its mission." Based on these findings, DCF contracted with two auditing firms to conduct financial and operation examinations on all CBCs. The DCF released the findings for six of the CBCs on August 22, 2023. Key findings include:

- Noncompliance with competitive procurement requirements for non-related and related entities.
- Overbilling related to PPP Loan Forgiveness.
- Board approval of departmental deficit budgets.
- Excessive compensation.
- Establishment of sub-contracts to related parties that provide administrative support and management services.
- Related parties holding real estate that may have been purchased through the use of state/federal funds or acquired based on the existence of those funding streams.

Another key finding was a significant overlap of key individuals serving on both CBC board of directors and the board of a CBC related party. Additionally, CBC boards were not providing high level fiduciary oversight of CBC operations and budgets. Certain executive leadership positions were also integrally involved in related parties creating the potential for conflict of interest in CBC contracts for services with such related parties.⁶³

The DCF took corrective action against the six CBCs because of the examinations' findings.

Executive Compensation

CBC expenditures must comply with financial guidelines developed by DCF and with federal and state law.

Current law prohibits a CBC administrative employee in excess of 150 percent of the annual

⁵⁶ Executive Office of the Governor, Office of the Chief Inspector General, Executive Order Number 20-44, *Data Compilation and Statutory Compensation Limit Review*, CIG Number 2021-01-25-0017, June 30, 2021, pg. vi., available at https://www.flgov.com/wp-content/uploads/2021/06/Final-Report-with-Responses-6.30.21-2.pdf.

⁵⁸ Eckerd Connects and Family Support Services of North Florida.

⁵⁹ Supra note 56.

⁶⁰ Florida Department of Children and Families, Office of Inspector General, Internal Audit, Project #A-1819DCF-043, December 3, 2021, available at https://eds.myflfamilies.com/IGRPTS/AuditFileView.aspx.

⁶¹ Id

⁶² Florida Department of Children and Families, Community-Based Care Lead Agencies Audit Findings, available at https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings (last visited Jan. 12, 2024).

salary paid to DCF's secretary from state-appropriate funds, including state-appropriated federal funds.⁶⁴ The law does not prohibit any party from providing cash that is not appropriated state funds to a CBC administrative employee.⁶⁵ The Legislature codified the statutory salary cap into law in 2015 after the Florida Auditor General found instances where salary payments, including bonuses and leave balances, did not appear to be properly supported or calculated in accordance with established CBC policy or state law.⁶⁶

CBCs must also comply with the federal salary rate limit because CBCs receive federal pass-through awards from the DCF. Federal funds from the United States Health and Human Services (HHS) may not be used to pay the salary, or any percentage of salary, to an individual at a rate in excess of the established Executive Level II rate, currently \$212,100.⁶⁷

Therefore, the maximum amount a CBC executive may be compensated with combined state and federal funds is \$315,000, of which only \$212,100 can be federal funds.⁶⁸

The DCF is required to publish the compensation information for a CBC's chief executive, chief administrator, or other chief officer. ⁶⁹ The following table includes the *total* compensation for CBC executive officers as of the last annual reporting to DCF. ⁷⁰

CBC Lead Agency	Circuit	CEO	CFO	coo	
Northwest Florida Health Network (Big Bend)	1, 2,14	\$563,842	\$272,261	\$217,194	
Partnership for Strong Families	3, 8	\$169,043	\$116,277	\$105,445	
Family Support Services of North Florida	4 (Duval, Nassau)	\$230,125	\$146,978	Vacant	
Family Support Services of Suncoast	6 (Pasco, Pinellas)	\$230,123	\$140,976	vacant	
Kids First of Florida	4 (Clay)	\$113,656	\$113,040	\$101,656	
St. Johns County Board of Commissioners	7 (St. Johns)	N/A	N/A	N/A	
Community Partnership for Children	7 (Flagler, Volusia, Putnam)	\$205,000	\$114,500	\$122,360	
Safe Children Coalition	12	\$220,000	\$110,000	\$145,000	
Kids Central	5	\$218,624	\$177,786	\$162,350	
Embrace Families	9, 18 (Orange, Osceola, Seminole)	\$332,023	\$206,520	\$254,635	
Heartland for Children	10	\$175,000	\$130,000	\$152,499	
Brevard Family Partnerships	18 (Brevard)	\$157,757	\$103,716	\$129,024	
Communities Connected for Kids	19	\$169,161	\$141,474	\$145,757	

⁶⁴ Section 409.992(3), F.S.

⁶⁵ *Id*

⁶⁶ Florida Auditor General, Department of Children and Families and Selected Community-Based Care Lead Agencies, Oversight of Foster Care and Related Services, Operational Audit, Report No. 2015-156, March 2015, available at: https://flauditor.gov/pages/pdf_files/2015-156.pdf.

⁶⁷ Email from Sam Kerce, Legislative Affairs Director, Florida Department of Children and Families, re: Questions, on file with the Senate Children, Families, and Elder Affairs Committee. *See also* Health Resources & Services Administration, Grants Policy Bulletin, Legislative Mandates in Grants Management for FY 2023, Feb. 1, 2023, available at: https://www.hrsa.gov/sites/default/files/hrsa/grants/manage/legislative-mandates-grants-management-2023.pdf.

⁶⁸ *Supra* note 14, pg. 6.

⁶⁹ Section 409.996(4)(a)1., F.S.

⁷⁰ Supra note 10.

CBC Lead Agency	Circuit	CEO	CFO	COO	
ChildNet	15 (Palm Beach)	\$266,492	\$201.956	\$212,630	
Cinidivet	17 (Broward)	\$200,492	\$201,930	\$212,030	
Children's Network of Southwest Florida	20	\$209,830	\$162,931	\$163,513	
Children's Network of Hillsborough	13	\$197,600	\$166,400	\$166,400	
Citrus Family Care Network	11, 16	\$263,800	\$176,342	\$203,059	

Conflicts of Interest

The outsourced nature of DCF services, including child welfare, requires DCF to engage in contract management functions focused on accountability. One area of possible lack of accountability is conflicts of interest between a CBC member, officer, or relative and CBC subcontractor.

Section 409.987(7), F.S., requires a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of a CBC. This requirement applies to situations in which a CBC board member or an officer, or a relative within the third degree of consanguinity by blood or marriage of a member or officer:

- Enters into a contract or other transaction for goods or services with the CBC.
- Holds a direct or indirect interest⁷¹ in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the CBC or proposes to enter into a contract or other transaction with the CBC.
- Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a
 result of the relationship with a board member or officer, or relative of the board member or
 officer of the CBC.

Any activity that involves a contract for goods and services, a purchase of any real or tangible property, an agreement to engage with the CBC for a benefit, or an in-kind contribution, or if a CBC board member or officer notifies the CBC board of a potential conflict of interest under an existing CBC contract, the proposed activity or potential conflict of interest must be presented to the CBC board for approval which includes:

- Listing the proposed activity on the CBC board's agenda for the next general or special meeting;
- Providing copies of all contracts and relevant documents related to the proposed transaction;
 and
- Giving the CBC board an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.⁷²

If the CBC board votes against the proposed activity, the CBC board member or officer must notify the CBC board in writing of his or her intention, or the relative's intention, not to pursue the proposed activity or the CBC board member or officer must resign. If the CBC board finds a CBC member or officer has violated the requirements for approval, the CBC board member or

⁷¹ "Indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under Ch. 112, Part III, F.S.

⁷² Section 409.987(7)(c), F.S.

officer will be deemed removed from the CBC board before the next scheduled board meeting.

If the CBC board does not approve a conflict of interest, the parties to the activity where the conflict of interest exist may opt to cancel the activity or resign from the CBC board or office before the next scheduled board meeting.⁷³

A contract entered into between a CBC board member or officer, or relative of a CBC board member or officer, and a CBC which has not been properly disclosed as a conflict of interest or potential conflict of interest is voidable and terminates upon the filing of a written notice to the CBC board of directors.⁷⁴

Findings from the most recent CBC financial and operational examinations included concerns of significant overlap of key individuals serving on both a CBC board of directors and a related party board and executive leadership positions being integrally involved in multiple related parties creating the potential for conflict of interest in CBC contracts for services with related parties.⁷⁵ Findings also noted a perception that CBC board of directors were not providing proper fiduciary oversight of CBC operations and budgets.⁷⁶

Competitive Solicitation for Commodities or Contractual Services

Section 287.057, F.S., requires state agencies that wish to procure commodities or contractual services in excess of \$35,000 to use a competitive solicitation process. A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.⁷⁷ Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid,⁷⁸ request for proposals,⁷⁹ or invitation to negotiate.⁸⁰

III. Effect of Proposed Changes:

Section 1 of the bill requires the DCF to reprocure CBC contracts every 5-years and allows for the DCF to extend a CBC contract for up to 1-year based on need.

The bill requires a CBC board of directors to ensure accountability and transparency of the system of care, which includes fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse. The bill requires the CBC to ensure that board members participate in annual training, as approved by the DCF, related to their responsibilities.

⁷³ Section 409.987(7)(d)2., F.S.

⁷⁴ Section 409.987(7)(f), F.S.

⁷⁵ Supra note 60.

⁷⁶ Id

⁷⁷ Section 287.012(6), F.S.

⁷⁸ Section 287.057(1)(a), F.S.

⁷⁹ Section 287.057(1)(b), F.S.

⁸⁰ Section 287.057(1)(c), F.S.

The bill expands those who may have a conflict of interest to include a CBC director or a relative of a director and creates a definition for "related party" to conform to changes made in this section.

The bill requires a CBC board of directors to disclose to the DCF any known, actual, or potential conflicts of interest.

The bill requires a CBC to competitively procure all contracts with related parties in excess of \$35,000, and prohibits CBCs from entering into a contract or be a party to any transaction that creates a conflict of interest, including for the provision of management or administrative services or oversight with related parties, which includes any:

- Entity where any director or executive of such entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the CBC.
- Subsidiary, parent entity, associate firm, joint venture, or any entity that is controlled, influenced, or managed by another entity or any individual related to such entity.
- Individual who is, or was within the immediately preceding 36 months, an executive officer or a board member of the entity.

The bill removes obsolete language related disclosure of conflicts of interest that occur by a specific date.

The bill creates civil penalties in the amount of \$5,000 per occurrence when a CBC does not disclose a known and potential conflict of interest to the DCF in the process described in s. 409.987(b), F.S.

The bill creates civil penalties when a CBC procures a contract that was a conflict of interest and not disclosed to the DCF to include \$50,000 for a first offense and \$100,000 for a second or subsequent offense. The bill requires the penalties to apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, sing-source contracts, and contracts that do not meet the minimum threshold for formal procurement. The bill requires reprocurement of any contract procured in violation of the disclosure requirements.

The bill allows the DCF, at its sole discretion, to prohibit execution of a contract for which a conflict of interest exists or will exist after execution.

These provisions all focus on the corporate function and business operations of CBCs, clarifying and detailing requirements around reporting, conflicts of interest, board of director functions, and financial penalties.

Section 2 of the bill requires CBCs to comply with regular, independent auditing of the CBCs' financial activities, including any requests for records associated with such financial audits within the timeframe established by the DCF or its contracted vendors. It also requires the results of financial audits to be provided to the community alliance in the CBC's services area rather than the CBC's financial information being provided to the community alliance.

The bill requires the CBC to competitively procure any subcontract in excess of \$250,000 and prohibits CBCs from subcontracting for the provision of administrative and management functions.

The bill prohibits a CBC from providing more than 35 percent of direct child welfare services unless there is a lack of viable providers available to perform the necessary services. The bill requires the DCF to review and approve or deny a CBC's request to exceed the threshold if there is no community alliance in the CBC's service area. If justification for exceeding the 35 threshold is approved, the bill limits the approval to 2 years and the CBC is required to reprocure for the services before the end of the 2-year period.

The bill expands the data that a CBC must publish on its website to include:

- The number of unlicensed placements for the previous month;
- The percentages and trends for foster parent and group home recruitment and licensure for the previous month;
- The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and
- The percentage of cases that converted from nonjudicial to judicial for the previous month.

These provisions focus on the business operations of CBCs and tighten requirements around procurement, the provision of services, and transparency.

Section 3 of the bill creates a new funding model for the allocation of funds from the DCF to the CBCs. The language removes the current equity-funding model and requires an actuarially sound, tiered payment model intended to achieve a stable payment model that adjusts to workload and incentivizes prevention, family preservation, and permanency. The bill does not redefine or change what core funding is, only the frequency and method of calculation. The bill creates a tiered payment model for the allocation of core funds to CBCs that includes:

- Tier 1 provides operational base and fixed costs, including administrative and other expenses, that do not vary based on the number of children and families served. Tier 1 payments may vary by geographic catchment area and costs of living differences. The bill requires the DCF to establish and annually update Tier 1 payment rates to maintain cost expectations aligned with the population served, services provided, and environment. The bill provides that Tier 1 payments may include:
 - Administrative expenditures;
 - Lease payments;
 - Asset depreciation;
 - o Utilities;
 - o Select components of case management, including administrative elements;
 - o Mandated activities such as training, quality, and contract manage; or
 - Activities performed for children and families which are nonjudicial and not candidates for Title IV-E funding, including true prevention and community-focused activites.
- Tier 2 is a per-child, per-month payment designed to provide funding for CBCs' expenses that vary based on the number of children served for a particular month. The per-child, permonth payment rate blends out-of-home rates and in-home rates specific to each CBC to create a financial incentive for CBCs to provide services in the least restrictive safe

placement. The bill requires the DCF to establish and annually update Tier 2 payment rates to maintain a cost expectation that is aligned with the population served, services provided, and environment.

• Tier 3 provides a financial incentive payment that the DCF must establish to reward CBCs that achieve performance measures aligned with the DCF's goals of prevention, family preservation, and permanency.

The bill requires the DCF to submit a report to the Governor, the Senate President, and the Speaker of the House of Representatives by December 1 of each year that includes:

- Each CBC's actual performance in attaining the previous fiscal year's targets;
- Recommendations for adjustments to CBC funding; and
- Adjustments to the tiered payment model, if necessary.

The bill requires the DCF to allocate funding based on the newly created actuarially sound, tiered based model, unless otherwise specified by proviso in the General Appropriations Act.

The bill delays the funding model changes until July 1, 2025, to ensure a smooth transition to the new model.

Section 4 of the bill requires CBCs to competitively procure all contracts consistent with the simplified acquisition threshold in federal rule (2 C.F.R. part 200). It also creates financial penalties or sanctions for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services. The bill requires the DCF to establish and incorporate the financial penalties or sanctions into the CBC contracts.

The bill requires CBCs to comply with purchasing practices for professional services, including engineering or construction design, in s. 287.055, F.S. It also requires the DCF to retain all rights to and ownership of any real property procured by the CBC upon termination of the CBC's contract. Further, it requires a CBC to return any funds from the sale, transfer, or other dispossession of real property during a CBC contract term to the DCF.

The bill limits the compensation a CBC administrative employee may receive to a capped total amount, 150 percent of the annual salary paid to the secretary of the DCF, regardless of the number of contracts a CBC executes with the DCF. This is currently \$315,000 of combined state and federal funds.

Section 5 of the bill expands the situations in which the DCF can petition the court to initiate receivership of a CBC. The bill allows the DCF to petition the court for receivership when the DCF's secretary determines that conditions exist within the CBC that present a danger (rather than an *imminent* danger as in current law) to the health, safety, or welfare of the dependent children in the CBC's care or supervision. Further, it expands when the DCF may petition for receivership from when a CBC *cannot* meet financial obligations to also include when a CBC is *unlikely* to meet financial obligations.

Section 6 of the bill creates flexibility for the DCF to take action against a CBC by removing a tiered intervention and graduated penalties process and instead requires contractual actions and

financial penalties for performance deficiencies. The bill requires the DCF to include the following in CBC contracts:

- Contractual actions for failure to comply with contract terms or in the event of performance deficiencies, as determined by the DCF. Such interventions and penalties include, but are not limited to:
 - o Corrective action plans.
 - o Requirements to accept technical assistance and consultation from the DCF.
 - o Financial penalties, including liquidated damages, which the DCF will be solely responsible for determining the monetary value of, that require the CBC to direct, rather than reallocate, funds from administrative costs to the DCF. The bill requires the DCF to use the collected funds to support service delivery of quality improvement activities for children in the CBC's care. The bill allows the penalties to be imposed for failure to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the DCF.
- Provisions that require a CBC to pay the DCF for failure to comply with contractual obligations.

Section 7 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A.	Municipality/County Mandates Restrictions:

B. Public Records/Open Meetings Issues:

None.

None.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is an indeterminate fiscal impact on the CBCs due to the funding model changes and financial penalties included in the bill.

Funding Model

The CBCs will experience an adjustment in state funding levels due to the funding model changes made by the bill; some CBCs will have an increase in funding, while others will have a decrease in funding. However, over time, the state could potentially experience a positive fiscal impact due to the funding model change if the proper incentives built into the new model increase prevention and in-home services and ultimately decrease the amount of funding spent on costly out-of-home care services.

Financial Penalties

A CBC that fails to disclose known or actual conflicts of interest or does not comply with other requirements mandated by the bill will experience a negative fiscal impact in the event of the DCF imposing the financial penalties authorized by the bill.

C. Government Sector Impact:

Current funding levels to the DCF will not need to change based on the language in the bill. However, over time, the cost of funding the child welfare system of care may decrease if the new actuarially sound funding model properly promotes and increases the use of prevention and in-home services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 409.987, 409.988, 409.990, 409.991, 409.992, 409.994, 409.996, 409.997 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 Children, Families, and Elder Affairs January 17, 2024:

The committee substitute adds the following provisions:

- Requiring CBC board members to complete annual training, as approved by the DCF, on their responsibilities.
- Include a CBC director, or a relative of a CBC director, to persons who can have a conflict of interest.

• Retaining current statutory language on the process of a CBC disclosing a conflict of interest to the DCF and allowing DCF to impose civil penalties if a CBC does not properly disclose known or potential conflicts of interest as required by that process.

- Requiring CBC board members to disclose any known, actual, or potential conflicts of interests.
- Requiring CBCs to competitively procure all contracts with related parties in excess of \$35,000.
- Requiring DCF to impose civil penalties against a CBC that procures a contract
 without proper disclosure of a conflict of interest on any contracted entered into by
 the CBC, regardless of the method of procurement, including, but not limited to,
 formal procurement, single-source contract, and contracts that do not meet the
 minimum threshold for formal procurement.
- Requiring subcontracts in excess of \$250,000 to comply with the competitive procurement process.
- Allowing a CBC to exceed the threshold of providing more than 35 percent of child welfare services in its service area if there is a lack of viable providers and limits the approval to exceed the threshold to 2-years.
- Delaying implementation of the CBC funding model changes until July 1, 2025.
- Including a list of Tier 1 operational base costs in the actuarily-sound funding model.
- Requiring a CBC to return any funds from the sale, transfer, or other dispossession of real property during a CBC contract terms to the DCF.
- Updating a cross-reference for early termination of a CBC contract.
- Retaining the requirements that the DCF must submit an annual report on the child welfare results-oriented accountability program.

The committee substitute removes the following provisions:

- Requiring CBCs to submit certain judicial documents to DCF attorneys within specific timeframes.
- Requiring CBCs to submit spending plans to the DCF for approval prior to receiving allocated funds.
- Allowing a written certification by the DCF's secretary to serve as prima facie for the purpose of filing a petition for receivership of a CBC.
- Requiring CBC contracts to include sanctions or disincentives for failure to comply with specific items.

B. Amendments:

None.

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



LEGISLATIVE ACTION		
Senate	•	House
Comm: RCS	•	
01/17/2024	•	
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The Committee on Children, Families, and Elder Affairs (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 409.987, Florida Statutes, are amended to read:

409.987 Lead agency procurement; boards; conflicts of interest.-

(3) Notwithstanding s. 287.057, the department shall use 5-

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year contracts with lead agencies. The 5-year contract must be reprocured at the end of each 5-year contract term. The contract may be extended at the discretion of the department for up to 1 year, based on department needs.

- (4) In order to serve as a lead agency, an entity must:
- (a) Be organized as a Florida corporation or a governmental entity.
- (b) Be governed by a board of directors or a board committee composed of board members. Board members shall provide oversight and ensure accountability and transparency for the system of care. The board of directors shall provide fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse. The lead agency shall ensure that board members participate in annual training, as approved by the department, related to their responsibilities. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must be composed consist of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:
- 1. At least 75 percent of the membership of the board of directors must be composed consist of persons residing in this state, and at least 51 percent of the membership of the board of directors must be composed consist of persons residing within

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the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must be composed consist of persons residing within the service area of the lead agency.

- 2. The powers of the board of directors or board committee include, but are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.
- (c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.
 - (7) (a) As used in this subsection, the term:
- 1. "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with a lead agency for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.
- 2. "Conflict of interest" means when a board member, director, or an officer, or a relative of a board member, director, or an officer, of a lead agency does any of the following:
- a. Enters into a contract or other transaction for goods or services with the lead agency.
 - b. Holds a direct or indirect interest in a corporation,

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limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the lead agency or proposes to enter into a contract or other transaction with the lead agency. For purposes of this paragraph, the term "indirect interest" has the same meaning as in s. 112.312.

- c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member, director, or officer, or relative of the board member, director, or officer, with the lead agency. For purposes of this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members or officers of the lead agency in connection with their service on the board.
- 3. "Related party" means any entity of which a director or an executive of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity.
- 4.3. "Relative" means a relative within the third degree of consanguinity by blood or marriage.
- (b) 1. For any activity that is presented to the board of a lead agency for its initial consideration and approval after July 1, 2021, or any activity that involves a contract that is

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being considered for renewal on or after July 1, 2021, but before January 1, 2022, a board member, a director, or an officer of a lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or a contract is renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted on by the board without prior notice as required under paragraph (c). The board shall disclose any known, actual, or potential conflicts to the department.

- 2. A lead agency may not enter into a contract or be a party to any transaction that creates a conflict of interest, including with related parties for the provision of management or administrative services or oversight. The lead agency shall competitively procure all contracts with related parties in excess of \$35,000 For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer of the lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021.
- (g) 1. Civil penalties in the amount of \$5,000 per occurrence shall be imposed for each known and potential conflict of interest, as described in paragraph (b), which is not disclosed to the department.
- 2. If a contract is procured for which a conflict of interest was not disclosed to the department before execution of the contract, the following penalties apply:
 - a. A civil penalty in the amount of \$50,000 for a first

offense.



b. A civil penalty in the amount of \$100,000 for a second 128 129 or subsequent offense. 130 3. The civil penalties for failure to disclose a conflict 131 of interest under subparagraphs 1. and 2. apply to any contract 132 entered into, regardless of the method of procurement, 133 including, but not limited to, formal procurement, single-source 134 contracts, and contracts that do not meet the minimum threshold 135 for formal procurement. 136 4. A contract procured for which a conflict of interest was 137 not disclosed to the department before execution of the contract 138 shall be reprocured. 139 5. The department may, at its sole discretion, prohibit 140 execution of a contract for which a conflict of interest exists, 141 or will exist after execution. 142 Section 2. Paragraphs (c), (i), (j), (k), and (l) of subsection (1) of section 409.988, Florida Statutes, are amended 143 144 to read: 145 409.988 Community-based care lead agency duties; general 146 provisions.-147 (1) DUTIES.—A lead agency: (c) Shall follow the financial guidelines developed by the 148 149 department and shall comply with regular, independent auditing 150 of its financial activities, including any requests for records 151 associated with such financial audits within the timeframe 152 established by the department or its contracted vendors provide 153 for a regular independent auditing of its financial activities. 154 The results of its financial audit must Such financial 155 information shall be provided to the community alliance

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established under s. 20.19(5).

- (i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services. Any subcontract in excess of \$250,000 must comply with the competitive procurement process.
- (j) May subcontract for the provision of services, excluding administrative and management functions, required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need, within the lead agency's geographic service area where there is a lack of viable providers available to perform the necessary services. The approval period to exceed the threshold must be limited to 2 years. The lead agency shall reprocure for these services before the end of the 2-year period, to exceed this threshold. The local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and approval or denial of the lead agency's request for an exemption from the services $\underline{\text{threshold}}$ -recommendation shall be made by the department. $\underline{\text{by}}$



185 representatives of local stakeholders, including at least one 186 representative from each of the following: 187 1. The department. 188 2. The county government. 189 3. The school district. 4. The county United Way. 190 191 5. The county sheriff's office. 192 6. The circuit court corresponding to the county. 7. The county children's board, if one exists. 193 194 (k) Shall publish on its website by the 15th day of each 195 month at a minimum the data specified in subparagraphs 1.-9.1.-196 5., calculated using a standard methodology determined by the 197 department, for the preceding calendar month regarding its case 198 management services. The following information must shall be 199 reported by each individual subcontracted case management 200 provider, by the lead agency, if the lead agency provides case 201 management services, and in total for all case management 202 services subcontracted or directly provided by the lead agency: 203 1. The average caseload of case managers, including only 204 filled positions; 205 2. The total number and percentage of case managers who 206 have 25 or more cases on their caseloads; 207 3. The turnover rate for case managers and case management 208 supervisors for the previous 12 months; 209 4. The percentage of required home visits completed; and 210 5. Performance on outcome measures required pursuant to s. 211 409.997 for the previous 12 months; -

6. The number of unlicensed placements for the previous

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month;



214	7. The percentage and trends for foster parent and group
215	home recruitment and licensure for the previous month;
216	8 The percentage of families being served through family
217	support, in-home, and out-of-home services for the pervious
218	month; and
219	9. The percentage of cases that converted from nonjudicial
220	to judicial for the previous month.
221	Section 3. Section 409.991, Florida Statutes, is amended to
222	read:
223	409.991 Allocation of funds for community-based care lead
224	agencies.—
225	(1) As used in this section, the term \div
226	(a) "core services funds" means all funds allocated to
227	community-based care lead agencies operating under contract with
228	the department pursuant to s. 409.987. The term does not include
229	any of, with the following exceptions:
230	(a) 1. Funds appropriated for independent living services;
231	(b) 2. Funds appropriated for maintenance adoption
232	subsidies;
233	(c) 3. Funds allocated by the department for child
234	protective investigation service investigations training;
235	(d)4. Nonrecurring funds;
236	(e) 5. Designated mental health wrap-around service services
237	funds;
238	(f) 6. Funds for special projects for a designated
239	community-based care lead agency; and
240	(g) 7. Funds appropriated for the Guardianship Assistance
241	Program under s. 39.6225.
242	(b) "Equity allocation model" means an allocation model



243 that uses the following factors: 244 1. Proportion of the child population; 2. Proportion of child abuse hotline workload; and 245 246 3. Proportion of children in care. 247 (c) "Proportion of child population" means the proportion of children up to 18 years of age during the previous calendar 248 249 year in the geographic area served by the community-based care 250 lead agency. 251 (d) "Proportion of child abuse hotline workload" means the 252 weighted average of the following subcomponents: 253 1. The average number of initial and additional child abuse 254 reports received during the month for the most recent 12 months 255 based on child protective investigations trend reports as 256 determined by the department. This subcomponent shall be 257 weighted as 20 percent of the factor. 258 2. The average count of children in investigations in the 259 most recent 12 months based on child protective investigations 2.60 trend reports as determined by the department. This subcomponent 261 shall be weighted as 40 percent of the factor. 262 3. The average count of children in investigations with a 263 most serious finding of verified abuse in the most recent 12 264 months based on child protective investigations trend reports as 265 determined by the department. This subcomponent shall be 266 weighted as 40 percent of the factor. 267 (e) "Proportion of children in care" means the proportion 268 of the number of children in care receiving in-home services over the most recent 12-month period, the number of children 269 270 whose families are receiving family support services over the

most recent 12-month period, and the number of children who have

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entered into out-of-home care with a case management overlay 272 273 during the most recent 24-month period. This subcomponent shall 274 be weighted as follows: 275 1. Fifteen percent shall be based on children whose 276 families are receiving family support services. 2. Fifty-five percent shall be based on children in out-of-277 278 home care. 279 3. Thirty percent shall be based on children in in-home 280 care. 281 (2) Effective July 1, 2025, allocation of core services 282 funds must be based on an actuarially sound, tiered payment 283 model. The tiered model's purpose is to achieve the overarching 284 goals of a stable payment model that adjusts to workload and 285 incentivizes prevention, family preservation, and permanency. 286 (a) Tier 1 provides operational base and fixed costs, which 287 do not vary based on the number of children and families served. 288 Tier 1 payments may vary by geographic catchment area and cost 289 of living differences. The department shall establish and 290 annually update Tier 1 payment rates to maintain cost 291 expectations that are aligned with the population served, 292 services provided, and environment. Tier 1 expenses may include: 293 1. Administrative expenditures; 294 2. Lease payments; 295 3. Asset depreciation; 296 4. Utilities; 297 5. Select components of case management, including 298 administrative elements; 299 6. Mandated activities such as training, quality, and

contract management; or

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- 7. Activities performed for children and families which are nonjudicial and not candidates for Title IV-E funding, including 303 true prevention and community-focused activities. (b) Tier 2 is a per-child, per-month payment designed to provide funding for lead agencies' expenses that vary based on the number of children served for a particular month. The 307 payment rate blends out-of-home rates and in-home rates specific to each lead agency to create a rate that provides a financial incentive to lead agencies to provide service in the least restrictive safe placement. The department shall establish and annually update Tier 2 payment rates to maintain cost 311 312 expectations that are aligned with the population served, services provided, and environment. Tier 2 rates must be set annually. (c) Tier 3 provides financial incentives that the department shall establish to reward lead agencies that achieve 317 performance measures aligned with the department's goals of prevention, family preservation, and permanency. The equity allocation of core services funds shall be calculated based on 320 the following weights: 321 (a) Proportion of the child population shall be weighted as 322 5 percent of the total. (b) Proportion of child abuse hotline workload shall be weighted as 35 percent of the total. 325 (c) Proportion of children in care shall be weighted as 60 326 percent of the total.
 - Page 12 of 19

(3) By December 1 of each year, beginning in 2024, the

department shall submit a report to the Governor, the President

of the Senate, and the Speaker of the House of Representatives

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which includes each lead agency's actual performance in attaining the previous fiscal year's targets, recommendations for adjustments to lead agency funding, and adjustments to the tiered payment model, if necessary Beginning in the 2015-2016 state fiscal year, 100 percent of the recurring core services funding for each community-based care lead agency shall be based on the prior year recurring base of core services funds.

- (4) Effective July 1, 2025, unless otherwise specified in the General Appropriations Act, the department shall allocate all funding for core services based on the methodology established in this section any new core services funds shall be allocated based on the equity allocation model as follows:
- (a) Seventy percent of new funding shall be allocated among all community-based care lead agencies.
- (b) Thirty percent of new funding shall be allocated among community-based care lead agencies that are funded below their equitable share. Funds allocated pursuant to this paragraph shall be weighted based on each community-based care lead agency's relative proportion of the total amount of funding below the equitable share.

Section 4. Subsections (1) and (3) of section 409.992, Florida Statutes, are amended to read:

409.992 Lead agency expenditures.-

(1) The procurement of commodities or contractual services by lead agencies is shall be governed by the financial quidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

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(a) Lead agencies shall competitively procure all contracts, consistent with the simplified acquisition threshold as specified in 2 C.F.R. part 200. Financial penalties or sanctions, as established by the department and incorporated into the contract, shall be imposed by the department for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services. (b) Notwithstanding s. 402.73, for procurement of real property or professional services, lead agencies shall comply

- with established purchasing practices, including the provisions of s. 287.055, as required, for professional services, including engineering or construction design. Upon termination of the contract, the department shall immediately retain all rights to and ownership of real property procured. Any funds from the sale, transfer, or other dispossession of such property during the contract term shall be returned to the department.
- (3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments from the lead agency or any related party, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from stateappropriated funds, including state-appropriated federal funds. This limitation applies regardless of the number of contracts a community-based care lead agency may execute with the department. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

Section 5. Paragraphs (c) and (d) of subsection (1) of

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section 409.994, Florida Statutes, are amended to read:

409.994 Community-based care lead agencies; receivership.-

- (1) The Department of Children and Families may petition a court of competent jurisdiction for the appointment of a receiver for a community-based care lead agency established pursuant to s. 409.987 if any of the following conditions exist:
- (c) The department determines that conditions exist in the lead agency which present a an imminent danger to the health, safety, or welfare of the dependent children under that agency's care or supervision. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.
- (d) The lead agency cannot meet, or is unlikely to meet, its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities constitutes shall constitute prima facie evidence that the lead agency lacks the financial ability to meet its financial obligations.

Section 6. Paragraph (d) of subsection (1) of section 409.996, Florida Statutes, is amended to read:

409.996 Duties of the Department of Children and Families.-The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and

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metrics specified in the strategic plan created under s. 20.19(1).

- (1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:
- (d) Provide for contractual actions tiered interventions and graduated penalties for failure to comply with contract terms or in the event of performance deficiencies, as determined appropriate by the department.
- 1. Such contractual actions must interventions and penalties shall include, but are not limited to:
 - 1. Enhanced monitoring and reporting.
 - a. 2. Corrective action plans.
- b.3. Requirements to accept technical assistance and consultation from the department under subsection (6).
- c.4. Financial penalties, which shall require a lead agency to direct reallocate funds from administrative costs to the department. The department shall use the funds collected to support service delivery of quality improvement activities for children in the lead agency's care to direct care for children. These penalties may be imposed for failure to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the department. Financial penalties may include liquidated damages.
- d.5. Early termination of contracts, as provided in s. 402.7305(3)(f) s. 402.1705(3)(f).
- 2. The department shall include in each lead agency contract executed a provision that requires payment to the

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department of sanctions or disincentives for failure to comply with contractual obligations. The department shall establish a schedule of daily monetary sanctions or disincentives for lead agencies, which must be incorporated by reference into the contract. The department is solely responsible for determining the monetary value of liquidated damages.

Section 7. This act shall take effect July 1, 2024. ======= T I T L E A M E N D M E N T ========== And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to community-based child welfare agencies; amending s. 409.987, F.S.; revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; revising requirements for an entity to serve as a lead agency; requiring that lead agencies ensure that board members participate in certain annual training; revising the definition of the term "conflict of interest"; defining the term "related party"; requiring the lead agency's board of directors to disclose any known, actual, or potential conflicts of interest; prohibiting a lead agency from entering into a contract or being a party to a transaction that creates a conflict of interest; requiring a lead agency to competitively procure certain contracts; imposing civil penalties on lead agencies for undisclosed conflicts of interest; providing

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applicability; amending s. 409.988, F.S.; revising community-based care lead agency duties; amending s. 409.991, F.S.; revising the definition of the term "core services funds"; removing definitions; requiring that the allocation of core services funds be based on a three-tiered payment model; providing specifications for the payment model; requiring that reports be submitted annually to the Governor and the Legislature by a specific date; requiring that all funding for core services be based on the statutory methodology; amending s. 409.992, F.S.; revising requirements for lead agency practices in the procurement of commodities and contractual services; requiring the department to impose certain penalties for a lead agency's noncompliance with applicable procurement law; requiring lead agencies to comply with established purchasing practices for the procurement of real property and professional services; requiring the department to retain all right to and ownership of real property procured upon termination of contracts; requiring certain funds to be returned to the department; providing applicability of certain limitations on the salaries of community-based care lead agency administrative employees; amending s. 409.994, F.S.; revising the conditions under which the department may petition a court for the appointment of a receiver for a community-based care lead agency; amending s. 409.996, F.S.; revising requirements for contracts between the department and lead agencies;



504	revising the actions the department may take upon
505	certain circumstances; making a technical change;
506	providing duties to the department; providing an
507	effective date.

By Senator Rouson

16-00721B-24 2024550

A bill to be entitled

An act relating to transparency for autism-related services; amending s. 393.063, F.S.; providing a definition for the term "manifests" or "onset"; amending s. 393.065, F.S.; requiring the Agency for Persons with Disabilities or its designee to provide specified information when notifying an applicant of his or her eligibility determination; providing an effective date.

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

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Section 1. Present subsections (26) through (46) of section 393.063, Florida Statutes, are redesignated as subsections (27) through (47), respectively, and a new subsection (26) is added to that section, to read:

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393.063 Definitions.—For the purposes of this chapter, the term:

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(26) "Manifests" or "onset" means the display or disclosure of characteristic signs or symptoms of an illness.

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Section 2. Subsection (3) of section 393.065, Florida Statutes, is amended to read:

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393.065 Application and eligibility determination.-

(3) The agency or its designee shall notify each applicant,

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in writing, of its <u>individualized</u> eligibility determination, including any specific criteria the applicant has not met from

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the agency's eligibility criteria described in rule 65G-4.0215,

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<u>Florida Administrative Code</u>. Any applicant or client determined by the agency to be ineligible for services has the right to

2024550___ 16-00721B-24 30 appeal this determination pursuant to ss. 120.569 and 120.57. Section 3. This act shall take effect July 1, 2024. 31

1-17-	2024
Meeti	ng Date

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to

Bill Number or Topic

		Senate professional st	aff conducting the meeting	ng
N	Committee	Lools	Phone .	Amendment Barcode (if applicable) 850-294-0052
Name Addres		JADME 20	3 Email	Margart DP FDDZ.OR
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

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		APPEARANCE	KECOKI	19 330
	Meeting Date	Deliver both copies of t Senate professional staff condu		Bill Number or Topic
	Committee			Amendment Barcode (if applicable)
Name	ALAN A	BRAMONITZ	Phone	850-241-3232
Address	s 7 × 4 8	MAJAN DR	Email	(EUP ArcHoridions
	City Speaking: For	$\frac{\int \mathcal{L}}{State}$ $\frac{328 \text{T/8}}{Zip}$ Against \square Information \bigcirc \bigcirc \bigcirc	——– Waive Speaki	ng: In Support Against
		PLEASE CHECK ONE OF T		
	m appearing without mpensation or sponsorship.	I am a registered lobbyish representing:	t,	I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Bill Number or Topic

Deliver both copies of this form to Senate professional staff conducting the meeting

11:01	Amendment Barcode (if applicable)
Name Victoria Zepp	Phone <u>833 - 618 - 8180</u>
	Phone 033 018 8180
Address 310 W College Ave	
Street College Moc	Email Victoria @feam 180. com
y	1001100:0011
Tallahassee FL	32201
City State	7in

Speaking: Against Information OR Waive Speaking:

Zip

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: Childrens Home Network

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules, pdf (flsenate.gov)

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

(08/10/2021)

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.)

NTRODUCER: (CS/SB 550 Children, Families,	and Elder Affair	rs Committee and	1 Senator Rouso	
	,	and Elder Affair	s Committee and	d Senator Rouson	
SUBJECT:				a Beliator Rouso	1
	Transparency for A	utism-related Se	ervices		
DATE:	January 18, 2023	REVISED:			
ANALYS	ST STAI	F DIRECTOR	REFERENCE		ACTION
. Hall	Tuszy	nski	CF	Fav/CS	
·•			AHS		
•			FP		

I. Summary:

CS/SB 550 requires the Agency for Persons with Disability to provide each applicant an individualized eligibility determination that includes the specific criteria the applicant has not met when denied.

COMMITTEE SUBSTITUTE - Substantial Changes

The bill is not expected to have a fiscal impact.

The bill is effective beginning July 1, 2024.

II. Present Situation:

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for the provision of services to individuals with developmental disabilities and for administering the Home and Community-Based Services (HCBS) Waiver. Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization. The HCBS Waiver provides services to individuals with developmental

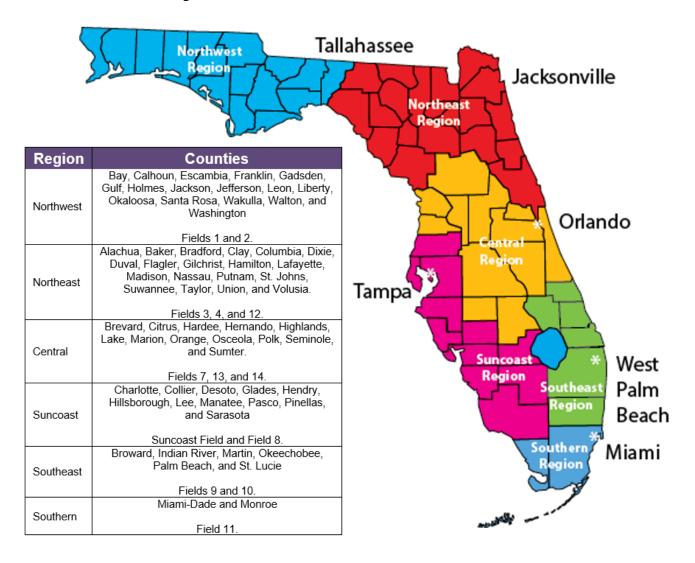
¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.³ Eligible individuals must meet institutional level of care requirements.⁴

The overarching goal for the APD is to prevent or reduce the severity of developmental disabilities and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.⁵

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:



³ The Centers for Medicare and Medicaid Services, https://www.medicaid.gov/medicaid/home-community-based-services-level-services-level-services-level-services-level-services-level-services-authorities/home-community-based-services-1915c/index.html (last visited Dec. 11, 2023).

⁴ Id.; Rule 59G-13.080(1), F.A.C.

⁵ See Section 393.062, F.S.

iBudget Florida Program

The APD administers Florida's individual budget-based HCBS Waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida. Alternatively, they may choose to live in an institutional setting known as Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁶ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁷

The APD initiated implementation of iBudget Florida on May 1, 2011 with the final areas transitioned from the previous teared waiver system on July 1, 2013. The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services. The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 34,900 individuals through iBudget Florida, contracting with service providers to offer 27 supports and services to assist individuals to live in their community. Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy. 11

Eligibility for iBudget Services

The application process for individuals wishing to receive services through the iBudget program are detailed in s. 393.065, F.S. The APD must review applications for eligibility within 45 days for individuals with developmental disabilities deemed to be in crisis ¹² and within 60 days for all other applicants. ¹³ Individuals who are determined to be eligible for the Waiver program are either given a slot in the program or placed on a wait list. In fiscal year 2022-2023 APD reports iBudget plans for 36,672 individuals. Due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis. As of January 15, 2024, there were 21,587 individuals on the HCBS Waiver wait list. ¹⁴

⁶ Section 393.063(24), F.S., defines "intermediate care facility for the developmentally disabled" to mean a residential facility licensed and certified under part VIII of ch. 400, F.S.

⁷ Section 393.0662, F.S.

⁸ The APD, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-23, p. 2, November 15, 2022,

https://apd.myflorida.com/publications/reports/docs/FY%202023%20Quarterly%20Report%201st%20Quarter%20report.pdf (last visited Dec. 11, 2023).

⁹ *Id*.

¹⁰ *Id*.

¹¹ *Id*.

¹² See Rule 65G-1.047, F.A.C.

¹³ Section 393.065(1), F.S.

¹⁴ Email from Kendall Kelley, Legislative Affairs Director, Florida Agency for Persons with Disabilities, *RE: Waitlist number*, Monday, January 15, 2024 11:16 AM (on file with the Senate Children, Families, and Elder Affairs Committee).

BILL: CS/SB 550

The needs of APD clients are classified into seven categories and are prioritized in the following decreasing order of priority: ¹⁵

- Category 1 Clients deemed to be in crisis.
- Category 2 Specified children from the child welfare system. ¹⁶
- Category 3 Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternative caregiver is available;
 - Who are at substantial risk of incarceration or court commitment without supports;
 - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
 - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternative caregiver is available;
- Category 5 Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain a meaningful day activity, maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 Clients 21 years of age or older who do not meet criteria for categories 1-5.
- Category 7 Clients younger than 21 years of age who do not meet the criteria for categories 1-4.¹⁷

Because APD requires extensive documentation to verify identity, domicile, and documentation of clinical eligibility, most applications are incomplete upon receipt and require additional time to process. The APD also provides for a comprehensive assessment when needed to confirm eligibility for an applicant.

Section 393.066, F.S. requires the APD to plan, develop, organize, and implement its programs and services and treatment for persons with developmental disabilities to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible. All elements of community-based services must be made available, and eligibility for these services must be consistent across the state. 19

¹⁵ Section 393.065(5), F.S.

¹⁶ See s. 393.065(5)(b), F.S., for specific criteria.

¹⁷ Section 393.065(5), F.S.

¹⁸ Section 393.066(1), F.S.

¹⁹ *Id*.

Eligibility Criteria

Pursuant to 65G-4.017, F.A.C., there are eligibility criteria for each disability as follows:

Disability	Eligibility Criteria
Autism	 A diagnosis may only be made by one of the following: A Florida-licensed psychiatrist; A Florida-licensed psychologist; A board-certified pediatric neurologist who is qualified by training and experience to make a diagnosis of autism; A board-certified developmental pediatrician; or Collateral information received from another state may be accepted if the evaluator is licensed through the same credentials required for licensure in Florida for the professions listed above.
Cerebral Palsy	Diagnosis is confirmed by written documentation from: A medical doctor; A doctor of osteopathy; or Medical records documenting a diagnosis of cerebral palsy before the age of 18.
Intellectual Disability	 To establish that an individual has intellectual disability, the following criteria shall be applied: A single test should not be used alone to determine eligibility. If a person has a great deal of variability on different scales or subtest scores of an IQ test, the full-scale score may not indicate intellectual disability and should not be relied on as a valid score. In that instance, closer scrutiny is required to make an appropriate differential diagnosis. This may include a review of school records, school placement, achievement scores, medical records, medication history, behavior during testing, and the psychosocial situation at the time of testing. Closer scrutiny must be required when there is a great deal of variability between IQ scores on different IQ tests or different administrations of the same test. The performance measures for this category must be validated by the professional judgment of a psychologist who is experienced in working with people who have intellectual disability, who has specific training and validation in the assessment instrument that is used, and who is one of the following: A Florida-licensed psychologist; A Florida-school psychologist. Any standardized test may be submitted as proof, with specific tests presumptively accepted.
Prader-Willi Syndrome	 Diagnosis is confirmed by written documentation from: A medical doctor; A doctor of osteopathy; or Medical records that document a diagnosis of Prader-Willi syndrome before the age of 18.
Spina Bifida	Diagnosis is confirmed by written documentation from one or more of the following: • A medical doctor; • A doctor of osteopathy; or • Medical records that document a diagnosis of spina bifida cystica or myelomeningocele before the age of 18.
Down Syndrome	Evidence requires medical records documenting a chromosome analysis (also referred to as a karyotype) finding the individual has an extra genetic material on their number 21 chromosome.
Phelan-McDermid Syndrome	The diagnosis must be confirmed utilizing genetic testing, with written documentation from: • A medical doctor; • A doctor of osteopathy;

Disability	Eligibility Criteria
High Risk Children, ages 3-5	Evidence requires a determination by an APD area office that a medical diagnosis of developmental delay evidenced by the child indicates a high probability that the child is likely to have an eventual diagnosis of a qualifying condition under Rule 65G-4.014, F.A.C., if early intervention services are not provided, or the child has one or more physical or genetic anomalies associated with specific developmental disabilities. If a child between three and five years of age already has been determined to have a developmental disability in one of the five categories identified in chapter 393, F.S., that a child shall be eligible for services from the agency under the appropriate diagnosis and shall be added to a preenrollment category.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 393.065, F.S., to require the APD to provide any specific criteria the applicant has not met from the APD's eligibility criteria as described in administrative code in their individual eligibility determination.

This language is a codification of the APD's existing process of providing individual eligibility determinations, but clarifies that specific eligibility criteria must be provided.

Section 2 of the bill provides an effective date for July 1, 2024.

IV. Constitutional Issues:

A.	Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 s. 393.065, 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:

CS by Children, Families, and Elder Affairs January 17, 2024:

The committee substitute removes the definitions of "manifests" and "onset" and removes the citation to specific administrative rule.

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



	LEGISLATIVE ACTION	
Senate	•	House
Comm: RCS	•	
01/17/2024	•	
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The Committee on Chil	ldren, Families, and E	lder Affairs (Rouson)
recommended the follo	owing:	
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Senate Amendment	t (with title amendmen	t)
Senate Amendment		t)
Senate Amendment Delete lines 13	t (with title amendmen	t)
	t (with title amendmen	t)
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Delete lines 13	- 20 The Amendment	
Delete lines 13	- (with title amendment) - 20 ITLE AMENDME nded as follows:	
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LEGISLATIVE ACTION					
Senate		House			
Comm: RCS					
01/17/2024					
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The Committee on Children, Families, and Elder Affairs (Rouson) recommended the following:

Senate Amendment

Delete lines 27 - 28

and insert:

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the agency's eligibility criteria, as described in rule.

Any applicant or client determined

By Senator Collins

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14-00826A-24 20241486

A bill to be entitled An act relating to child permanency; amending s. 39.01, F.S.; defining the term "visitor"; amending s. 39.0138, F.S.; requiring the Department of Children and Families to conduct a records check through the Comprehensive Child Welfare Information System on all persons being considered for placement of a child; requiring the department to complete a name-based check of federal criminal history records for certain persons being considered for child placement when a child has been sheltered; requiring a specified entity to ensure that the fingerprints of the applicant and the members of the applicant's household are submitted to the Department of Law Enforcement by a specified time, unless certain exemptions apply; requiring the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation by a specified time; prohibiting the Department of Children and Families from placing a child in a home if certain requirements are not met; requiring the Department of Children and Families to seek a court order to remove a child from a placement if certain fingerprinting requirements are not met; amending s. 39.202, F.S.; allowing any person to have access to certain identifying child records under specified circumstances; creating s. 39.5035, F.S.; authorizing specified persons to file both a petition alleging

dependency and a petition for permanent commitment of

a child whose parents are deceased and who does not

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have a legal custodian; requiring that both a petition alleging dependency and a petition for permanent commitment of a child be filed within specified timeframes, as applicable; authorizing specified persons to file a petition for the permanent commitment of a child whose parents are deceased, under certain circumstances; providing requirements for the petition for the permanent commitment of the child; requiring that adjudicatory hearings be held within a specified timeframe; providing notice requirements; providing requirements for the adjudicatory hearing on the petition for the permanent commitment of a child; requiring the court to enter certain orders in certain circumstances within specified timeframes after the adjudicatory hearing; specifying requirements for disposition hearings; amending s. 39.522, F.S.; authorizing a child's case manager, an authorized agent of the department, or a law enforcement officer to remove a child from a court-ordered placement under certain circumstances; requiring the department to perform certain duties within a specified timeframe after a child is removed from placement if the child was not placed in licensed care at the time of removal; requiring the court to hold a hearing to determine whether the department had probable cause to support the removal of the child; requiring the court to enter certain orders, depending on whether the court determines there is probable cause to remove the child; requiring the court to

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conduct a hearing if a finding of probable cause for the removal of the child is made and the child's placement is modified, unless certain parties waive this requirement; amending s. 39.6221, F.S.; revising a condition for the placement of a child in permanent guardianship; amending s. 39.6225, F.S.; revising a criterion for guardianship assistance payments made to guardians who have entered into a guardianship assistance agreement; amending s. 39.801, F.S.; authorizing the court to proceed with a hearing for the termination of parental rights under certain circumstances; amending s. 39.812, F.S.; authorizing the court to review the department's denial of an application to adopt a child; requiring that certain provisions be carried out upon the court's review of a denial of an application to adopt a child; revising the conditions under which the department may remove a child from the foster home the child was residing in or the custodian the child was residing with; requiring the department or its contracted licensed child-placing agency to make every reasonable effort to contact the adoptive family of the child once the adoption is finalized; requiring the department or its contracted licensed child-placing agency to record certain information; amending s. 63.032, F.S.; defining the term "licensed child-placing agency"; amending s. 63.062, F.S.; requiring the department to consent to an adoption or attach to the petition to adopt the court order finding that the adoption was

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unreasonably withheld in certain circumstances; amending s. 63.093, F.S.; requiring the department to contract with licensed child-placing agencies for specified purposes beginning on a specified date; requiring the department, through its contracted licensed child-placing agency, to respond to certain inquiries from an adoptive parent in a certain amount of time; requiring the department, through its contracted licensed child-placing agency, to refer an adoptive parent to a certain training program; requiring the department, through its contracted licensed child-placing agency, to complete an adoptive home study that must be updated on a specified schedule; authorizing the updated placement or licensing home study to serve as the adoption home study under certain circumstances; requiring the contracted licensed child-placing agency to approve or deny a home study within a specified timeframe; requiring the department to adopt certain rules to eliminate certain practices; requiring the department to annually report to the Governor and the Legislature on the status of adoptions in this state; amending s. 63.097, F.S.; revising the amount of certain fees that may be assessed without approval of the court; prohibiting the court from approving certain fees if the fees exceed the total amount of the Federal Adoption Tax Credit for the current tax year; amending s. 409.1451, F.S.; providing that aftercare services are available to certain young adults who are eligible

for either the Guardianship Assistance Program or the adoption assistance program; amending s. 409.166, F.S.; revising conditions for the department to provide adoption assistance payments to adoptive parents of certain children; repealing s. 409.1662, F.S., relating to the adoption incentive program; amending s. 409.1664, F.S.; defining the term "health care practitioner"; authorizing specified persons to receive a lump sum monetary benefit for the adoption of certain children in the welfare system; increasing the amount of a lump sum monetary benefit specified persons are authorized to receive for such adoptions; authorizing health care practitioners to apply for the monetary benefit if certain requirements are met; requiring a health care practitioner to apply to the Department of Health to obtain the benefit; allowing a health care practitioner to obtain adoption assistance for which he or she may qualify under applicable statutes; authorizing the department to adopt rules that may provide for an application process that health care practitioners may use to apply for monetary benefits; amending s. 409.988, F.S.; deleting provisions that require a lead agency to serve certain children; providing effective dates.

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

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Section 1. Subsection (88) is added to section 39.01, Florida Statutes, to read:

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

- (88) "Visitor" means a person who:
- (a) Provides care or supervision to children in the home; or
 - (b) Is 14 years of age or older, other than a child in care, and who will be in the child's home at least:
 - 1. Five consecutive days; or
 - 2. Any seven or more days in a period of a month.
 - Section 2. Subsections (1) and (5) of section 39.0138, Florida Statutes, are amended to read:
 - 39.0138 Criminal history and other records checks; limit on placement of a child.—
 - (1) The department shall conduct a records check through the Comprehensive State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other frequent adult visitors to the home. An outof-state criminal history records check must be initiated for

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any person 18 years of age or older who resided in another state if that state allows the release of such records. The department must complete the records check within 14 business days after receiving a person's criminal history results, unless additional information is required to complete the processing. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

- (5) When a child has been sheltered pursuant to s. 39.402 and must be placed in out-of-home care due to an emergency, the department must complete a name-based check of federal criminal history records to ascertain whether the applicant being considered for placement or the adult household members residing with the applicant will jeopardize the safety of the sheltered child.
- (a) If the name-based check of federal criminal history records does not return any record of federal criminal history, the department, vendor, entity, or agency authorized by s. 943.053(13) must ensure that the fingerprints of the applicant and all adult members of the applicant's household are submitted to the Department of Law Enforcement for state processing within 7 days after receipt of the results of the name-based check if such persons are not exempted from the fingerprinting requirements. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing within 15 calendar days after the date the Department of Law Enforcement received the fingerprints. The department may not place a child in a home if the applicant or a

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member of the applicant's household is disqualified by the namebased check or if their fingerprints are not submitted timely to the Federal Bureau of Investigation.

(b) The department shall seek a court order to immediately remove the child from the home if any applicant or adult household member fails to provide fingerprints within 7 days after the name-based check, unless such persons are exempted from the fingerprint requirements The department may place a child in a home that otherwise meets placement requirements if a name check of state and local criminal history records systems does not disqualify the applicant and if the department submits fingerprints to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the state and national criminal history records check.

Section 3. Paragraph (o) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

- 39.202 Confidentiality of reports and records in cases of child abuse or neglect; exception.—
- (2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:
- (o) Any person in the event that the cause of the death of a child, as determined by the department at the completion of its investigation in accordance with s. 39.301(16), was to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect

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 $\underline{\text{may}}$ shall not be released. Any information otherwise made confidential or exempt by law $\underline{\text{may}}$ shall not be released pursuant to this paragraph.

Section 4. Section 39.5035, Florida Statutes, is created to read:

39.5035 Deceased parents; special procedures.-

- (1) (a) If both parents of a child are deceased, or the last known living parent dies and a legal custodian has not been appointed for the child through a probate or guardianship proceeding, an attorney for the department, a guardian ad litem, or any other person who has knowledge of the facts alleged or is informed of such facts and believes that they are true may initiate a proceeding by filing both a petition alleging dependency and a petition for the permanent commitment of the child. Both the petition alleging dependency and the petition for the permanent commitment of the child must be filed within 21 days after the shelter hearing for a child who has been placed in shelter status by order of the court and has not yet been adjudicated dependent. In all other cases, both the petition alleging dependency and the petition for the permanent commitment of the child must be filed within a reasonable time after the petitioner first becomes aware of the facts supporting the petitions.
- (b) If both parents die or the last known living parent dies after a child has already been adjudicated dependent, an attorney for the department, a guardian ad litem, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true may file a petition for permanent commitment of the child. The petition must be filed

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within a reasonable time after the petitioner first becomes aware of the facts that support the petition for permanent commitment.

- (2) A petition for the permanent commitment of the child must fulfill all of the following requirements:
 - (a) Be in writing.
- (b) Identify the alleged deceased parent or parents and provide facts that establish that both parents of the child are deceased or the last known living parent is deceased and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding.
- (c) Be signed by the petitioner under oath stating the petitioner's good faith in filing the petition.
- (3) When a petition for the permanent commitment of the child has been filed, the clerk of the court shall set the case before the court for an adjudicatory hearing. The adjudicatory hearing must be held as soon as practicable after either petition is filed and no later than 30 days after the filing date.
- (4) Notice of the date, time, and place of the adjudicatory hearing and a copy of the petition must be served on the following persons:
 - (a) Any person who has physical custody of the child.
- (b) A living relative of each parent of the child, unless a living relative cannot be found after a diligent search or inquiry.
- (c) The guardian ad litem for the child or the representative of the guardian ad litem program, if a guardian ad litem has been appointed.

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(5) Adjudicatory hearings must be conducted by a judge, without a jury, applying the rules of evidence used in civil cases and adjourning the hearings from time to time as necessary. At the hearing, the judge shall determine whether the petitioner has established by clear and convincing evidence that both parents of the child are deceased, or that the last known living parent is deceased and the other parent cannot be found after diligent search or inquiry, and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding. A certified copy of the death certificate for a parent is sufficient evidence of proof of the parent's death.

- (6) If, within 30 days after an adjudicatory hearing on a petition for the permanent commitment of the child, the court finds that the petitioner:
- (a) Has met the clear and convincing standard, the court must enter a written order adjudicating the child dependent and permanently committing the child to the custody of the department for the purpose of adoption. A disposition hearing must be scheduled no later than 30 days after the entry of the order, in which hearing the department must provide to the court a case plan that identifies the permanency goal for the child. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete all steps necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized or the child reaches 18 years of age, whichever occurs first, the court shall hold hearings every 6 months to review the progress being made toward permanency for the child.

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(b) Has not met the clear and convincing standard and that a preponderance of the evidence establishes that the child does not have a parent or legal custodian capable of providing supervision or care, the court must enter a written order adjudicating the child dependent. A disposition hearing must be scheduled no later than 30 days after the entry of the order as provided in s. 39.521.

(c) Has not met the clear and convincing standard and that a preponderance of the evidence does not establish that the child does not have a parent or legal custodian capable of providing supervision or care, the court must enter a written order so finding and dismissing the petition.

Section 5. Subsection (7) is added to section 39.522, Florida Statutes, to read:

- 39.522 Postdisposition change of custody.-
- (7) Notwithstanding any other provision of this section, a child's case manager, an authorized agent of the department, or a law enforcement officer may at any time remove a child from a court-ordered placement and take the child into custody if the child's current caregiver requests immediate removal of the child from the home. An authorized agent of the department or a law enforcement officer may also remove a child from a court-ordered placement and take the child into custody if there is probable cause as required in s. 39.401(1)(b).
- (a) If, at the time of the removal, the child was not placed in licensed care in the department's custody, the department must file a motion to modify placement within 1 business day after the child is taken into custody. Unless all parties and the current caregiver agree to the change of

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placement, the court shall set a hearing within 24 hours after the filing of the motion. At the hearing, the court shall determine whether the department has established probable cause to support the immediate removal of the child from his or her current placement. The court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral or written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing.

- (b) If the court finds that probable cause is not established to support the removal of the child from the placement, the court must order that the child be returned to his or her current placement. Such a finding does not preclude a party from filing a subsequent motion pursuant to subsection (2).
- (c) If the current caregiver admits to a need for a change of placement or if probable cause is established to support the removal, the court must enter an order changing the placement of the child. If the child is not placed in foster care, the new placement for the child must meet the home study criteria in this chapter.
- (d) If the child's placement is modified based on a probable cause finding, the court must conduct a hearing under the procedures in subsection (2) or subsection (3), unless waived by all parties and the caregiver.
- Section 6. Paragraph (a) of subsection (1) of section 39.6221, Florida Statutes, is amended to read:
 - 39.6221 Permanent guardianship of a dependent child.-
 - (1) If a court determines that reunification or adoption is

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not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

(a) The child has been in the placement for not less than the preceding 6 months, or the preceding 3 months if the caregiver has been named as the successor guardian on the child's guardianship assistance agreement.

Section 7. Subsection (9) of section 39.6225, Florida Statutes, is amended to read:

- 39.6225 Guardianship Assistance Program. -
- (9) Guardianship assistance payments shall only be made for a young adult whose permanent guardian entered into a guardianship assistance agreement after the child attained $\underline{14}$ $\underline{16}$ years of age but before the child attained 18 years of age if the child is:
- (a) Completing secondary education or a program leading to an equivalent credential;
- (b) Enrolled in an institution that provides postsecondary or vocational education;
- (c) Participating in a program or activity designed to promote or eliminate barriers to employment;
 - (d) Employed for at least 80 hours per month; or
- (e) Unable to participate in programs or activities listed in paragraphs (a)-(d) full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation. Any such barrier to participation must be supported by documentation in the child's case file or school or medical records of a physical, intellectual, emotional, or psychiatric

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condition that impairs the child's ability to perform one or more life activities.

Section 8. Present paragraph (d) of subsection (3) of section 39.801, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection, to read:

- 39.801 Procedures and jurisdiction; notice; service of process.—
- (3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:
- (d) Personal appearance of any person at the advisory hearing as provided in s. 39.013(13) obviates the necessity of serving process on that person, and the court may proceed with the advisory hearing and any subsequently noticed hearing.
- Section 9. Subsection (4) and present subsections (5) and (6) of section 39.812, Florida Statutes, are amended, and subsection (7) is added to that section, to read:
 - 39.812 Postdisposition relief; petition for adoption.-
- (4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, the court may:
- (a) For good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.

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(b) Review the department's denial of an application to adopt a child. The department's decision to deny an application to adopt a child is reviewable only as provided in this section and is not subject to chapter 120.

- 1. If the department denies an application to adopt, the written notification of denial provided to the applicant must be filed with the court and copies provided to all parties within 10 business days after the decision.
- 2. A denied applicant may file a motion to review the department's denial within 30 days after the issuance of the department's written notification of the decision to deny the application.
- 3. A denied applicant has standing under this chapter only to file the motion to review in subparagraph 2. and to present evidence in support of the motion. Such standing is terminated upon entry of the court's order.
- 4. The motion to review under subparagraph 2. must allege the department unreasonably withheld its consent to the adoption and must request that the court allow the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.
- 5. The court shall hold a hearing within 30 days after the filing of the motion to review. The court may only consider whether the department's denial of the application was consistent with department policies and made in an expeditious manner. The standard of review is whether the department's denial of the application was an abuse of discretion.
- 6. If the department selected a different applicant to adopt the child, the selected applicant may participate in the

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hearing as a participant as defined in s. 39.01(57) and may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

- 7. The court shall enter a written order within 15 days after the conclusion of the hearing, either denying the motion to review or finding that the department unreasonably withheld its consent and authorizing the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.
- (5) When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:
- (a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;
- (b) A motion filed under paragraph (4)(b) to review the department's denial of an application has been denied by the court;
- (c) (b) Thirty days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed; or
- $\underline{\text{(d)}}_{\text{(e)}}$ The foster parent or custodian agrees to the child's removal.
 - (6) (5) The petition for adoption must be filed in the

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division of the circuit court which entered the judgment terminating parental rights, unless a motion for change of venue is granted pursuant to s. 47.122. A copy of the consent executed by the department must be attached to the petition, unless waived pursuant to s. 63.062(7). The petition must be accompanied by a statement, signed by the prospective adoptive parents, acknowledging receipt of all information required to be disclosed under s. 63.085 and a form provided by the department which details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The prospective adoptive parents may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63.

- (7) (a) (6) (a) Once a child's adoption is finalized, the department or its contracted licensed child-placing community-based care lead agency must make a reasonable effort to contact the adoptive family by telephone 1 year after the date of finalization of the adoption as a postadoption service. For purposes of this subsection, the term "reasonable effort" means the exercise of reasonable diligence and care by the department or its contracted licensed child-placing community-based care lead agency to make contact with the adoptive family. At a minimum, the department or its contracted licensed child-placing agency must document the following:
- 1. The number of attempts made by the <u>department or its</u>

 <u>contracted licensed child-placing community-based care lead</u>

 agency to contact the adoptive family and whether those attempts

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were successful;

2. The types of postadoption services that were requested by the adoptive family and whether those services were provided by the <u>department or its contracted licensed child-placing</u> community-based care lead agency; and

- 3. Any feedback received by the <u>department or its</u> <u>contracted licensed child-placing community-based care lead</u> agency from the adoptive family relating to the quality or effectiveness of the services provided.
- (b) The <u>department or its contracted licensed child-placing</u> community-based care lead agency must report annually to the department on the outcomes achieved and recommendations for improvement under this subsection.

Section 10. Effective July 1, 2025, present subsections (12) through (19) of section 63.032, Florida Statutes, are redesignated as subsections (13) through (20), respectively, and a new subsection (12) is added to that section, to read:

- 63.032 Definitions.—As used in this chapter, the term:
- (12) "Licensed child-placing agency" has the same meaning as in s. 39.01.

Section 11. Subsection (7) of section 63.062, Florida Statutes, is amended to read:

- 63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.—
- (7) If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required. If the minor has been permanently committed to the department for

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or, in the alternative, the court order finding that the department unreasonably withheld its consent entered under s.

39.812(4) must be attached to the petition to adopt and the consent of the department shall be waived upon a determination by the court that such consent is being unreasonably withheld and if the petitioner must file has filed with the court a favorable preliminary adoptive home study as required under s.

63.092.

Section 12. Section 63.093, Florida Statutes, is amended to read:

- 63.093 Adoption of children from the child welfare system.-
- (1) Beginning July 1, 2025, the department shall contract with one or more licensed child-placing agencies to provide adoptive services to prospective adoptive parents, to complete the adoption processes for children permanently committed to the department, and to support adoptive families. The department may permit a contracted licensed child-placing agency to subcontract the duties required in this section.
- (2) The department, through its contracted licensed child-placing or community-based care lead agency as defined in s. 409.986(3), or its subcontracted agency, must respond to an initial inquiry from a prospective adoptive parent within 7 business days after receipt of the inquiry. The response must inform the prospective adoptive parent of the adoption process and the requirements for adopting a child from the child welfare system.
- (3) (2) The department, through its contracted licensed child-placing or community-based care lead agency, or its

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subcontracted agency, must refer a prospective adoptive parent who is interested in adopting a child in the custody of the department to a department-approved adoptive parent training program. A prospective adoptive parent must successfully complete the training program, unless the prospective adoptive parent is a licensed foster parent or a relative or nonrelative caregiver who has:

- (a) Attended the training program within the last 5 years; or
- (b) Had the child who is available for adoption placed in their home for 6 months or longer and has been determined to understand the challenges and parenting skills needed to successfully parent the child who is available for adoption.
- $\underline{(4)}$ (3) A prospective adoptive parent must complete an adoption application created by the department.
- (5)(4) Before a child is placed in an adoptive home, the department, through its contracted licensed child-placing community-based care lead agency or its subcontracted agency, must complete an adoptive home study of a prospective adoptive parent that includes observation, screening, and evaluation of the child and the prospective adoptive parent. An adoptive home study must be updated every is valid for 12 months from after the date on which the study was approved. If the child was placed before the termination of parental rights, the updated placement or licensing home study may serve as the adoption home study. In addition, the department, through its contracted licensed child-placing community-based care lead agency or its subcontracted agency, must complete a preparation process, as established by department rule, with the prospective adoptive

610 parent.

(6)(5) At the conclusion of the adoptive home study and preparation process, a decision shall be made about the prospective adoptive parent's appropriateness to adopt. This decision shall be reflected in the final recommendation included in the adoptive home study. If the recommendation is for approval, the adoptive parent application file must be submitted to the department, through its contracted licensed child-placing community-based care lead agency or its subcontracted agency, for approval. The contracted licensed child-placing community-based care lead agency or its subcontracted agency must approve or deny the home study within 14 business days after receipt of the recommendation.

- (7) The department shall adopt rules that eliminate duplicative practices and delays in the adoption home study process for active service members seeking to adopt in this state, including, but not limited to, giving credit for adoption classes that have been taken in another state that substantially complies with s. 409.175(14)(b).
- (8) By November 15 of each year, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of adoptions in this state.

Notwithstanding subsections (2) and (3) (1) and (2), this section does not apply to a child adopted through the process provided in s. 63.082(6).

Section 13. Present subsection (6) of section 63.097, Florida Statutes, is redesignated as subsection (7), a new

subsection (6) is added to that section, and subsection (3) of that section is amended, to read:

63.097 Fees.-

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- (3) Approval of the court is not required when until the total of amounts permitted under subsection (2) exceeds:
 - (a) \$2,500 \$5,000 in legal or other fees;
 - (b) \$800 in court costs; or
- (c) $\frac{$2,500}{$5,000}$ in reasonable and necessary living and medical expenses.
- (6) Excluding reasonable, medically necessary expenses, the court may not approve the fees per child contemplated by this section if they exceed the total amount of the Federal Adoption Tax Credit for the current tax year.
- Section 14. Paragraph (a) of subsection (2) and subsection (3) of section 409.1451, Florida Statutes, are amended to read: 409.1451 The Road-to-Independence Program.—
 - (2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.-
- (a) A young adult is eligible for services and support under this subsection if he or she:
- 1. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 14 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;
- 2. Spent at least 6 months in licensed care before reaching his or her 18th birthday;
- 3. Earned a standard high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent

pursuant to s. 1003.435;

- 4. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term "full-time" means 9 credit hours or the vocational school equivalent. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor;
- 5. Has reached 18 years of age but is not yet 23 years of age;
- 6. Has applied, with assistance from the young adult's caregiver and the community-based lead agency, for any other grants and scholarships for which he or she may qualify;
- 7. Submitted a Free Application for Federal Student Aid which is complete and error free; and
- 8. Signed an agreement to allow the department and the community-based care lead agency access to school records.
 - (3) AFTERCARE SERVICES.-
- (a)1. Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age and is:
 - a. Not in foster care.
- b. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.
- c. Eligible for either the Guardianship Assistance Program pursuant to s. 39.6225(9) or the adoption assistance program

pursuant to s. 409.166(4)(d), but the young adult is not participating in either program.

- 2. Subject to available funding, aftercare services as specified in subparagraph (b) 8. are also available to a young adult who is between the ages of 18 and 22, is receiving financial assistance under subsection (2), is experiencing an emergency situation, and whose resources are insufficient to meet the emergency situation. Such assistance shall be in addition to any amount specified in paragraph (2) (b).
- (b) Aftercare services include, but are not limited to, the following:
 - 1. Mentoring and tutoring.
 - 2. Mental health services and substance abuse counseling.
- 3. Life skills classes, including credit management and preventive health activities.
 - 4. Parenting classes.
 - 5. Job and career skills training.
 - 6. Counselor consultations.
- 7. Temporary financial assistance for necessities, including, but not limited to, education supplies, transportation expenses, security deposits for rent and utilities, furnishings, household goods, and other basic living expenses.
- 8. Temporary financial assistance to address emergency situations, including, but not limited to, automobile repairs or large medical expenses.
- 9. Financial literacy skills training under s. 39.6035(1)(c).

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The specific services to be provided under this paragraph shall be determined by an assessment of the young adult and may be provided by the community-based care provider or through referrals in the community.

(c) Temporary assistance provided to prevent homelessness shall be provided as expeditiously as possible and within the limitations defined by the department.

Section 15. Paragraph (d) of subsection (4) of section 409.166, Florida Statutes, is amended to read:

409.166 Children within the child welfare system; adoption assistance program.—

- (4) ADOPTION ASSISTANCE.-
- (d) Effective January 1, 2019, adoption assistance payments may be made for a child whose adoptive parent entered into an initial adoption assistance agreement after the child reached 14 years of age but before the child reached 18 years of age. Such payments may be made until the child reaches age 21 if the child is:
- 1. Completing secondary education or a program leading to an equivalent credential;
- 2. Enrolled in an institution that provides postsecondary or vocational education;
- 3. Participating in a program or activity designed to promote or eliminate barriers to employment;
 - 4. Employed for at least 80 hours per month; or
- 5. Unable to participate in programs or activities listed in subparagraphs 1.-4. full time due to a physical, an intellectual, an emotional, or a psychiatric condition that limits participation. Any such barrier to participation must be

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supported by documentation in the child's case file or school or medical records of a physical, an intellectual, an emotional, or a psychiatric condition that impairs the child's ability to perform one or more life activities.

Section 16. <u>Effective July 1, 2025, section 409.1662,</u> Florida Statutes, is repealed.

Section 17. Section 409.1664, Florida Statutes, is amended to read:

409.1664 Adoption benefits for qualifying adoptive employees of state agencies, veterans, servicemembers, and law enforcement officers, and health care practitioners.—

- (1) As used in this section, the term:
- (a) "Child within the child welfare system" has the same meaning as provided in s. 409.166(2).
- (b) "Health care practitioner" means a person listed in s. 456.001(4) who holds an active status license from the Department of Health and whose individual income does not exceed \$150,000.
- (c) "Qualifying adoptive employee" means a full-time or part-time employee of a state agency, a charter school established under s. 1002.33, or the Florida Virtual School established under s. 1002.37, who is not an independent contractor and who adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. The term includes instructional personnel, as defined in s. 1012.01, who are employed by the Florida School for the Deaf and the Blind, and includes other-personal-services employees who have been continuously employed full time or part time by a state agency for at least 1 year.

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(d) "Servicemember" has the same meaning as in s. 250.01(19).

- (e) "State agency" means a branch, department, or agency of state government for which the Chief Financial Officer processes payroll requisitions, a state university or Florida College System institution as defined in s. 1000.21, a school district unit as defined in s. 1001.30, or a water management district as defined in s. 373.019.
 - (f) "Veteran" has the same meaning as in s. 1.01(14).
- (2) A qualifying adoptive employee, veteran, or servicemember, law enforcement officer, or health care practitioner who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$25,000 \$10,000 per such child, subject to applicable taxes. A law enforcement officer who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$25,000 per such child, subject to applicable taxes. A qualifying adoptive employee, veteran, or servicemember, law enforcement officer, or health care practitioner who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$10,000 \$5,000 per such child, subject to applicable taxes. A law enforcement officer who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$10,000 per each such child, subject to

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applicable taxes. A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the monetary benefit provided in this subsection if such employee was employed by a charter school or the Florida Virtual School when he or she adopted a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. A veteran or servicemember may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2020. A law enforcement officer may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2022. A health care practitioner may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child in the child welfare system pursuant to chapter 63 on or after July 1, 2024.

- (a) Benefits paid to a qualifying adoptive employee who is a part-time employee must be prorated based on the qualifying adoptive employee's full-time equivalency at the time of applying for the benefits.
- (b) Monetary benefits awarded under this subsection are limited to one award per adopted child within the child welfare system.
- (c) The payment of a lump-sum monetary benefit for adopting a child within the child welfare system under this section is subject to a specific appropriation to the department for such purpose.

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(3) A qualifying adoptive employee must apply to his or her agency head, or to his or her school director in the case of a qualifying adoptive employee of a charter school or the Florida Virtual School, to obtain the monetary benefit provided in subsection (2). A veteran or servicemember must apply to the department to obtain the benefit. A law enforcement officer must apply to the Department of Law Enforcement to obtain the benefit. A health care practitioner must apply to the Department of Health to obtain the benefit. Applications must be on forms approved by the department and must include a certified copy of the final order of adoption naming the applicant as the adoptive parent. Monetary benefits shall be approved on a first-come, first-served basis based upon the date that each fully completed application is received by the department.

- (4) This section does not preclude a qualifying adoptive employee, veteran, servicemember, or law enforcement officer, or health care practitioner from receiving adoption assistance for which he or she may qualify under s. 409.166 or any other statute that provides financial incentives for the adoption of children.
- (5) Parental leave for a qualifying adoptive employee must be provided in accordance with the personnel policies and procedures of his or her employer.
- (6) The department may adopt rules to administer this section. The rules may provide for an application process such as, but not limited to, an open enrollment period during which qualifying adoptive employees, veterans, servicemembers, or law enforcement officers, or health care practitioners may apply for monetary benefits under this section.

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(7) The Chief Financial Officer shall disburse a monetary benefit to a qualifying adoptive employee upon the department's submission of a payroll requisition. The Chief Financial Officer shall transfer funds from the department to a state university, a Florida College System institution, a school district unit, a charter school, the Florida Virtual School, or a water management district, as appropriate, to enable payment to the qualifying adoptive employee through the payroll systems as long as funds are available for such purpose.

- (8) To receive an approved monetary benefit under this section, a veteran or servicemember must be registered as a vendor with the state.
- (9) Each state agency shall develop a uniform procedure for informing employees about this benefit and for assisting the department in making eligibility determinations and processing applications. Any procedure adopted by a state agency is valid and enforceable if the procedure does not conflict with the express terms of this section.

Section 18. Effective July 1, 2025, paragraph (a) of subsection (1) of section 409.988, Florida Statutes, is amended to read:

409.988 Community-based care lead agency duties; general provisions.—

- (1) DUTIES.—A lead agency:
- (a) 1. Shall serve:

a. all children referred as a result of a report of abuse, neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject

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of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred.

- b. Children who were adopted from the child welfare system and whose families require postadoption supports.
- 2. The lead agency may also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.
- Section 19. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

January 17, 202	The Florida Senate APPEARANCE RECORD 1486
Children Families	Deliver both copies of this form to Senate professional staff conducting the meeting Bill Number or Topic
Name Committee Barney Bis	
Address 1454 Vieux Street	Carre Drive Barney@BarneyBishop.com
Tallahasse	FL 32308
Speaking:	or Against Information OR Waive Speaking: In Support Against
I am appearing without compensation or sponsorship	PLEASE CHECK ONE OF THE FOLLOWING: I am a registered lobbyist, representing: Florida Smart Justice Alliance I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate
Meeting Date CFE Committee APPEARANCE RECORD Deliver both copies of this form to Senate professional staff conducting the meeting Bill Number or Topic
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S-001 (08/10/2021)



2024 AGENCY LEGISLATIVE BILL ANALYSIS Department of Children and Families

BILL INFORMATION		
BILL NUMBER:	SB 1486	
BILL TITLE:	Child Permanency	
BILL SPONSOR:	Senator Collins	
EFFECTIVE DATE:	July 1, 2024 and July 1, 2025	
·		

COMMITTEES OF REFERENCE
1) Children, Families, and Elder Affairs
2) Appropriations Committee on Health and Human Services
3) Fiscal Policy
4)
5)

CURRENT COMMITTEE	
Children, Families, and Elder Affairs	

SIMILAR BILLS		
BILL NUMBER:	HB 1083	
SPONSOR:	Representative Trabulsy	

PREVIOUS LEGISLATION			
BILL NUMBER:			
SPONSOR:			
YEAR:			
LAST ACTION:			

IDENTICAL BILLS			
BILL NUMBER:			
SPONSOR:			

Is this bill part of an agency package?			
Yes.			

BILL ANALYSIS INFORMATION		
DATE OF ANALYSIS:	1/10/2023 For further information, please contact Sam Kerce at (850) 488-9410.	
LEAD AGENCY ANALYST:	Kate Williams	
ADDITIONAL ANALYST(S):		
LEGAL ANALYST:	Stephanie Zimmerman	
FISCAL ANALYST:	Chad Barrett	

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill makes the adoption process more efficient and less costly while reducing barriers to permanency. Additionally, enhancements are made to further protect children from potentially unsafe placements and financial assistance options are expanded for children who have been in the child welfare system.

<u>Private Adoption Fees:</u> Places a cap on the total amount of fees and services prospective adoptive parents must pay when pursuing an adoption through a private adoption entity and prohibits the court from approving a total dollar amount for fees and services per child that exceeds the current Federal Adoption Tax Credit amount.

<u>Streamlining Adoptions for Military Families:</u> Requires the department to adopt rules to streamline the process for military families who have begun the process to adopt in one state and subsequently restationed to Florida.

<u>Statewide Adoption Services:</u> Creates a more efficient system for managing adoption services and helps to ensure a faster time to permanency for children in care by permitting the Department of Children and Families (Department) to contract services directly for a statewide approach to adoption.

Independent Living Expansion: Expands the eligibility criteria for Post-Secondary Education and Support (PESS), Aftercare, and Extended Guardianship/Adoption Assistance Programs, to make it easier for young adults aged 18 to 23 who have been in the foster care system to receive benefits as they transition to independence.

Adoption Subsidy for Healthcare Practitioners: Increases the adoption subsidies for children adopted from the dependency system and expands eligibility for these subsidies to health care practitioners with an active Department of Health license and tax collector employees.

<u>Criminal History Checks for Child Placements:</u> Defines the scope of individuals subject to a fingerprint-based background records check for child placements, which will bring the state into compliance with Federal regulations and maintain the Department's expedited access to the Federal Bureau of Intelligence (FBI)'s criminal history records database.

<u>Permanency:</u> Makes several changes to streamline permanency by creating a legal process for orphaned children, reducing wait times for successor guardians, providing flexibility for service of process in Termination of Parental Rights (TPR) hearings, and ensuring safe and appropriate placements.

- Provides a process for the permanent commitment of a child to the Department for the purpose of adoption when both parents are deceased.
- Creates an emergency modification of placement that will enable the Department and the judiciary to take immediate action to protect children at risk.
- This language will enable the trial court, at its discretion, to waive notice for a termination proceeding when the parent is present regardless of whether the parent was served with the petition, thus eliminating continuances and delays.
- Accelerates the time to permanency by reducing the number of months required to close a case in permanent guardianship from 6 to 3 months if the caregiver was previously named as a successor guardian.

<u>Adoption Proceedings:</u> Shifts judicial review of the Department's decision on an adoption application from a separate administrative process (Ch. 120 hearing) to the dependency court.

<u>Child Abuse Records:</u> Clarifies the manner in which abuse records can be released to account for ongoing criminal investigations.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Present Situation is captured together with Effect of the Bill for ease of alignment.

2. EFFECT OF THE BILL:

Section 1: Background Checks for Child Placement

Present Situation:

The Department uses the FBI's federal data bases to run nationwide criminal history checks when considering the placement of a child. State statutes must be in compliance with federal law and rules, Pub. L. 92-544, to allow a state agency to have access to the FBI's criminal history record information. Section 39.0138, F.S., was previously approved and the FBI's Criminal Justice Information Law Unit (CJILU) authorized the Department to conduct a fingerprint-based background check of any person being considered for placement of dependent children. In 2020, amendments were made to this section of statute, which prompted a review by the CJLIU who found the statute language to be inadequate. Specifically, they found the term "visitor" to be too broad and noted that timeframes and processes were not explicitly stated. The Department has been given a grace period until January 1, 2025 to continue using the FBI system but must amend statute to be compliant or risk losing access to this system.

Current rules address visitor screening:

65C-28.011 (1) (e), F.A.C., requires all household members age 18 or older, a name check through the National Crime Information Center (NCIC) for an emergency placement.

65C-30.001 (59), F.A.C., defines Household Member to include adult visitors to the home who provide care of the child outside the parent's sight and/or sound supervision.

The current reference to visitor in rule is not sufficient to address the need for statutory requirement of CJILU. The proposed definition is more aligned with a household member than the definition currently in rule and has been approved by CJILU.

Background screenings that are conducted with the FBI in FY 2022-2023:

- The Department completed 33,380 screenings for placement of children and adoptions and 929 were denied.
- The Department conducted **7,527** screenings for emergency placements which required the FBI name check. Out of those screenings, **7,373** were approved and **154** were disqualified for emergency placement.

Proposed Change:

The bill amends s. 39.01, F.S., by specifically defining the word visitor as a person who is 14 years or older and who will be in the home for at least five consecutive days or any seven or more days in a period of a month.

Section 2: Emergency Placement Background Checks

Present Situation:

See Section 1 present situation.

Proposed Change:

The bill amends s. 39.0138, F.S., to update the name of the child welfare information system. The bill also adds the necessary timeframes and processes to statute to satisfy the CJILU findings. Specifically, it requires that during an emergency placement, a name-based check must be completed using the federal criminal history records and adds a 7-day timeframe of when fingerprints must be submitted to FDLE and requires FDLE to submit those prints to the FBI for review within 15 days. Finally, the bill requires the Department to seek a court order to remove a child from the home immediately if an applicant fails to provide fingerprints within 15 days.

Section 3: Abuse Record Release After a Death

Present Situation:

Section 39.202(2)(o), F.S., provides that Department records "shall" be released to "any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect." Importantly, the statute addresses Department records. On March 8, 2022, the trial court in Miami held that the Department is not the sole arbiter of whether a child's cause of death is the result of abuse, abandonment, or neglect within the meaning of the statute, finding that that "all facts and circumstances known about a child's cause of death, regardless of their source, must be

taken into account".¹ The court in this case interpreted s. 39.202(2)(o), F.S., as not vesting the Department with the sole authority to make a determination as to the cause of death, stating instead that the determination of the police, medical examiner, prosecuting authorities, and other entities must be taken into account and could, therefore, serve as a sufficient trigger for the release of records. This holding allows other entities to circumvent the investigation, judgment, or determination of the Department. The Department is therefore always at risk of unknowingly violating Chapter 119 and s. 39.202, F.S., as another entity's determination is permitted to bind the Department.

Proposed Change:

Amends s. 39.202(2)(o), F.S., to clarify that access to child abuse records shall be granted to persons after the death of a child is determined by the Department at the closure of its investigation, in accordance with s. 39.301(16), F.S. Clarifying s. 39.202(2)(o), F.S., provides not just for transparency, but accurate transparency, giving the Department time to conduct a proper investigation into the cause and circumstances into the tragic death of a child. Furthermore, clarifying s. 39.202(2)(o), F.S., helps remaining family members, including siblings, by ensuring that no information is released pre-maturely, or inaccurately.

Section 4: Permanent Commitment of Orphaned Children

Present Situation:

Presently, the Department can adjudicate a child dependent if both parents are deceased and the child has no family member who can serve as a legal custodian through a probate or guardianship proceeding, but there is no statutory mechanism to permanently commit the child to the Department for subsequent adoption.

The court in <u>F.L.M. v. Department of Children and Families</u>, 912 So. 2d 1264 (Fla. 4th DCA 2005), held that when the parents or guardians have died, they have not abandoned the child because the definition of abandonment contemplates the failure to provide a minor child with support and supervision while being able, and the parents who died are no longer "able". Instead, the court held that an orphaned child without a legal custodian can be properly adjudicated dependent based upon then s. 39.01(14)(e), F.S., in that the child has no parent or legal custodian capable of providing supervision and care. As such, the Department relies upon s. 39.01(14)(e), F.S., to adjudicate orphaned children as dependent.

Section 39.811(2), F.S., permits a court to commit a child to the custody of the Department for the purpose of adoption if the court finds that the grounds for termination of parental rights have been established by clear and convincing evidence. Section 39.806(1), F.S., outlines various grounds for termination of parental rights. However, all grounds available require that the parent engage in behavior that puts a child at risk. Because a deceased parent can no longer engage in any behavior, the Department cannot seek the termination of a deceased parent's rights. Moreover, even if there was a legal ground to seek the termination of a deceased parent's rights, there may be benefits that the child is receiving such as social security benefits or an inheritance because of the parent's death that the Department would not want to halt by seeking a termination of the deceased parent's rights.

Because the Department cannot seek termination of parental rights when both parents are deceased, courts are permanently committing children to the Department's custody without meeting the requirements of s. 39.811(2), F.S. Instead, the court is relying upon its inherent authority to enter any order that is in the child's best interests to permanently commit the child for adoption. The dependency system needs the authority to permit an orphaned child who has no legal custodian to be permanently committed to the Department for subsequent adoption without terminating the deceased parent's rights to allow the child to continue to receive death benefits.

Proposed Change:

Section 39.5035, F.S., is created to provide a process for the permanent commitment of a child to the Department for the purpose of adoption when both parents are deceased, or the last living known parent becomes deceased. This new statute fills a gap in Chapter 39, F.S., to permit an orphaned child to be permanently committed to the Department for adoption without terminating the deceased parent's rights, which allows the child to continue to receive death benefits. Each new subsection is described below:

¹ McClatchy v. Fla. Dep't. of Child. and Families, No. 2021-003289-CA-01 (Fla. 11th Cir. Ct. Mar. 8, 2022) (order denying the Department's motion for partial summary judgment.).

Section 39.5035(1), F.S., provides that, where both parents of a child are deceased or the last living known parent becomes deceased and the child does not have a legal custodian through a probate or guardianship proceeding, an attorney for the Department, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true, may initiate a proceeding seeking an adjudication of dependency and permanent commitment of the child to the custody of the Department, for the purpose of adoption, by filing a petition for adjudication and permanent commitment. When a child has been placed in shelter status by order of the court and not yet adjudicated, a petition for adjudication and permanent commitment must be filed within 21 days after the shelter hearing. In all other cases, the petition must be filed within a reasonable time after the date the child was referred to protective investigation or after the petitioner becomes aware of the facts supporting the petition. If after a child has been adjudicated dependent both parents become deceased or the last living known parent becomes deceased, an attorney for the Department, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true, may file a petition for permanent commitment.

Section 39.5035(2), F.S., requires the petition to be in writing, identify the deceased parent or parents, and allege the facts that establish both parents are deceased, or the last living known parent is deceased and the child does not have a legal custodian through a probate or guardianship proceeding. The petition must be signed by the petitioner under oath stating the petitioner's good faith in filing the petition.

Section 39.5035(3), F.S., provides that, when a petition for adjudication and permanent commitment or a petition for permanent commitment has been filed, the clerk of court shall set the case before the court for an adjudicatory hearing to be held as soon as possible, but no later than 30 days after the petition is filed.

Section 39.5035(4), F.S., provides notice of the date, time, and place of the adjudicatory hearing for the petition for adjudication and permanent commitment or the petition for permanent commitment. A copy of the petition must be served upon the following persons, specifically notifying them that a petition has been filed:

- (a) Any person who has physical custody of the child.
- (b) A living relative of each parent of the child, unless upon diligent search and inquiry no such relative can be found.
- (c) The Guardian ad Litem for the child or the representative of the Guardian ad Litem program if the program has been appointed.

Section 39.5035(5), F.S., provides that adjudicatory hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the hearings from time to time as necessary. In a hearing on a petition for adjudication and permanent commitment or a petition for permanent commitment, the court shall consider whether the petitioner has established by clear and convincing evidence that both parents of the child are deceased, and that the child does not have a legal custodian through a probate or guardianship proceeding. The presentation of a certified copy of the death certificate for a parent shall constitute evidence of the parent's death. Section 39.5035(6), F.S., provides when the adjudicatory hearing is on a petition for adjudication and permanent commitment, within 30 days after conclusion of the adjudicatory hearing, the court shall enter a written order as follows:

- (a) If the court finds that the petitioner has met the clear and convincing evidence standard, the court shall enter a written order adjudicating the child dependent and permanently committing the child to the custody of the Department for the purpose of adoption. The order shall provide for a disposition hearing, to be scheduled no later than 30 days after entry of the order, in which the Department shall provide to the court a case plan that identifies the permanency goal for the child. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized, or the child reaches the age of 18 years, whichever occurs first, the court shall hold hearings at 6-month intervals to review the progress being made toward permanency for the child.
- (b) If the court finds the petitioner has not met the clear and convincing evidence standard, but that a preponderance of the evidence establishes the child has no parent or legal custodian capable of providing supervision or care, the court shall enter a written order adjudicating the child dependent. The order shall

provide for a disposition hearing, to be scheduled no later than 30 days after entry of the order, pursuant to s. 39.521, F.S.

(c) If the court finds the petitioner has not met the clear and convincing evidence standard and that a preponderance of the evidence does not establish the child has no parent or legal custodian capable of providing supervision or care, the court shall enter a written order so finding and dismissing the case.

Section 39.5035(7), F.S., provides when the adjudicatory hearing is on a petition for permanent commitment, within 30 days after conclusion of the adjudicatory hearing, the court shall enter a written order as follows:

- (a) If the court finds that a petition for permanent commitment has been established by clear and convincing evidence, the court shall enter a written order permanently committing the child to the custody of the Department for the purpose of adoption. The order shall provide for a disposition hearing, to be scheduled no later than 30 days after entry of the order, in which the Department shall provide to the court an amended case plan that identifies the permanency goal for the child. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized, or the child reaches the age of 18 years, whichever occurs first, the court shall hold hearings at 6-month intervals to review the progress being made toward permanency for the child.
- (b) If the court finds that the petitioner has not met the clear and convincing evidence standard, the court shall enter a written order so denying the petition. The order has no effect on the child's prior adjudication. Such an order does not bar the petitioner from filing a subsequent petition for permanent commitment based on newly discovered evidence that establishes both parents of a child are deceased or that the last living known parent is deceased and the child does not have a legal custodian through a probate or guardianship proceeding.

Section 5: Emergency Post-Disposition Modification of Placement Present Situation:

FSFN data reflects that during FY 2022-2023 a post-disposition change of custody was granted for 6,672 children. The process for granting changes of custody is controlled by s. 39.522, F.S. Section 39.522(2), F.S., states that a child who has been placed in the child's own home under the protective supervision of the Department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the Department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement. If any party or the current caregiver denies the need for a change, the court must hear all parties. Upon the admission of a need for a change or after such hearing, the court shall enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for changing custody of the child shall be the best interest of the child. When determining whether a change of legal custody or placement is in the best interests of the child, the court shall consider the factors listed in s. 39.01375, F.S., and the report filed by the multidisciplinary team, if applicable, unless the change of custody or placement is made pursuant to s. 63.082(6), F.S. The court shall also consider the priority of placements established under s. 39.4021, F.S., when making a decision regarding the best interest of the child in out-of-home care. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria.

Importantly, s. 39.522(2), F.S., does not provide as s. 39.402, F.S., for an emergency hearing when a child's placement must be immediately modified. Because there is no emergency process for modification of placement, when a child is at risk of abuse, abandonment, or neglect, the Department has been exercising its shelter power to protect the child and the court conducts a shelter hearing. This leads to confusion as to the standard to be used to move the child—probable cause to shelter or best interests to modify placement. Moreover, the provisions in s. 39.402(8)(c)-(g) regarding how to conduct a shelter hearing are designed to address a family first entering the dependency system, not a child who has already been adjudicated dependent and whose parents already have appointed counsel to represent their interests.

Proposed Change:

This section creates an emergency modification of placement that will enable the Department and the judiciary to take immediate action to protect children at risk of abuse, abandonment, or neglect who have already been subject to disposition.

Section 39.522(7), F.S., is added to state that at any time, an authorized agent of the Department or a law enforcement officer may remove a child from a court-ordered placement and take the child into custody if the child's current caregiver requests immediate removal of the child from the home or if the circumstances meet the criteria of s. 39.401(b), F.S. If at the time of the removal the child was not placed in foster care, the Department shall file a motion to modify placement within one business day of the child being taken into custody. Unless all parties stipulate to the change of placement, the court shall set a hearing within 24 hours of the filing of the motion. At the hearing, the court shall determine whether the Department has established probable cause that reasonable grounds exist to immediately remove the child from the current placement. The court may base its determination on a sworn motion or affidavit and may hear all relevant and material evidence, including oral and written reports to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. If probable cause is not established to support the removal from the placement, the court shall enter an order to return the child to the placement. If the caregiver admits to a need for a change of placement or probable cause is established to support the removal from the placement, the court shall enter an order changing the placement. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria in Chapter 39, F.S. Where the court modifies a child's placement based upon a probable cause finding, the court must conduct a hearing under the procedures in subsection (2) or (3) unless waived by all parties and the caregiver.

Section 6: Permanent Guardianship

Present Situation:

Section 39.6221, F.S., contemplates the placement of a child in a permanent guardianship with a relative or other adult approved, if reunification or adoption is not in the best interest of the child.

One of the requirements for placement with a permanent guardian is the identification of a successor guardian. The successor guardian is intended to care for the child in the event of death or incapacitation of the initial guardian. To be deemed a successor guardian, an individual must be selected by the child's initial guardian and have an existing relationship with the child, complete background screening, and must be added to the Guardianship Assistance Agreement. In the event the successor guardian is needed, the child is required to be placed for six months with new caregiver, who the child already has an existing relationship with, prior to closing out to permanent guardianship.

Proposed Change:

The bill amends s. 39.6221, F.S., to require a child to be placed with a successor guardian for a minimum of three months prior to closing out to permanent guardianship, as opposed to six months. This change will speed up the time to permanency for the child.

Sections 7, 14, and 17: Independent Living Expansion

Present Situation:

Section 39.6225, F.S., establishes the Guardianship Assistance Program (GAP) to provide benefits, including monthly payments, to relative and fictive kin guardians that have committed to serve as a permanent guardian for a child. GAP payments on behalf of the child until the child reaches 18 years of age. In the event the child achieves permanent guardianship after the age of 16, s. 39.6225(9), F.S., allows for the family to remain eligible for GAP payments until the child reaches 21 years of age; this program is known as the Extended Guardianship Assistance Program (EGAP).

Section 409.166, F.S., establishes adoption assistance payments that are to be made to qualifying adoptive families. These payments are made until the child reaches 18 years of age. In the event the child was adopted after the age of 16, s. 409.166(4)(d), F.S., allows for the adoptive family remain eligible adoption assistance payments until the child reaches 21 years of age; this program is known as the Extended Maintenance Adoption Subsidy (EMAS).

Section 409.1451(2), F.S., establishes the Postsecondary Education Services and Support (PESS) program. This program offers a monthly stipend of \$1,720 to eligible young adults enrolled in a postsecondary educational institution. The PESS program serves an important role in supporting young adults who either aged-out of the child welfare system or have spent time in out-of-home care. The program provides a level of financial security necessary for the young adult to have the opportunity to successfully navigate higher education and ultimately achieve self-sufficiency. Section 409.1451(3), F.S., establishes the Aftercare program. This program is commonly referred to as a bridge program, designed to help eligible young adults who are experiencing an emergency situation, and whose resources are insufficient to meet the emergency situation. These services are not meant to last for a significant period of time, unlike other Independent Living programs. Services provided are determined by an assessment of the young adult and are provided by the Lead Agency or through referrals in the community.

Proposed Change:

The EGAP, EMAS, and PESS programs [ss. 39.6225(9), F.S., 409.166(4), F.S., and 409.1451(2), F.S.,] are all amended to reduce the age at which a child may achieve permanency and still be eligible for the respective programs from 16 years old to 14 years old. The goal of the change is to help children achieve permanency sooner by removing an incentive to remain in out-of-home care until the age of 16 in order to qualify for the programs until age 21.

Section 409.1451(3), F.S., is amended to allow young adults who qualify for either EGAP or EMAS, but are not currently participating in either program, to be eligible for the Aftercare program. This will extend services to young adults whose family connection dissolves during the transition to adulthood, leaving them without access to supportive adults and a benefit program that would have been available if they had stayed in the child welfare system.

The increase in eligible population and estimated increase in program participation is below:

Program	Increased Eligible Population	Estimated Increase in Participation
EGAP	782	235
EMAS	550	165
PESS	351	71
Aftercare	1,835	275
Totals	3,518	746

Section 8: Service of Process

Present Situation:

When the Department files a petition in a Chapter 39 action, the Department must serve the parent with the petition per s. 39.502(2) and s. 39.801, F.S. During the dependency phase of a case, s. 39.502(2), F.S., provides that personal appearance of a parent in a hearing before the court obviates the necessity of serving the dependency petition on that person. Thus, when a parent appears, the court may proceed with litigation on the dependency petition. The rationale for this is that when a parent appears for an arraignment hearing or other hearing after the dependency petition has been filed, the parent is aware of the action that has been brought against the parent, otherwise they would not have known to appear.

Even if a parent appears at a termination of parental rights advisory hearing or a hearing after the filing of the termination petition, there is no provision in the termination of parental rights phase that is similar to s. 39.502(2), which would allow the court to proceed. Instead, Florida statutory law requires personal service upon a parent, which requires that an authorized agent or process server directly deliver the petition to the parent. As personal services is required, the Department is not permitted to serve a termination of parental upon a parent's counsel like the Department is permitted to do with other notices and judicial filings.

Thus, even if a parent arrives to an advisory hearing, the court cannot conduct the hearing until the Department personally serves that parent. Where that hearing is in person, the Department is able to serve the parent by handing

the parent a physical copy of the petition in the courtroom. However, advisory hearings on termination of parental rights petitions are now routinely being conducted remotely. When hearings are conducted remotely, the Department is not able to personally serve the parent during the hearing because the parent is not physically in the same space as an agent for the Department. Thus, the court must continue the advisory hearing until the Department can complete service by a formal process service. This results in unnecessary delays in the termination process as the parent through their appearance has acknowledged that they are aware of the action against them, the court explains the consequences at the hearing of admitting to or denying the allegations, and the parent is permitted to deny the allegations against them to prompt the court to schedule a trial.

Proposed Change:

Section 39.801(3), F.S., is amended to provide that notice of the termination proceeding may be waived, in the discretion of the judge, for any person entitled to notice if that person appears before the court at an advisory hearing, or any other hearing after the advisory hearing. This language will enable the trial court to conduct the advisory hearing when the parent is present regardless of whether the parent was served with the petition if the court deems the circumstances appropriate to proceed, eliminating continuances and delays.

Section 9: Chapter 120 Proceedings

Present Situation:

The Department's ability to place a child in its custody for adoption and the court's review of the placement is pursuant to s. 39.812, F.S. The statute provides that the Department may place a child in a home and the Department's consent alone shall be sufficient. The dependency court retains jurisdiction over any child placed in the custody of the Department until the child is adopted pursuant to ss. 39.811(9), 39.812(4), and 39.813, F.S. After custody of a child for subsequent adoption has been given to the Department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, s. 39.811(9), F.S., provides that for good cause shown by the Guardian ad Litem for the child, the court may review the appropriateness of the adoptive placement of the child.

Where a child is available for adoption, the Department through its contractors will receive applications to adopt the child. When there are two or more families with approved home studies, the Department's rules route these conflicting applications through the adoption applicant review committee (AARC) for resolution. The decision of the AARC is then reviewed and the Department issues its consent to one applicant while communicating its denial to the other applicants through certified letter. These letters are considered final agency action. Unsuccessful applicants have a "point of entry" to seek review of Department action through the administrative hearing process under Chapter 120, F.S. These hearings are heard by designated hearing officers within the Department. The assignment of adoption disputes to the Chapter 120, F.S., process did not originate with, nor was it inspired by, legislative directive. Instead, this process arose due to the opinion in Department of Children & Family Services v. I.B. and D.B., 891 So. 2d 1168 (Fla. 1st DCA 2005). However, this process is inconsistent with the Legislature's clear intent of permanency and resolution of all disputes through the Chapter 39, F.S., process and precludes the selected applicant from participating, which is statutorily permissible in the dependency court proceeding.

The chart below displays the number of 120 adoption denial cases the Department commenced and concluded each year, of those the number that resulted in a different decision than the AARC recommendation, and the number of DCA appeals and the outcome for Chapter 120 adoption cases each year.

Year	120 Cases	AARC Decisions Overturned (by 120 Decision)	DCA Appeals	DCA Decisions Overturning Agency Decision
2019	58	0	2	0
2020	46	0	4	0
2021	42	1	2	0
2022	41	1	1	0
2023 to date	41	1	1	0

This process delays adoption for these children. All of Chapter 120 contested adoption matters were reviewed from 2021 and 2022, and the average length of time between the receipt of a hearing request and entry of a final order was 161 days. Of note, this does not include any additional delays caused by appeal to the appropriate District Court which adds, on average, an additional 323 days of delay.

Proposed Change:

Section 39.812(4), F.S., is amended to provide that the court may review the Department's denial of an application to adopt a child. The Department's decision to deny an application will now be reviewable only under s. 39.812 by the dependency court judge who has the most knowledge of the child's needs and best interests, and is not subject to Chapter 120, F.S. The Department must file the denial with the court and provide copies to the parties within 10 days after the decision. The denied applicant may file a motion to review the denial within 30 days of issuance of the Department's written notification. The denied applicant shall have standing in the Chapter 39, F.S., proceeding only to file such a motion and to present evidence in support of the motion. Such standing is terminated upon entry of the court's order. The motion must allege the Department unreasonably withheld its consent and must request that the court allow the denied applicant to file a petition to adopt the child under Chapter 63, F.S., without the Department's consent. The court must hold a hearing within 30 days after the filing of the motion. The court must only consider whether the Department's review of the application was consistent with the agency's policies and made in an expeditious manner, using an abuse of discretion review. If the Department selected another applicant to adopt the child, the selected applicant may participate in the hearing as a participant and may be granted leave by the court to be heard without filing a motion to intervene. This will give selected applicants who don't currently have custody of the child the ability to be informed of the hearing, attend the hearing, and provide information to the court. Thereafter, the court must enter a written order within 15 days after the hearing denying the motion to review.

It is estimated that at least 116 days (almost four months) of permanency delay will be removed if Chapter 120 proceedings are eliminated by requiring a declined applicant to seek review in the dependency court using the process above. The impact on a child of lingering in the dependency system can be significant; reducing this time for four months will help reduce this strain on children and families. There will be savings to the Department's legal resources if the changes in Sections 10 and 11 are adopted. Historically, the Department has annually reviewed 58 Chapter 120 cases, concerning a family petition for administrative hearing, for purposes of contesting a Chapter 39 adoption selection. The time saved by eliminating this additional process will enable Department legal resources to focus on other legal obligations and enable expedited case closures.

Section 39.812(5), F.S., is amended to provide that the Department may remove the child from a foster home or court-ordered custodian whose application to adopt has been denied and the court has denied the motion to review the Department's denial under subsection (4).

Section 39.812(6), F.S., is amended to clarify that a copy of the consent executed by the Department must be attached to the petition to adopt, unless waived pursuant to s. 39.812(4), F.S.

Sections 10: Child Placing Agency Related to Adoption

Present Situation:

Currently s. 63.032, F.S., provides definitions for Ch. 63, F.S., related to adoption. The term "Agency" is defined as any child-placing agency licensed by the Department.

Proposed Change:

Section 63.032, F.S., is amended by replacing the term "agency" to "child placing agency" to be more specific; the term "agency" is vague. The definition of "agency", now "child placing agency" remains unchanged.

Section 11: Filing of Adoption Petition

Present Situation:

In addition to a denied adoption applicant bringing a Chapter 120 administrative proceeding, Florida law also permits denied adoption applicants to initiate a new Chapter 63, F.S., legal action by filing a petition for adoption. Upon filing the petition, the petitioner must demonstrate pursuant to s. 63.062(7), F.S., that the Department unreasonably

withheld its consent to be permitted to adopt the child. Because Chapter 63, F.S., permits anyone who meets the requirements of s. 63.042(2), F.S., to adopt and any petitioner may argue the Department's consent to the adoption should be waived because it was unreasonably withheld, multiple parties may file a petition to adopt the same child. Thus, there can be at least three legal proceedings simultaneously addressing the adoption of the child: (1) the Chapter 39, F.S., dependency proceeding, (2) the Chapter 63, F.S., adoption proceeding filed by the family who has the Department's consent, and (3) the Chapter 63, F.S., adoption proceeding filed by the applicant whose application was denied. There would be even more proceedings if the approved applicant and other denied applicants also file a petition to adopt. Multiple competing adoption petitions require additional court hearings to resolve the conflict and lead to a delay of the child's adoption. These court proceedings often occur concurrently with the administrative hearing process, which can lead to disparate results.

Proposed Change:

Section 63.062(7), F.S., is amended to provide that if when a minor has been permanently committed to the Department for subsequent adoption, the Department must consent to the adoption or the petitioner must attach to the petition to adopt a court order entered pursuant to s. 39.812(4), F.S., as it is amended in Section 9, which finds the Department unreasonably withheld its consent, and the petitioner must file a favorable preliminary adoptive home study as required under s. 63.092, F.S. This amendment will ensure that there is only one adoption petition filed for each child.

Section 12: Statewide Adoption Services

Present Situation:

Section 63.093, F.S., permits Lead Agencies, or their subcontractors, to provide services for prospective adoptive parents, adoptions, and post-adoption support. Various adoption services may be provided at the time a child is permanently committed to the custody of the Department which include adoption recruitment, completions of home studies, child studies, disclosure and implementation and oversight of all adoption assistance benefits. This approach contributes to variances in adoption services statewide that result in challenges to some prospective adoptive parents. Section 63.092(3), F.S. requires a licensed child placing agency, a child caring agency, a licensed professional, or an agency to complete a preliminary home study. A preliminary home study provides an account not only the physical home environment, finances, backgrounds but documentation of the counseling or education of the intended adoptive parents as determined in s. 409.175(14), F.S., and documentation of support services in the community for the prospective adoptive parents.

The average length of time from a child being sheltered to TPR is 18 months; the average length of time from TPR to finalizing an adoption is 12 months; the total average length of time from Shelter to finalizing an adoption is 2.5 years. In June 2023, there were approximately 4700 children whose parents' parental rights had been terminated; approximately 3300 of the children were matched and/or placed with caregivers who wanted to adopt.

To help identify barriers to timely adoption and permanency, the Department met with stakeholders, including the Guardian ad Litem Program, Lead Agencies, Case Management Organizations, and the Judiciary across the State who identified the following barriers to finalizing adoptions:

- Prospective adoptive parents' background screens were expiring and had to be redone;
- The adoption application packet was too long and could range from 60-70 pages based on each Lead Agency's form;
- The adoption home studies were not completed timely; and
- Writing and compiling documents for child studies was causing delays.

The Department launched the Adoption Initiative Pilot in July 2023 to expedite adoptions, which included streamlining procedures, clarifying requirements, meeting with stakeholders to address barriers, and bringing in dedicated case managers to focus on finalizing adoptions. Circuit 6 and 13 were selected because they had the highest pending adoption rates; both circuits recently experienced a turnover of CBC Lead Agencies.

During the Pilot additional barriers were identified due to unnecessary adoption practices:

Agencies requested documents from case managers that were not required by Rule or Statute;

- Lengthy enhanced subsidy approval processes caused delays; and
- Adoption specialists were assigned only after parental rights were terminated instead of after the TPR petition was filed.

Since the start of the Pilot, C6 and C13 increased the total number of adoptions and reduced the total number of children in care. The charts below compare the first quarter of the Pilot to the same period last year.

C6 FSS-Suncoast

Category	Q1 22-23	Q1 23-24	% Change
Total Adoptions	62	100	61.29%
Avg Number of Children in OHC	2,532	1,999	-21.05%

Data Source: DCF OCFW Dashboard as of 11-15-2023

C13 Childrens Network-Hillsborough

Category	Q1 22-23	Q1 23-24	% Change
Total Discharges Adoptions	30	71	136.67%
Avg Number of Children in OHC	2,433	2,143	-11.92%

Data Source: DCF OCFW Dashboard as of 11-15-2023

Proposed Change:

Section 63.093, F.S., is amended to require the Department to directly contract with one or more agencies to provide services to prospective parent(s), complete the adoption process, and offer post-adoption services, with the allowance that the contracted agency may subcontract required duties. This shifts the responsibility for all adoption related activities from the Lead Agencies to a Department contracted agency focused on adoption work.

The contracted agency would be responsible in ensuring child welfare professionals are providing the Department approved training as outlined in s. 63.093(2), F.S., recruitment activities for children free for adoption with no identified home, conducting adoption home studies, child studies, preparation and negotiation of adoption subsidies, participation in case staffing (MDTs), preparation of court related documents and attendance at hearings related to post termination of parental rights. The licensed child placing agency would be required to prepare adoption paperwork and consents for the adoption hearings and provide testimony at final hearings. The licensed child placing agency would provide oversight for post adoption services which would include temporary case manager services, referrals, and training. Post adoption services would be inclusive of meeting the requirements as outlined in s. 39.812, F.S. regarding post adoption contact. The processing and oversight of other adoption assistance benefits to include ICAMAs, EMAS, enhanced adoption subsidy request, adoption incentive, reunion registry, dissolution and other benefits including access to state parks for adoptive families. The licensed child placing agency would be responsible for both state and federal audits associated with maintenance adoption subsidy. The resultant contract will focus on permanency through adoption by streamlining processes and maximizing available resources statewide. Further technical changes are made to ss. 409.988 3.812(6), F.S., to account for this new directive.

Section 63.093(5), F.S. is amended to allow for the placement home studies and licensing home studies to count as the preliminary adoption home study if updated, eliminating delays due to multiple reviews. As an example, a family who has a child placed for 9-12 months may be required to have 4 home studies from Shelter to adoption, which can delay permanency throughout the life of the case:

- Child Protective Investigator completes the Initial Placement Home Study.
- Within 45 days the Case Manager updates the home study.
- Within 60 days the licensing specialist completes a Level 1 relative/non-relative licensing home study.
- The Adoption Specialist completes an adoption home study.

With each home study, there is additional delay based on time to schedule, conduct assessments, and prepare reports. Multiple home studies also mean multiple workers are interacting with the same family, in the same home, regarding the same child, i.e., child protective investigator, case manager, licensing specialist, and adoption specialist. Any additional training would be addressed by agency rule.

Additionally, the bill requires the department to adopt rules to eliminate duplicative practices and delays in the adoption home study process for active-duty military who are seeking to adopt in the state. Military families looking to adopt may start the process in one state and before completion may be restationed to another state. Since each state has their own standards, this can lead to the family having to start the process from scratch. This bill will require that the Department set standards to help streamline the process for these families by working to apply steps that a family may have taken in another state toward the process here in Florida. For example, adoptive parents must complete various parenting classes in most states - the department would work, where applicable, to count classes taken in other states toward the class requirement here in Florida.

The Department is also required to submit an annual report on November 15 to the Governor, President of the Senate, and Speaker of the House on the status of adoptions in the state of Florida.

Section 13: Private Adoption Fees

Present Situation:

Under Ch. 63, F.S., only adoption entities can complete adoption activities in the State of Florida. Adoption entities include the following: the Department, a child-caring agency registered under the Florida Association of Christian Child Caring Agencies (FACCCA), an attorney, and a child-placing agency licensed by Department. Chapter 63 does not apply to international adoptions, as the child must reside in Florida in order for the Uniform Child-Custody Jurisdiction and Enforcement Act to be satisfied for the court to have jurisdiction to conduct the adoption.

There are currently 64 private adoption agencies licensed by the Department; one private adoption agency registered under FACCCA, and over 100,000 attorneys licensed under the Florida Bar; there is not a unique designation for licensed attorneys who handle adoptions.

Pursuant to s. 63.097, F.S., adoption entities may assess fees, costs, and expenses for private adoptions, or they may pay for the fees and services on behalf of prospective adoptive parents. Private adoption service fees vary widely between adoption entities. Per the National Child Information Gateway, the total amount of fees and services paid by prospective adoptive parents can range from \$30,000 to \$60,000. See Child Welfare Information Gateway. (2022). Planning for adoption: Knowing the costs and resources. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. https://www.childwelfare.gov/pubs/s-cost/ Private adoption entities may charge prospective adoptive families for reasonable living expenses of the birth mother when the birth mother is unable to pay due to unemployment, underemployment, or disability; reasonable and necessary medical expenses; court filing expenses, court costs, and other litigation expenses and birth certificate and medical record expenses; costs associated with advertising; professional fees; and expenses necessary to comply with the requirements of Ch. 63, including, but not limited to, service of process, investigator fees, a diligent search, a preliminary home study, and a final home investigation. Entities seeking to charge fees, costs, or expenses for other items, require an approval from the court prior to payment and must be based on a finding of extraordinary circumstances.

In addition, the courts must approve the total amount of fees when an adoption entity charges more than the following approved fees:

- (a) \$5,000 in legal or other fees;
- (b) \$800 in court costs; or
- (c) \$5,000 in reasonable and necessary living and medical expenses.

Adoptive parents can file for a federal adoption tax credit for all qualifying adoption expenses, based on the adoptive parent's income. The adoption tax credit for the year 2023 is \$15,950. Adoption expenses include the following:

- Adoption fees,
- Attorney's fees,
- Court costs,
- Travel expenses (including meals and lodging) while away from home, and

Re-adoption expenses relating to the adoption of a foreign child.

Proposed Change:

Section 63.097(6), F.S., is established to reduce the total amount of fees an adoption entity can charge a family prior to court approval, not to exceed the following amounts:

- (a) \$2,500 in legal or other fees; (currently \$5,000)
- (b) \$400 in court costs; (no change)
- (c) \$2,500 in reasonable and necessary living and medical expenses (currently \$5,000)

In addition, the bill prohibits the courts from approving an amount for fee and services to be paid for by potential adoptive parents that exceeds the current federal adoption tax credit. This update would allow families who want to adopt, but financially cannot afford to do so, an opportunity to adopt a child.

The bill also allows adopted families the ability to receive a federal financial credit that replenishes most of the costs spent on the adoption of their child.

Section 14: Adoption/EMAS

Present Situation:

See Section 7 Present Situation

Proposed Change:

Section 409.166, F.S., is amended to make conforming changes related to Section 7 of the bill.

Section 15: Adoption Exchange

Present Situation:

The Department currently contracts with a third-party vendor to operate the Adoption Exchange (exchange) pursuant to s. 409.167, F.S. The purpose of the exchange is to serve all authorized licensed child-placing agencies in the state as a means of recruiting adoptive families for children who are eligible for adoption and who have been permanently placed with the department or a licensed child-placing agency. The exchange is required by law to post a description of the child along with a photograph and any other relevant information. The exchange currently operates as a website open to the general public with profiles and photos of children eligible for adoption.

Proposed Change:

Section 409.167, F.S., is amended to clearly state that the photos available on the exchange are to be made accessible only to those who are interested and have taken steps toward becoming a prospective adoptive parent. Such photos are not available to the general public.

Section 16: Direct Contracting for Adoption Services

Present Situation:

See Section 11 Present Situation

Proposed Change:

Section 409.988, F.S., is amended to make conforming changes related to Section 11 of the bill.

Section 17: Independent Living

Present Situation:

See Section 7 Present Situation

Proposed Change:

Section 409.1451, F.S., is amended to make conforming changes related to Section 7 of the bill.

Section 18: Elimination of Obsolete Funding Language

Present Situation:

See Section 11 Present Situation

Proposed Change:

Section 409.1662, F.S., is repealed to make conforming changes related to Section 11 of the bill. If the bill passes, CBCs will no longer responsible for providing adoption services, therefore an adoption incentive program for CBCs would no longer be needed.

Section 19: Expansion of Adoption Subsidies (OCFW)

Present Situation:

Section 409.1664, F.S., establishes an adoption incentive program for qualifying adoptive employees of state agencies, law enforcement officers, veterans, and servicemembers. The program provides an incentive for families to consider the adoption of children from the child welfare system by providing one-time, lump-sum payments, subject to applicable taxes, to eligible adoptive parents who adopt a child from the child welfare system.

Currently, an eligible adoptive parent who adopts a child from the child welfare system can receive a lump-sum payment of either \$10,000 or \$5,000, depending on their specific eligibility criteria, and a payment of either \$25,000 or \$10,000, if the child is determined "difficult to place" as described in s. 409.1664, F.S. These benefits are awarded on a first-come, first-served basis and subject to available appropriation.

Year	DCF Adoptions	Adoption Subsidies Requested	% with Subsidies
2019/20	4,548	275	6%
2020/21	3,904	263	7%
2021/22	3,888	323	8%
2022/23	3,602	412	11%

Proposed Change:

The bill amends s. 409.1664, F.S., to expand eligibility of the program to include health care practitioners and tax collectors. Health care practitioner is defined as "a person listed in s. 456.001(4), F.S., who holds an active status license from the Department of Health and whose individual income does not exceed \$150,000." A tax employee means an employee of an office of county tax collector in the state. The bill clarifies that this section will only apply to health care practitioners who adopt a child from the child welfare system on or after July 1, 2024, and requires them to apply through the Department of Health. In addition, it increases the lump sum payment amounts for state employees, identified other qualified applicants, veterans, and servicemembers making them eligible to receive a one-time lump sum benefit of \$10,000 for adopting a child that is not considered difficult to place and a one-time lump sum benefit of \$25,000 for adopting a child who is considered difficult to place. This establishes benefit parity among all of the eligible adoptive parents.

Law enforcement officers (LEO) are the most recent addition to the program, becoming eligible in SFY 2022-23. Using the adoptions finalized from this population as a baseline to forecast expected increase in adoptions, the Department estimates this expansion will result in an additional 213 children being adopted by health care practitioners and tax collectors if included in the definition of Other Qualified Applicant and an additional 113 children adopted due to the lump sum amounts being increased.

Section 20:

Effective Date July 1, 2024 – expect for sections 10, 12 and 16 of the bill which be effective July 1, 2025.

3.	DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO
	DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	Section 12 provides that the department shall adopt rules to streamline adoptions for active military service members.
	Section 15 provides that the adoption exchange shall provide information deemed useful in facilitating family-matching between children and prospective adoptive parents in accordance with rules established by the Department.
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	65C, F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	N/A
Provide a summary of the proponents' and opponents' positions:	N/A

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	Yes, a status of adoptions in the state of Florida submitted to the Governor, President of the Senate, and Speaker of the House.
Date Due:	Annually, November 15
Bill Section Number(s):	Section 12

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?

Board:	None
Board Purpose:	
Who Appoints:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	None

Expenditures:	None
Does the legislation increase local taxes or fees?	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	N/A
Expenditures:	Sections 7, 14, and 17 with IL expansion:
	Populations are being provided eligibility with proposed expansions:
	 Extended Post-18 Adoption (EMAS) and Permanent Guardianship (EGAP) Supports – Lower eligibility age 16 to 14: for a young adult whose adoptive parent or permanent guardian entered into a guardianship or adoption assistance agreement after the child attained 14 years of age, but before the child attained 18 years of age. Postsecondary Education Services and Support (PESS) – Lower eligibility age 16 to 14: A young adult that was at least 14 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12-months immediately preceding such placement or adoption. Aftercare – Open Aftercare Services to young adults 18-22, who's guardian or adoptive parent is eligible, but not currently participating in EMAS or EGAP.
	Young adults not currently eligible who may benefit from these expansions: (Calculations based on FSFN clients and March 2023 average payments as of 6/28/2023.)
	Extended Post-18 Adoption (EMAS) and Permanent Guardianship (EGAP) Supports:
	 From the current eligible population of 1,336, there are 433 young adults who utilize these supports.
	If this bill passes, 1,332 more young adults will now become eligible. At a 30% participation rate, an increase of 400 (235 EGAP and 165 EMAS) are expected to benefit from this expansion.
	2. Postsecondary Education Services and Support (PESS):
	 From the current eligible population of 363 young adults, who were adopted or placed in permanent guardianship at age 16 or 17, there are 26 young adults who utilize these supports.
	 If this bill passes, 351 more young adults will now become eligible. At a 20% participation rate, an increase of <u>71</u> are <u>expected</u> to benefit from this expansion.
	Aftercare: If this bill passes, 1.835 young adults, who were adopted or placed in
	 If this bill passes, 1,835 young adults, who were adopted or placed in permanent guardianship at age 14 – 17, will now become eligible. At a 15% participation rate, 275 young adults are expected to benefit from this expansion.

The Annual Cost Per Proposal

- **1.** Extended Post-18 Adoption and Permanent Guardianship Supports' Increased Fiscal: **\$3,216,000.**
 - Formula: ((New Population * March 2023 Average EMAS/EGAP Monthly Payment) *12 Months)
 - The Math: (400 * \$670) = \$268,000; (\$268,000 * 12 months) = \$3,216,000.
- 2. Postsecondary Education Services and Support (PESS)'s Increased Fiscal: \$1,465,440.
 - Formula: ((New Population * PESS Monthly Payment) * 12 Months)
 - The Math: (71 * \$1,720) = \$122,120; (\$122,120 * 12 Months) = \$1.465.440.
- 3. Aftercare Expansion's Increased Fiscal: \$3,428,700.
 - Formula ((New Population * March 2023 Average Aftercare Monthly Payment) *12 Months)
 - The Math: (275 * \$1,039) = \$285,725; (\$285,725 * 12 months) = \$3,428,700.
- Total Fiscal Impact for Expansions: \$8,110,140 (EMAS/EGAP \$3,216,000 + PESS \$1,465,440 + Aftercare \$3,428,700 = \$8,110,140)

Section 19 – Subsidy for Other Qualified Applicants to include health care practitioners and tax collectors while also increasing lump sum amounts:

The calculation for the expansion of Other Qualified Applicants to include health care practitioners with an active license under s. 456.001(4), F.S. In addition, it changes the lump sum received for state employees, identified other qualified applicants, veterans, servicemembers, and health care practitioners making them eligible to receive a one-time lump sum benefit of \$10,000 for adopting a child that is not considered difficult to place and a one-time lump sum benefit of \$25,000 for adopting a child who is considered difficult to place is as follows:

Fiscal Year 2022-2023 Actuals and Rates Not Difficult to Place @ \$5,000 Difficult to Place @ \$10,000	Amount \$0 \$3,970,000	Adoptions 0 397
LEO Place @ \$25,000	\$375,000	15
Total Cost	\$4 345 000	412

Fiscal Year 2022-2023 Actuals and

Fiscal Year 2024-2025 Rates	Amount	Adoptions
Not Difficult to Place @ \$10,000	\$0	0
Difficult to Place @ \$25,000	\$10,300,000	412

25 percent increase in Fiscal Year 2022-2023 Actuals and Fiscal Year 2024-2025 Proposed Rates Not Difficult to Place @ \$10,000 \$0 0 Difficult to Place @ \$25,000 \$12,875,000 515

Expenditures:

Other:

	LEO is the newest group to receive an in were placed with LEO families. https://www.fdle.state.fl.us/CJSTC/Public Ratios.aspx#2021ratios This website rep Police Departments full-time officer coun: Sheriffs' Offices full-time (law enforcements Sheriffs' Offices full-time (concurrent) offischools & Ports full-time officer count: 1, State Agencies full-time officer count: 4,2 LEO TOTAL: 52,949 (15 LEO Adoptions/52,949 Potential LECO	rations/CJAP/Statewide orts the following: t 19,687 nt) officer count: 22,48 cer count: 4,693 867	3 -
	Estimated addition of health care practition 1,025,093 *0.0208% = 213 estimated additional estimated estimated additional estimated estimated additional estimated		s:
	Fiscal Year 2022-2023 Actuals,		
	Fiscal Year 2024-2025 Proposed Rates practitioners and tax collectors Adoptions	s, and addition of hea	Ith care Amount
	Not Difficult to Place @ \$10,000 Difficult to Place @ \$25,000 (515+213)	\$0 \$18,200,000	0 728
	Total Estimated 2024-25 need: \$18,200,0 Current GAA Amount: \$8,377,470 Difference/Need: \$9,822,530	000	
	Fiscal Impact for Other Qualificate practitioners and tax collessum amounts: \$9,822,530.		
	> TOTAL FISCAL IMPACT: \$17,9	32,670 (\$8,110,140 +	\$9,822,530)
Does the legislation contain a State Government appropriation?			
If yes, was this appropriated last year?			
MULATIO THE ELOCAL TOTAL	AACT TO THE DRIVATE SECTIONS		
WHAT IS THE FISCAL IMP	PACT TO THE PRIVATE SECTOR?		

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase	N/A
taxes, fees or fines?	

Does the bill decrease taxes, fees or fines?		
What is the impact of the increase or decrease?		
Bill Section Number:		
	TECHNOLOGY IMPACT	
Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	N/A	
If yes, describe the anticipated impact to the agency including any fiscal impact.		
	FEDERAL IMPACT	
Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?		
If yes, describe the anticipated impact including any fiscal impact.		
	ADDITIONAL COMMENTS	
LEG	AL - GENERAL COUNSEL'S OFFICE REVIEW	
Issues/concerns/comments and recommended action:		

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.)

Pre	pared By: The P	rofession	nal Staff of the Co	ommittee on Childr	en, Families, and Elder Affairs
BILL:	SB 1486				
INTRODUCER:	Senator Colli	ins			
SUBJECT:	Child Perman	nency			
DATE:	January 15, 2	2024	REVISED:		
ANAL	YST	STAF	F DIRECTOR	REFERENCE	ACTION
. Rao		Tuszyı	nski	CF	Pre-meeting
2				AHS	
3				FP	

I. Summary:

SB 1486 makes numerous changes to Chapters 39, 409, and 63, F.S., to reduce barriers in dependency proceedings, ensure the safety of children in out-of-home care, increase the time to permanency, and expand the financial opportunities to children in, or formerly in, the foster care system and adoptive parents. Specifically, the bill:

- Revises the process for background screening process for out-of-home placements.
- Creates a process to commit a child to the legal custody of the Department of Children and Families (DCF) to seek adoption for a child whose parents die while the child is in the dependency system or who otherwise does not have a legal guardian to care for the child and must rely on the DCF for services, but is not a victim of abuse, abandonment, or neglect.
- Creates an emergency modification of placement process to address child safety of children in out-of-home care that is separate from a shelter hearing.
- Reduces the number of months required to close a case to permanent guardianship and allow a guardian to receive Guardianship Assistance Program (GAP) benefits from 6 to 3 months if the caregiver was previously named as a successor guardian.
- Reduces the child-age eligibility requirement for a guardian or adoptive parent to receive GAP payments or adoption assistance payments.
- Eliminates the requirement to personally serve a parent with a petition when the parent appears at a termination of parental rights hearing, aligning statute with the dependency hearing process.
- Shifts the judicial review of the DCF's decision on adoption applications made to the DCF under Ch. 39, F.S., from a separate administrative process under Ch. 120, F.S., to the judge assigned to the dependency processing who has the most familiarity with the child and family.
- Removes the requirement for Community-based care (CBC) lead agencies to provide adoption services and, instead, requires the DCF to contract with a child-placing agency to provide such services.

• Reduces the fee amounts private adoption entities can charge prospective adoptive parents without court approval.

- Expands those who may participate in the adoption benefits program to include certain health care practitioners.
- Repeals the adoption incentive program that awarded incentive payments to CBCs.
- Expands independent living services for young adults aging out of foster care by decreasing the eligibility age for Postsecondary Education Services and Supports and allowing young adults to receive Aftercare if eligible for the extended GAP program or the extended adoption assistance program but is not participating in either program.

The bill has an indeterminate, but significant, negative fiscal impact on state government and the private sector. *See* Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2024, with the exception of sections 10 and 16, which have an effective date of July 1, 2025.

II. Present Situation:

An estimated 3.9 million referrals of alleged child abuse and neglect were made nationwide in 2021. Of that 3.9 million, approximately 2 million met the requirements for an investigation leading to approximately 588,000 children with a finding of maltreatment. More than 4.28 million children live in a Florida, a vast majority of which, never come to the attention of Florida's child welfare system. In 2021, the Department of Children and Families (DCF) investigated 256,060 reports of potential child abuse, and approximately 11 percent (or 27,394) of those investigations results in a finding of maltreatment.

The United States Congress appropriates federal funds through various grants to the DCF to supplement state general revenue funds for the implementation of child welfare programs. The DCF uses these funds to contract with local community non-profits to provide child welfare services.

The DCF uses a centralized child welfare information system known as Florida Safe Families Network (FSFN) and is in the middle of a multi-year project to transition from old federal guidelines that required a Statewide Automated Child Welfare System (SACWIS) to new federal

¹ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Report on Child Maltreatment 2021*, p. 8, available at: https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf (last visited Jan. 14, 2024).

² *Id.* at p. 13; referred to as "screened in referrals."

³ *Id.* at 21; referred to as "victims of abuse and neglect."

⁴ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Population Data for Florida, available at https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/florida.html (last visited Jan. 14, 2024).

⁵ *Id*.

⁶ The main federal grant programs that supplement state-level child welfare programs are Titles IV-E and IV-B of the Social Security Act.

⁷ Part V of ch. 409, F.S.

guidelines that require a Comprehensive Child Welfare Information System (CCWIS).⁸ This transition will modernize and enhance the data capabilities of the DCF.

Florida's Child Welfare System - Generally

Chapter 39, F.S., creates Florida's dependency system charged with protecting children who have been abused, neglected, or abandoned. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The DCF and CBCs work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.⁹

Child welfare services are directed toward the prevention of child abuse, abandonment, and neglect. ¹⁰ The DCF practice model is based on the safety of the child within his or her home, using in-home services, such as parenting coaching and counseling to maintain and strengthen the child's natural supports in the home environment. ¹¹ These services are coordinated by the DCF-contracted community-based care lead agencies (CBCs). ¹² The DCF remains responsible for a number of child welfare services, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services. ¹³ Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system. ¹⁴

Department of Children and Families

The DCF's statutory mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency. ¹⁵ The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the DCF is accountable to taxpayers. ¹⁶

The DCF is required to provide services relating to 17:

- Adult protection.
- Child care regulation.

⁸ The Children's Bureau, CCWIS Status, available at https://www.acf.hhs.gov/cb/training-technical-assistance/ccwis-status (last visited Jan. 14, 2024)

⁹ Chapter 39, F.S.

¹⁰ Section 39.001(8), F.S.

¹¹ See generally: The Department of Children and Families, *Florida's Child Welfare Practice Model*, available at: https://www.myflfamilies.com/services/child-family/child-and-family-well-being/floridas-child-welfare-practice-model (last visited Jan. 14, 2024).

¹² Section 409.986(1), F.S.; See generally The Department of Children and Families (The DCF), About Community-Based Care, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last visited Jan. 14, 2024).

¹³ Office of Program Policy Analysis and Government Accountability, Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care, Report 06-50, June 2006, available at https://oppaga.fl.gov/Products/ReportDetail?rn=06-50 (last visited Jan. 14, 2024).

¹⁴ *Id.*

¹⁵ Section 20.19(1)(a), F.S.

¹⁶ Section 20.19(1)(b), F.S.

¹⁷ Section 20.19(4)(a), F.S.

- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

The DCF must deliver services by contract through private providers to the extent allowed by law and funding.¹⁸ These private providers include CBCs delivering child welfare services.¹⁹

Community-Based Care System

The DCF, through CBCs, administer a system of care²⁰ to children and families that is required to focus on:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had their children removed from their care;
- Safety for children who are separated from their families;
- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency, including providing adoption and postadoption services; and
- Transition to independence and self-sufficiency.²¹

The CBCs must give priority to services that are evidence-based and trauma informed.²² The CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.²³

The Dependency System Process - Generally

When child welfare necessitates that the DCF remove a child from the home to ensure his or her safety, a series of dependency court proceedings must occur to place that child in an out-of-home placement, adjudicate the child dependent, and if necessary, terminate parental rights and free that child for adoption. Steps in the dependency process usually include:

- A report to the Florida Abuse Hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.

¹⁸ Section 20.19(1)(d), F.S.

¹⁹ Part V of ch. 409, F.S. and s. 394.9082, F.S.

²⁰ Section 409.986(1), F.S.; See generally The Department of Children and Families (The DCF), About Community-Based Care, available at <a href="https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care/about-community-based-care/about-community-based-care (last visited Jan. 14, 2024).

²¹ Id.; Also see generally s. 409.988, F.S.

²² Section 409.988(3), F.S.

²³ The DCF, Lead Agency Information, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 14, 2024).

• Case planning for the parents to address the problems resulting in their child's dependency.

- Placement in out-of-home care, if necessary.
- Reunification with the child's parent or another option to establish permanency, such as adoption after termination of parental rights.²⁴

Dependency Proceeding	Description of Process	Controlling Statute(s)
Removal	The DCF may remove a child from his or her home after a protective investigation determines that conditions in that child's home are unsafe and a safety plan cannot make the conditions safe.	s. 39.401, F.S.
Shelter Hearing	The court must hold a shelter hearing within 24 hours after removal. At this hearing, the judge determines whether there was probable cause to remove the child and whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	The DCF must file a petition for dependency within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	The court must hold an arraignment and shelter review within 28 days of the shelter hearing. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any previous shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	The court must hold an adjudicatory trial within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	The court must hold a disposition hearing within 15 days of arraignment (if the parents admits or consents to adjudication) or 30 days of adjudication if a court finds the child dependent. At this hearing, the judge reviews the case plan and placement of the child and orders the case plan and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Change of Custody Hearing	The court may change the temporary out-of-home placement of a child at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement at least every 6 months, or upon motion of a party.	s. 39.701, F.S.

²⁴ The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, F.S.

Dependency Proceeding	Description of Process	Controlling Statute(s)
Petition for Termination of Parental Rights	If the DCF determines that reunification is no longer a viable goal and termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	The court must hold an advisory hearing as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	
Adjudicatory Hearing	The court must hold an adjudicatory trial within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Central Abuse Hotline

The DCF is required to operate and maintain a central abuse hotline (hotline)²⁵ to receive reports of known or suspected instances of child abuse,²⁶ abandonment,²⁷ or neglect,²⁸ or instances when a child does not have a parent, legal custodian or adult relative available to provide supervision and care.²⁹ The hotline must operate 24 hours a day, 7 days a week, and accept reports in writing via fax, web-based reporting,³⁰ web-based chat, or a single statewide toll-free telephone number.³¹

If the hotline determines a report meets the statutory criteria for child abuse, abandonment, or neglect, a child protective investigation must be completed by a DCF child protective

²⁵ Hereinafter cited as "hotline". "Florida Abuse Hotline" means the DCF's central abuse reporting intake assessment center, which receives and processes reports of known or suspected child abuse, neglect or abandonment 24 hours a day, seven days a week. Chapter 65C-30.001, F.A.C.

²⁶ Section 39.01(2), F.S., defines "abuse" as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.

²⁷ Section 39.01(1), F.S., defines "abandoned" or "abandonment" as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. "Establish or maintain a substantial and positive relationship" means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

²⁸ Section 39.01(50), F.S., states "neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

²⁹ Section 39.201(4), F.S.

³⁰ Section 39.201(2)(j), F.S., requires the DCF to update the web-based reporting form to include fields for specified information and allow a reporter to save and return to a report at a later time.

³¹ Section 39.201(4) and (5), F.S.

investigator (CPI).³² The CPI must either implement a safety plan for the child, which allows the child to remain in the home with in-home services or take the child into custody. If the child cannot safely remain in the home with a safety plan, the DCF must file a shelter petition and remove the child from his or her current home and temporarily places them in out-of-home care.³³

Hotline reports and child welfare records are confidential.³⁴ However, the law requires the DCF to release records to "any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect."³⁵ Current law does not detail or specify whom must make the determination that the death was the result of abuse, abandonment, or neglect or when that determination must occur. This lack of specificity has caused issues with the DCF being unaware of "determinations" made by other entities and being unknowingly liable for the release of records.³⁶

In-Home Services

The DCF is required to make all efforts to keep children with their families and provide interventions that allow children to remain safely in their own homes.³⁷ CPIs and CBC case managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes.

As of September 30, 2023, 8,136 children were receiving in-home services.³⁸

Out-of-Home Placements

When a CPI determines that in-home services are not enough to ensure a child's safety, the CPI removes the child from the home and places him or her in a safe and appropriate temporary out-of-home placement, which can include placement with:

³² Section 39.201 (4), F.S. Hereinafter cited as "CPI." The DCF recruits qualified professional staff to serve as child protective investors. Preference is given to individuals who have baccalaureate and master's degrees in social work, psychology, sociology, counseling, special education, education, human development, child development, family development, marriage and family therapy, nursing, or individuals with a combination of relevant work and volunteer experience that demonstrate a commitment to helping children and families. All CPIs are required to complete training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age developed by the Child Protection Team Program within the Department of Health, and training that is either focused on serving a specific population, including, but not limited, to, medically fragile children, sexually exploited children, children under 3 years of age, or families with a history of domestic violence, mental illness, or substance abuse, or focused on performing certain aspects of child protection practice, including, but not limited to, investigation techniques and analysis of family dynamics. Section 402.402, F.S. See also: s. 39.01, F.S. defines "Protective investigator" as an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.

³³ Section 39.201, F.S.

³⁴ Section 39.202(1), F.S.

³⁵ Section 39.202(2)(o), F.S.

³⁶ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 3-4, (on file with the Senate Committee on Children, Families, and Elder Affairs).

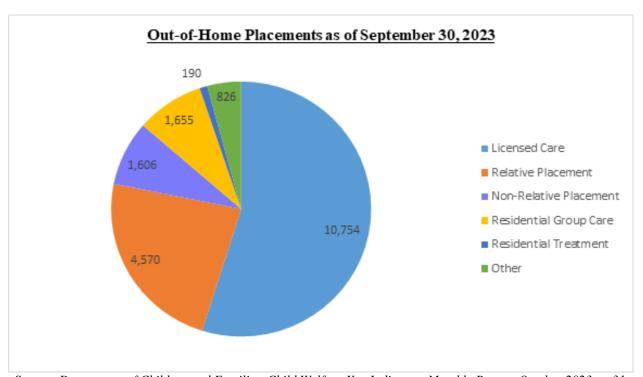
³⁷ Sections 39.402(7), 39.521(1)(f), and 39.701(d), F.S.

³⁸ The Department of Children and Families, Child Welfare Key Indicators Monthly Report October 2023, available at: https://www.myflfamilies.com/KIDS/ROA/child-welfare-key-indicators-reports (last visited Jan. 14, 2024).

- a nonoffending parent;
- relative caregiver;
- adoptive parent of the child's sibling;
- fictive kin who has a close existing relationship to the child;
- nonrelative caregiver that does not have an existing relationship with the child; or
- licensed foster care, group care or residential care.³⁹

Out-of-home placements provide housing, support, and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.⁴⁰

Children in out-of-home care should be placed in the least restrictive, most family-like environment in close proximity to parents. ⁴¹ CBCs are responsible for placing children in the most appropriate available setting after conducting an assessment using child-specific factors. ⁴² The following chart demonstrates the number of children in out-of-home care in the state as of September 30, 2023.



Source: Department of Children and Families, Child Welfare Key Indicators Monthly Report, October 2023, p. 31

⁴⁰ The Office of Program Policy and Government Accountability, Program Summary, available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053 (last visited Jan. 14, 2024).

³⁹ Section 39.4021, F.S.

⁴¹ Sections 39.001(1) and 39.4021(1), F.S.

⁴² Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.

Background Screening Requirements for Out-of-Home Placements

Statute requires the DCF to conduct local and criminal history records on all persons being considered as a placement option, including all "household members" 12 years of age and older ⁴³ A criminal history records check may include, but is not limited to, submission of fingerprints to the Florida Department of Law Enforcement (FDLE) for processing and forwarding to the Federal Bureau of Investigation (FBI) for state and national criminal history information, and a local criminal records checks through local law enforcement agencies for all household members 18 years of age and older and other visitors to the home.

The DCF uses the FBI's criminal history record databases to complete criminal history records checks⁴⁴ State statute must be in compliance with federal law and rules to allow a state agency to access the FBI's criminal history information. Section 39.0138, F.S., was previously approved and the FBI's Criminal Justice Information Law Unit (CJILU) authorized the DCF to conduct finger-based background checks of any person being considered for placement of dependent children. However, in 2020, changes were made to s. 39.0138, F.S., which prompted a review by the CJLIU.

The review found the definition of "visitor" to be too broad and timeframes and processes for the background check were not explicitly stated. ⁴⁵ For DCF to continue using the FBI system Florida statute must come into compliance with federal standards. ⁴⁶

In state fiscal year 2022-23 the DCF utilized the FBI's system to:

- Complete 33,380 screenings for placement of children and adoptions, of which 929 were denied.
- Conduct 7,527 screenings for emergency placement, of which 7,373 were approved and 154 were disqualified.

Emergency Postdisposition Change of Placements

Section 39.522, F.S., details the process for a dependency court to grant changes of placement for children who are in the dependency system. The law allows a petition to be brough before the court alleging the need for the change of placement of child who is placed by the DCF under protective supervision. If any party⁴⁷ to the child's case or the current caregiver denies the need for the change, the court must hear from all parties through an evidentiary hearing. Upon the admission of a need for a change or after such hearing and finding of a need for change of placement, the court must enter an order changing the placement, modifying the conditions of

⁴³ Section 39.0138, F.S.

⁴⁴ Pub. L. 92-544 provides the authority for the DCF to utilize the FBI's criminal history record databases.

⁴⁵ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁶ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁷ "Party" is defined as the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child. S. 39.01, F.S.

protective supervision, or continuing the conditions of protective supervision as ordered. The standard for postdisposition change of placement is the best interests of the child.⁴⁸

When determining whether a change of legal custody or placement is in the best interests of the child, the court must consider 15 best interest factors, ⁴⁹ and any report filed by the multidisciplinary team. The court must also consider the priority of placements established in law when deciding what placement is in the child's best interest.⁵⁰

Importantly, s. 39.522(2), F.S., does not provide for an emergency hearing when a child's placement must be immediately modified. Because there is no emergency process for modification of placement, when a child is at risk of abuse, abandonment, or neglect in his or her current placement, the DCF has been exercising its shelter power to protect the child.⁵¹ This requires the court to conduct a shelter hearing for the child already under the DCF's supervision. This leads to confusion as to whether the standard to be used to move the child is probable cause to shelter or best interests of the child to modify placement.⁵²

During state fiscal year 2022-23, dependency courts granted a postdisposition change of placement for 6,672 children in the dependency system.⁵³

Termination of Parental Rights

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the

⁴⁸ Section 39.01375, F.S.

⁴⁹ Section 39.01375, F.S. lists 15 factors the court must consider when determining whether a proposed placement change is in a child's best interest: The child's age; the physical, mental, and emotional health benefits to the child by remaining in his or her current placement or moving to the proposed placement; the stability and longevity of the child's current placement; the established bonded relationship between the child and the current or proposed caregiver; the reasonable preference of the child, if the child is of a sufficient age and capacity to express a preference; the recommendation of the child's current caregiver, if applicable; the recommendation of the child's guardian ad litem, if one has been appointed; the child's previous and current relationship with a sibling and if the change of legal or physical custody or placement will separate or reunite siblings, evaluated in accordance with s. 39.4024, F.S.; the likelihood of the child attaining permanency in the current or proposed placement; the likelihood the child will be required to change schools or child care placement, the impact of such change on the child, and the parties' recommendations as to the timing of the change, including an education transition plan required under s. 39.4023, F.S.; the child's receipt of medical, behavioral health, dental, or other treatment services in the current placement; the availability of such services and the degree to which they meet the child's needs; and whether the child will be able to continue to receive services from the same providers and the relative importance of such continuity of care; the allegations of any abuse, abandonment, or neglect, including sexual abuse and human trafficking history, which caused the child to be placed in out-of-home care and any history of additional allegations of abuse, abandonment, or neglect; the likely impact on activities that are important to the child and the ability of the child to continue such activities in the proposed placement; the likely impact on the child's access to education, Medicaid, and independent living benefits if moved to the proposed placement; and any other relevant factor.

⁵⁰ Section 39.4021(2)(a), F.S. lists the priority of placements that must be considered, as follows: 1. Nonoffending parent; 2. Relative caregiver; 3. Adoptive parent of the child's sibling, when the DCF or CBC is aware of such sibling; 4. Fictive kin with a close existing relationship with the child; 5. Nonrelative caregiver that does not have an existing relationship with the child; 6. Licensed foster care; 7. Group or congregate care.

⁵¹ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 6, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁵² *Id*.

⁵³ *Id*.

child until the child is adopted.⁵⁴ The DCF, the guardian ad litem assigned to the child's case, or any other person knowledgeable of the facts of the case is permitted to file a petition for the termination of parental rights with the court.⁵⁵

During the dependency phase of a dependency case, personal appearance of any person in a hearing before the court obviates the necessity of serving process on that person. ⁵⁶ However, there is no similar provision during the termination of parental rights phase of the case. ⁵⁷ Because of this, when a case has entered the termination of parental rights phase, even if a parent arrives to a hearing, the DCF must personally serve that parent and the hearing must be reset to a later date. When hearings are conducted remotely, the DCF is not able to personally serve the parent during the hearing; therefore, the hearing cannot be re-held until service by a formal process server is completed. ⁵⁸ This can result in delays in the termination of parental rights process and permanency for children.

Permanency

Florida law requires a permanency hearing no later than 12 months after the child was removed from his or her home or within 30 days after a court determines that reasonable efforts to return the child to either parent are not required, whichever occurs first. ⁵⁹ The purpose of the permanency hearing is for the court to determine when the child will achieve permanency or whether modifying the permanency goal is in the child's best interest. ⁶⁰ A permanency hearing must be held at least every 12 months for any child who continues to be supervised by the DCF. ⁶¹

The permanency goals under Florida law⁶², listed in order of preference are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship under s. 39.6221, F.S.;
- Permanent placement with a fit and willing relative under s. 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.

Adoptions

Child Welfare Adoptions and Adoption Decision Review Process

The Florida Adoptions Act, codified in Ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities⁶³:

• The DCF under Chapter 39, F.S.;

⁵⁴ Section 39.811, F.S.

⁵⁵ Section 39.802, F.S.

⁵⁶ Section 39.502(2), F.S.

⁵⁷ See generally, Part X of Ch. 39, F.S.

⁵⁸ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 4-6, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁵⁹ Section 39.621 (1), F.S.

⁶⁰ *Id*.

⁶¹ *Id*.

⁶² Section 39.621, F.S.

⁶³ Ch. 63, F.S.

- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is licensed by the DCF to place children in Florida.

Ultimately, if the court is unable to reunify a child to his or her home due to safety concerns, the child welfare system may seek a permanent home for that child through the adoption process. Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be legally the child of the adoptive parents and entitled to all rights and privileges and subject to all obligations of a child born to the adoptive parents. Adoption is one of the legally recognized child-welfare permanency goals that may be ordered by a court for a child within the child welfare system.

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her current parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.⁶⁷ The DCF may place the child with a licensed child-placing agency, a registered child-caring agency, or a family home for prospective adoption if given custody of a child that has been made available for a subsequent adoption under ch. 39, F.S.⁶⁸

The DCF's ability to place a child in its custody for adoption and the court's review of that placement is controlled by s. 39.812, F.S. The DCF may place a child in a home and the DCF's consent alone, in all cases, is sufficient. The dependency court retains jurisdiction over any child placed in the custody of the DCF until the child is adopted. After custody of a child for subsequent adoption has been given to the DCF, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction the court may review the appropriateness of the adoptive placement upon good cause shown by the Guardian ad Litem for the child.

Adoption Decision Review Process

When a child is available for adoption, the DCF, through its contractors, receives applications to adopt the child.⁶⁹ Some applicants are denied because their adoption home study is denied based on criminal history.⁷⁰ When there are two or more families with approved home studies, the DCF sends these conflicting applications through the adoption applicant review committee (AARC)

⁶⁴ Section 39.811(2), F.S.; See generally Parts VIII and X of ch. 39, F.S.

⁶⁵ Section 39.01 (5), F.S.

⁶⁶ Section 39.01(59), F.S., defines "permanency goal" to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time as another permanency goal is pursued. See also Section 39.621(3), F.S.

⁶⁷ Section 39.811(9), F.S.

⁶⁸ Section 39.812(1), F.S.; See generally Parts VIII and X of ch. 39, F.S.

⁶⁹ Rule 65C-16.004, F.A.C.

⁷⁰ Rule 65C-16.007, F.A.C

for resolution.⁷¹ The decision of the AARC is then reviewed and the DCF issues its consent to one applicant while communicating its denial to the other applicants through certified letter.⁷²

Unsuccessful applicants are able to seek review of the DCF action through the administrative hearing process under Chapter 120, F.S. Designated hearing officers at the DCF hear these reviews. The assignment of adoption decision disputes to the Chapter 120, F.S., process did not originate with, nor was it inspired by, legislative directive. This process arose due to the opinion in Department of Children & Family Services v. I.B. and D.B.⁷³ Notwithstanding this opinion, the Legislature's overall intent in relation to permanency and the resolution of disputes in the dependency case is to proceed under Ch. 39, F.S. Furthermore, the Ch. 120, F.S., process precludes the selected applicant from participating, which is statutorily permissible in the dependency court proceeding.⁷⁴

Florida law also permits denied adoption applicants to initiate legal action under Chapter 63, F.S., by filing a petition for adoption.⁷⁵ Upon filing the petition, the petitioner must demonstrate that the DCF has unreasonably withheld its consent to the adoption.⁷⁶ Because Chapter 63, F.S., permits anyone who meets the requirements of s. 63.042(2), F.S., to adopt and any petitioner may argue the DCF's consent to the adoption should be waived because it was unreasonably withheld, multiple parties may file a petition to adopt the same child.⁷⁷

There can be up to four proceedings simultaneously addressing the permanency or adoption of a single child using the same child-specific facts:

- The Chapter 39, F.S., dependency proceeding;
- The Chapter 63, F.S., adoption proceeding filed by the family who has the DCF's consent;
- The Chapter 63, F.S., adoption proceeding filed by the applicant whose application was denied; and
- The Chapter 120, F.S., proceeding to dispute the adoption decision by the DCF.

The chart below includes the number of 120 adoption denial cases the DCF commenced and concluded each year, of those the number of cases that resulted in a different decision than the AARC recommendation and the number of DCA appeals and the outcome decisions.

Year	Chapter 120 Cases	AARC Decisions Overturned (by 120 Decision)	DCA Appeals	DCA Decisions Overturning Agency Decision
2019	58	0	2	0
2020	46	0	4	0
2021	42	1	2	0

⁷¹ Rule 65C-16.005(9), F.A.C.

⁷³ See generally 891 So. 2d 1168 (Fla. 1st DCA 2005).

⁷² Id

⁷⁴ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 6, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁷⁵ Section 63.042(2), F.S.

⁷⁶ Section 63.062(7), F.S.

⁷⁷ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 8-10, (on file with the Senate Committee on Children, Families, and Elder Affairs).

Year	Chapter 120 Cases	AARC Decisions Overturned (by 120 Decision)	DCA Appeals	DCA Decisions Overturning Agency Decision
2022	41	1	1	0
2023	41	1	1	0

This current process delays adoption. Between 2021 and 2022, the average length of time between the receipt of a chapter 120 hearing request and entry of a final order was 161 days⁷⁸. This does not include any additional delays caused by appeals to the District Court which adds, on average, an additional 323 days.⁷⁹

Adoption Costs

Private Adoptions

Under Ch. 63, F.S., only adoption entities can complete adoption activities in Florida. Adoption entities include the DCF, a child-caring agency registered under the Florida Association of Christian Child Caring Agencies (FACCCA), a Florida licensed-attorney, and a child-placing agency licensed by the DCF. There are currently 64 private adoption agencies licensed by the DCF; one private adoption agency registered under FACCCA, and over 100,000 attorneys licensed by the Florida Bar. 81

Current law allows adoption entities to assess fees, costs, and expenses for private adoptions, or they pay for the fees and services on behalf of the adoptive parents.⁸² Private adoption services and fees vary, but it is estimated the total amount of fees and services paid by prospective adoptive parents can range from \$30,000 to \$60,000.⁸³ Section 63.097, F.S., allows private adoption entities may charge prospective adoptive families for:

- Reasonable living expenses of the birth mother when the birth mother is unable to pay due to unemployment, underemployment, or disability.
- Reasonable and necessary medical expenses.
- Court filing expenses, court costs, and other litigation expenses.
- Birth certificate and medical record expenses.
- Costs associated with adverting.
- Professional fees.
- Expenses necessary to comply with the requires of Ch. 63, F.S., including, but not limited to, service of process, investigator fees, a diligent search, a preliminary home study, and a final home investigation.

⁷⁸ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 3-4, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁷⁹ Id

⁸⁰ Section 63.302, F.S.

⁸¹ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 13, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁸² Section 63.097, F.S.

⁸³ Child Welfare Information Gateway, *Planning for Adoption: Knowing the Costs and Resources*, available at: https://www.childwelfare.gov/resources/planning-adoption-knowing-costs-and-resources/ (last visited Jan. 14, 2024).

Adoption entities seeking to charge fees, costs, or expenses for other items than those listed above require court approval prior to payment and a finding that the costs are based on a finding of extraordinary circumstances.⁸⁴

Additionally, the court must approve the total amount of fees charged to prospective adoptive parents when an adoption entity charges more than the following:

- \$5,000 in legal or other fees;
- \$800 in court costs; or
- \$5,000 in reasonable and necessary living and medical expenses. 85

In order to lessen the economic burden of private adoptions, adoptive parents may file for a federal adoption tax credit for qualifying adoption expenses⁸⁶ based on the adoptive parent's income. The 2023 federal adoption tax credit is approximately \$16,000.⁸⁷

Adoption from the Child Welfare System

Adoption Assistance

Section 409.166, F.S., creates the adoption assistance program to provide financial assistance to adoptive parents who adopt a child from the foster care system. ⁸⁸ Such assistance may include, but is not limited to, a monthly subsidy, medical assistance, Medicaid assistance, and reimbursement of nonrecurring expenses associated with the legal adoption. ⁸⁹

Individuals who adopt a child from the child welfare system are eligible to receive \$5,000 annually, paid on a monthly basis, for the support and maintenance of the child until the child's 18th birthday. ⁹⁰ In the event the child was adopted after the age of 16, s. 409.166(4)(d), F.S., allows for the adoptive family to remain eligible for the adoption assistance payment until the child reaches 21 years of age, if the young adult is participating in specific programs or activities. ⁹¹

⁸⁴ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 10, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁸⁵ Section 63.097, F.S.

⁸⁶ Qualifying adoption expenses include adoption fees, attorney fees, court costs, travel expenses (including meals and lodging while away from the home), and re-adoption expenses relating to adoption of a foreign child.

⁸⁷ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 10, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁸⁸ Section 409.166, F.S.

⁸⁹ *Id*.

⁹⁰ Section 409.166(4)(c), F.S. The adoptive parents can receive an amount other than \$5,000 upon agreement by the DCF and memorialized in a written agreement between the adoptive parents and the DCF. The agreement must take into consideration the circumstances of the adoptive parents and the needs of the child being adopted. The amount of subsidy may be adjusted upon changes in the needs of the child or circumstances of the adoptive parents. In no case shall the amount of the monthly payment exceed the foster care maintenance payment that would have been paid during the same period if the child had been in a foster family home.

⁹¹ This program is known as the Extended Maintenance Adoption Subsidy (EMAS). The payments may be made to the adoptive parents until the child reaches 21 if the child is: completing secondary education or a program leading to an equivalent credential; enrolled in an institution that provides postsecondary or vocational education; participating in a program or activity designated to promote or eliminate barriers to employment; employed for at least 80 hours per month; or

Beginning in 2000, Florida's Department of Management Services could administer adoption benefits to any state employee or water management district employee who adopted from the child welfare system. 92 vertook the administration of the adoption benefits program. 93 In 2010, the program was repealed, and funding ended. 94 However, in 2015, the Legislature reestablished the adoption benefit program to provide a one-time benefit to qualifying employees who adopt a child from the foster care system. 95

The following table includes information on the expansion of persons eligible for the adoption benefit program over time:

Year	Employees Eligible for the Adoption Benefit under s. 409.1664, F.S.
	Full-time or part-time employee of a state agency who is paid from regular salary
2015	appropriations rather than a temporary employee. The term includes instructional
	personnel who are employed by the Florida School for the Deaf and Blind. 96
2017	Full-time or part-time employees of charter schools or the Florida Virtual School to
2017	the list of eligible employees. ⁹⁷
	Full-time or part-time employee from a state agency, charter school, or Florida
	Virtual School that is not an independent contractor.
2020	Other personal services employees who have been continuously employed full-time or part-time by a state agency for at least 1 year.
	Veterans and servicemembers that are domiciled in the state. 98
2022	Law enforcement officers. ⁹⁹

Qualifying adoptive employees, veterans, or servicemembers who adopt a child from the child welfare system, who is "difficult to place" is eligible to receive a one-time monetary benefit of \$10,000 per child, while law enforcement offices is eligible to \$25,000 per child. If the child being adopted is not considered "difficult to place," a qualifying adoptive employee,

unable to participate in the following programs or activities full time due to a physical, an intellectual, an emotional, or psychiatric conditions that limits participation.

⁹² Chapter 2000-241, Laws of Fla.

⁹³ Chapter 2007-119, Laws of Fla.

⁹⁴ Chapter 2010-158, Laws of Fla.

⁹⁵ Chapter 2015-130, Laws of Fla.

⁹⁶ Chapter 2015-130, Laws of Fla.

⁹⁷ Chapter 2017-140, Laws of Fla.

⁹⁸ Chapter 2020-22, Laws of Fla.

⁹⁹ Chapter 2022-23, Laws of Fla.

¹⁰⁰ Section 409.166(2), F.S., defines "difficult to place" as a child whose (1) permanent custody has been awarded to the DCF or to a licensed child-placing agency; (2) has established significant emotional ties with his or her foster parents or is not likely to be adopted because he or she meet a specific category (eight years of age; developmentally disabled; physically or emotionally handicapped; a member of a racial group that is disproportionately represented among children available for adoption or a member of sibling group of any age provided two or more members of a sibling group remain together for purposes of adoption); and (3) for whom a reasonable but unsuccessful effort has been made to place the child without providing a benefit.

¹⁰¹ Section 409.1664, F.S.

veteran, or servicemember is eligible to receive \$5,000 per child, while a law enforcement officer is eligible to receive \$10,000 per child. 102

The following table identifies the number of adoption subsidies that were requested from the total number DCF adoptions. ¹⁰³

SFY	DCF Adoptions	Adoption Subsidies Requested	% with Subsidies
2019-20	4,548	275	6%
2020-21	3,904	263	7%
2021-22	3,888	323	8%
2022-23	3,602	412	11%

Statewide Adoption Services

Various adoption services may be provided at the time a child is permanently committed to DCF's custody for subsequent adoption. To facilitate adoption, CBCs, or its subcontractors, are required to recruit prospective adoptive families; annually assess adoptive parent resource needs; complete initial and final adoptive home studies; comply with adoption disclosure requirement; and implement and administer adoption assistance benefits. ¹⁰⁴

Additionally, CBCs, or its subcontractors, are required to inform prospective adoptive parents of the available adoption benefits. ¹⁰⁵

In Florida, the average length of time from a child being sheltered to termination of parental rights is 18 months. ¹⁰⁶ The average length of time from termination of parental rights to finalizing adoption is 12 months. ¹⁰⁷ This means the average length of time from shelter to a finalized adoption is 2.5 years. ¹⁰⁸ In June 2023, there were 4,700 children legally free for adoption of which 3,300 were matched or placed with prospective adoptive parents. ¹⁰⁹

To help eliminate barriers to timely adoption and permanency, the DCF and various stakeholders, including the Guardian ad Litem program, CBCs, case management organizations, and the judiciary identified the following barriers to finalizing adoptions¹¹⁰:

- Multiple background screenings of prospective adoptive parents due to expiration;
- Adoption application packets were not uniform statewide and could range from 60-70 pages based on the CBC;

¹⁰² Section 409.1664, F.S.

¹⁰³ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 15, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁰⁴ R. 65C-16.004, F.A.C

¹⁰⁵ 65C-16.012 F.A.C.

¹⁰⁶ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁰⁷ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁰⁸ *Id*.

¹⁰⁹ Id.

¹¹⁰ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).

• Adoption home studies were not completed timely and compiling data for the child specific information for the home studies caused delays.

Based on these barriers to finalizing adoptions, in July 2023, the DCF launched a pilot in Circuits 6 and 13 to expedite adoptions, which included streamlining adoption procedures, clarifying requirements, meeting with stakeholders to address barriers, and brining in dedicated case management staff to focus on finalizing adoptions. Circuits 6 and 13 were selected for the pilot due to both having the highest statewide pending adoption rates and both recently experiencing a turnover of its CBC.

During the pilot, the DCF identified additional barriers in the adoption process due to unnecessary adoption practices, including:

- CBCs requesting documents from case managers that were not required by administrative rule or statute.
- Lengthy enhanced subsidy approval processes caused delays.
- Adoption specialists were assigned only after parental rights were terminated instead of after the petition for the termination of parental rights was filed.

Since the implementation of the Pilot, the total number of adoptions increased, and the total number of children in care decreased. The tables below compare the first quarter of the Pilot to the same quarter during the year prior to the Pilot's implementation. 114

Circuit 6 – Family Support Services of SunCoast (CBC)			
Category	SFY 2022-23 (Q1)	SFY 2023-24 (Q1)	% Change
Total Adoptions	62	100	61%
Average Number of Children in Out- of-Home Care	2, 532	1,999	-21%

Circuit 13 – Children's Network of Hillsborough (CBC)				
Category	SFY 2022-23 (Q1)	SFY 2023-24 (Q1)	% Change	
Total Adoptions	30	71	137%	
Average Number of Children in Out- of-Home Care	2,433	2,143	-12%	

Adoption Incentive Program

The Adoption Incentive Program aims to improve the achievement of permanency, stability, and well-being for children in foster care who cannot be reunified with their families. ¹¹⁵ Through the

The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 11-12, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹¹² *Id*.

¹¹³ *Id*.

¹¹⁴ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹¹⁵ Section 409.1662, F.S.

Adoption Incentive Program, the DCF can award CBCs, and subcontractors involved in the adoption process, with an incentive payment when achieving specific and measure adoption performance standards.¹¹⁶

Due to budgetary constraints, the DCF has been unable to award incentive payments to any CBC since State Fiscal Year 2019-20.¹¹⁷

Adoption of Orphaned Children

Currently, when both parents of a child are deceased with no family member to serve as legal guardian or custodian through a probate or guardianship proceeding, the DCF can adjudicate a child dependent. However, there is no legal mechanism to permanently commit a child to the custody of the DCF for subsequent adoption. 118

In *F.L.M. v. Department of Children and Families*,¹¹⁹ the court held that when the parents of a child have died they have not abandoned the child because the definition of "abandonment" in Ch. 39, F.S., contemplates the failure to provide a minor child with support and supervision while being able, and the parents who died are no longer able. Instead, the courts have held that an orphaned child without a legal custodian can be adjudicated dependent based on the child having no parent or legal custodian capable of providing supervision and care pursuant to s. 39.01(14)(e), F.S. ¹²⁰ As such, the DCF relies upon this maltreatment to adjudicate orphaned children dependent. ¹²¹

Section 39.811(2), F.S., allows a court to commit a child to DCF's custody for subsequent adoption if the court finds by clear and convincing evidence that the grounds for termination of parental rights are established. Section 39.806(1), F.S., outlines various grounds for termination of parental rights. However, all available grounds require that a parent engage in behavior that puts a child at risk. This prevents the DCF from seeking termination of a deceased parent's parental rights based on available grounds because a deceased parent has not engaged in behavior that puts a child at risk. Furthermore, even if there were a statutory ground to seek the termination of a deceased parent's rights, there are benefits that a child may be receiving, such as social security benefits or an inheritance, and termination of the deceased parent's rights would disrupt those benefits.¹²²

¹¹⁶ Section 409.1662(3), F.S.

¹¹⁷ The Department of Children and Families, *Adoption Incentive Reports 2019-20*, 2020-21, 2021-22, 2022-23, available at: https://www.myflfamilies.com/services/child-family/lmr (last visited Jan. 12, 2024).

¹¹⁸ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 4, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹¹⁹ 912 So. 2d 1264 (Fla. 4th DCA 2005)

¹²⁰ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 4, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹²¹ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 4-6, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹²² *Id.*

Currently, courts are permanently committing children to DCF"s custody without meeting the requirements of s. 39.811(2), F.S., which requires termination of parental rights by clear and convincing evidence that the grounds for termination of parental rights are established.¹²³

Florida's Independent Living Services

The DCF strives to achieve permanency for all children in care before their 18th birthday. ¹²⁴ However, a child will age out of care upon reaching 18 years of age if a permanent placement is not found. ¹²⁵ From October 1, 2022, to September 30, 2023, there were 801 young adults who aged out of Florida's foster care system. ¹²⁶

Florida provides independent living services to young adults to help them transition out of foster care and to prepare them to become self-sufficient adults. Florida's independent living services include extended foster care (EFC), which applies to young adults who were in licensed foster care upon turning 18 years of age. ¹²⁷ Florida also offers two other independent living programs: Postsecondary Education Services and Support (PESS) and Aftercare services (Aftercare). The following tables provides information on the eligibility requirements to participate in Florida's independent living programs and the services provided by each.

Program	Eligibility	Services
Extended Foster Care (EFC) ¹²⁸	Young adults who turned 18 in foster care and are: Completing high school or its equivalent; or Enrolled in college or vocational schooling; or Working at least 80 hours per month. To stay in EFC, the young adult must: Meet with a case manager every month. Continue to participate in a required activity. Attend court reviews every six months.	Young adults may choose to remain in licensed foster care and receive foster care services until the age of 21 (22 with a disability).
Postsecondary Education Services and Support (PESS) ¹²⁹	 Young adults who turned 18 in foster care and spent at least 6 months in licensed out-of-home care before turning 18. Young adults who are at least 18 and were adopted from foster care after age 16 or were placed with a court-approved guardian after sending at least 6 months in licensed foster care within the 12 months 	\$1,720 per month for: • Housing • Utilities • Living expenses Available until the age 23.

 $^{^{123}}$ Id

¹²⁴ Section 39.01, F.S. Section 39.621, F.S., lists the permanency goals in order of preference as 1. reunification; 2. adoption, if a petition for termination of parental rights has been or will be filed; 3. permanent guardianship; 4. permanent placement with a fit and willing relative; or 5. placement in another planned permanent living arrangement.

¹²⁵ Rule 65C-30.022, F.A.C.

¹²⁶ Florida Department of Children and Families, *Office of Child and Family Well-Being Dashboard*, available at: https://www.myflfamilies.com/ocfw-dashboard (last visited Jan. 12, 2024).

¹²⁷ Chapter 2013-178, Laws of Florida

¹²⁸ Section 39.6251, F.S.

¹²⁹ Section 409.1451(2), F.S.

Program	Eligibility	Services
	immediately preceding such adoption or placement; and	
	 Have earned a high school diploma or equivalent; and 	
	 Are attending a college or vocational school that is Florida Bright Futures eligible. 	
		Mentoring
		Tutoring
		Substance abuse
	Young adults who turned 18 while in licensed foster care,	treatment
Aftercare ¹³⁰	but are not yet 23, and	Counseling
Aitercare	Are not in EFC; or	Job and career skills
	Are not in PESS.	training
		Temporary financial
		assistance for
		necessities

III. **Effect of Proposed Changes:**

Background Screenings (Sections 1 and 2)

Section 1 of the bill amends s. 39.01, F.S., to add the definition of "visitor" to Ch. 39, F.S., to require individuals that fall under the definition to complete a background screening when a child is being considered for an out-of-home placement. The bill defines "visitor" as a person who:

- Provide care or supervision to children in the home; or
- Is 14 years of age or older who will be in the child's home at least five consecutive days or any seven or more days in a period of a month.

This change (along with the changes in section 2) will make Florida statutes compliant with federal requirements and allow the DCF to continue to use the FBI's federal database to conduct and complete required background screenings for out-of-home placements. 131

Section 2 of the bill amends s. 39.0138, F.S. to require the DCF to conduct a criminal history records check on frequent adult visitors to a home being considered for an out-of-home placement.

The bill also amends the process for conducting and completing a background check by:

- Requiring the DCF to complete a name-based check of federal criminal history records if a child has been sheltered and must be placed in out-of-home care due to an emergency.
- Requiring fingerprints of the out-of-home placement applicant and all other adult members of the applicant's household to be submitted to the FDLE within seven days after receipt of the

¹³⁰ Section 409.1451(3), F.S.

¹³¹ The Department of Children and Families, SB 1486 Agency Bill Analysis (January 2024), p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs).

results of the name-based check, unless an individual is exempted from fingerprinting requirements.

• Requiring the FDLE to forward the fingerprints to the FBI for review within 15 calendar days after the FDLE received the fingerprints.

The bill prohibits the DCF from placing a child in an out-of-home placement if the:

- applicant or any household members are disqualified as a result of the name-based check; or
- fingerprints are not submitted timely to the FBI.

The bill requires the DCF to seek a court order to immediately remove a child from that placement if an applicant does not submit the required fingerprints to the FDLE within the timeframe required by the bill.

The bill removes current statutory language allowing the DCF to place a child in a home if the home meets placement requirements, but the DCF is waiting for the results of the state and national criminal history records check. This current language is removed due to the bill's changes made to the background screening process.

The bill also changes the name of the child welfare systems of record used by the DCF from the State Automated Child Welfare System (SACWIS) to the Comprehensive Child Welfare Information System (CWIS).to reflect the transition to new federal guidelines.

These change (along with the changes in section 1) will make Florida statutes compliant with federal requirements and allow the DCF to continue to use the FBI's federal database to conduct and complete required background screenings for out-of-home placements.

Child Abuse Records (Section 3)

Section 3 of the bill amends s. 39.202(2)(o), F.S. to allow access to child abuse records in the case of a child's death only after the DCF has closed its investigation and met the requirements of 39.301(16), F.S., which states that the DCF must close its investigation within 60 days unless:

- There is an active, concurrent criminal investigation that is continuing beyond the 60-day period and closure of the DCF investigation may compromise successful criminal prosecution.
- The final report of a medical examiner is necessary for the DCF to close its investigation and the report has not been received.
- The child necessary to the investigation has been declared missing by the DCF, a law enforcement agency, or a court.

This change gives the DCF adequate time to fully complete its investigation and ensure sensitive information is not released inaccurately or prematurely.

Adoption of Orphaned Children (Section 4)

Section 4 of the bill creates s. 39.5035, F.S. to allow a court to permanently commit a child whose parents are deceased to DCF's custody. This change allows a child to find permanency when there's no legal custodian available to care the child after the death of his or her parents

and to allow the child to continue to receive death benefits without terminating the deceased parent's parental rights.

The bill allows an attorney for the DCF, or any person with knowledge of the facts, to file a petition for adjudication and permanent commitment if both parents of a child are deceased and there has been no appointment of a legal custodian or guardian through probate or a guardianship proceeding.

If the child has not been adjudicated dependent, the bill requires the filing of the petition adjudication and permanent commitment within 21 days after the shelter hearing. If the child has been adjudicated dependent, the bill requires the filing of a petition for permanent commit within a reasonable time after the petitioner first becomes aware of the facts that support the petitions.

The bill requires the petition for adjudication and permanent commitment to be in writing and contain the following:

- Identification of the deceased parent or parents;
- Facts that establish both parents of the child;
- Facts that establish that a legal custodian or guardian has not been appointed for the child; and
- Be signed by the petitioner under oath stating the filing of the petition is in good faith.

The bill requires the court to conduct an adjudicatory hearing as soon as practicable, but no later than 30 days after the filing of a petition. Notice of the date, time, and place of the adjudicatory hearing and a copy of the petition must be served on:

- Any person with physical custody of the child.
- A living relative of each parent of the child, unless one cannot be found after a diligent search or inquiry.
- The guardian ad litem for the child or a representative of the guardian ad litem program, if applicable.

The bill requires adjudicatory hearings to be conducted by a judge without a jury and applying the rules of evidence in use in civil cases. The bill requires the court to determine by clear and convincing evidence that both parents of the child are deceased, or that the last known living parent is deceased, and the other parent cannot be found after diligent search or inquiry, and that a legal custodian or guardian has not been appointed for the child. The bill allows a certified copy of a death certificate to be sufficient evidence of proof of a parent's death.

The bill requires the court to make one of the following determines within 30 days after the adjudicatory hearing on a petition for the permanent commitment of the child:

• If the court finds the petitioner has met the clear and convincing standard: the bill requires the court to enter a written order adjudicating the child dependent and permanently committing the child to DCF's custody for subsequent adoption. The court must schedule a disposition hearing no later than 30 days after the entry of the order, where the DCF must provide the court with a case plan for the child. The court must hold hearings every 6 months to review the progress of the child's case plan permanency goal, until the child reaches 18 years of age, or the adoption of the child is finalized.

• If the court finds the petitioner has not met the clear and convincing standard, but that a preponderance of the evidence establishes that the child does not have a parent of legal custodian capable of providing supervision of care: the bill requires the court to enter a written order adjudicating the child dependent. A disposition hearing must be scheduled no later than 30 days after the entry of the order.

• If the court finds the petitioner has not met the clear and convincing standard and that a preponderance of the evidence does not establish that the child does not have a parent or legal custodian capable of providing supervision of care: the bill requires the court to enter a written order dismissing the petition.

Emergency Postdisposition Change of Placement (Section 5)

Section 5 amends s. 39.522, F.S. to create process for emergency modification of a child's court-ordered placement. The bill allows a child's case manager, authorized DCF agent, or law enforcement officer to remove a child from a placement if the current caregiver requests immediate removal of the child or if the circumstances meet the criteria of a shelter pursuant to s. 39.401(1)(b), F.S. 132

The bill requires that, if at the time of removal, the child was not placed in foster care, the DCF to file a motion to modify placement within one business day of the child being taken into custody. Unless all parties and the caregiver agree to the change of placement, the court must set a hearing within 24 hours after the filing of the motion to modify placement to determine whether the DCF has established probable cause that reasonable grounds exist for the immediate removal of the child. The court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral or written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing.

- If the court finds probable cause has not been established to support the removal of the child: the bill requires the court to order the return of the child to his or her current placement. This finding by the court does not preclude a subsequent motion.
- If the current caregiver admits to a need for a change of placement or probable cause is established: the bill requires the court to enter an order changing the child's placement. If the child is not placed in licensed foster care, the new placement must meet the required home study criteria of ch.39, F.S.
- If the child's placement is modified based on a probable cause finding: the bill requires the court to conduct postdisposition hearings under s. 39.522(2) and (3), F.S., unless waived by all parties.

Permanent Guardianship and Guardianship Assistance Program (Section 6 and 7)

Section 6 amends s. 39.6221, F.S., to allows the court to close a case to permanent guardianship if the child was placed with a relative or other approved adult for the preceding three months and that person was named on the child's guardianship assistance agreement. This change allows

¹³² Pursuant to s. 39.401(1)(b), F.S., there must be probable cause that supports that the child has been (1) abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment; (2) the parent or legal custodian has materially violated a condition of placement imposed by the court; or (3) that the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision or care.

children to achieve permanency with a guardian that has already been vetted through the background screening requirements of the Guardianship Assistance Agreement, without having to unnecessarily return to the child welfare system.

Section 7 amends s. 39.6225, F.S. to expand the eligibility of guardianship assistance payments by reducing the age requirement a child must be for a guardian to receive payments. The bill allows a guardian who entered into a guardianship assistance agreement when a child was 14 to receive guardianship assistance payments, rather than when the child was 16 years of age. This increases the eligible population by 782 individuals, with an expected 235 of those choosing to participate in the program.¹³³

Judicial Notice in Termination of Parental Rights Cases (Section 8)

Section 8 amends s. 39.801(3), F.S. to mirror language relating to the dependency phase of the case that allows for personal appearance at a termination advisory hearing, or any subsequent hearing, to remove the need for personal services.

This language will enable a trial court to conduct an advisory hearing if a parent has personally appeared regardless of whether the parent was personally served with the petition, eliminating continuances and delays, and reducing time to permanency for children.

Child Welfare Adoptions and Adoption Decision Review Process (Sections 9 and 11)

Section 9 amends s. 39.812(4), F.S. to change the jurisdiction for reviewing the DCF's denial of an application to adopt a child from a ch.120, F.S., administrative hearing to the dependency court. The DCF's decision to deny an adoption applicant will now be reviewable only under s. 39.812, F.S., and is not subject to ch. 120, F.S.

The bill requires the DCF to file the denial with the court and provide copies to the parties within 10 business days after the decision. The bill allows the denied applicant to file a motion to review the denial within 30 days of the issuance of the written notification of denial. The motion must allege the DCF unreasonably withheld its consent and request that the court allow the denied applicant to file a petition to adopt the child under ch. 63, F.S., without DCF's consent. The denied applicant is given limited standing in the ch.39, F.S., proceeding to file the motion and to present evidence in support of the motion. Such standing terminates upon the entry of the court's order. The bill maintains the standard of review for these cases that is applicable in the ch. 120, F.S., administrative proceedings.

The bill requires the court to hold a hearing within 30 days after the filing of the motion. The court may only consider whether the DCF's review of the application was consistent with the agency's policies and made in an expeditious manner using an abuse of discretion review. If the DCF selected another applicant to adopt the child, the selected applicant may participate in the hearing and may be granted leave by the court to be heard without filing a motion to intervene.

¹³³ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 8, (on file with the Senate Committee on Children, Families, and Elder Affairs).

The bill requires the court to enter a written order within 15 days after the hearing that either denies the motion to review or finds the DCF unreasonably withheld its consent. If the court finds the DCF unreasonably withheld consent, the bill requires the court to authorize the denied applicant to file a petition to adopt the child without the DCF's consent.

The bill amends s. 39.812(5), F.S., to allow the DCF to remove a child from a foster home or court-ordered custodian whose adoption application was denied by the DCF, and the court denied review of DCF's denial.

The bill amends s. 39.812(6), F.S., to require the DCF to attach a copy of the consent for adoption to the petition to adopt.

The bill amends s. 63.062(7), F.S., to require the DCF to consent to the adoption or the petitioner to attach to his or her petition to adopt the court order finding that the DCF unreasonably withheld its consent when the court permanently commits a minor to the DCF for adoption. The petitioner must also file a favorable preliminary adoptive home study as required by s. 63.092, F.S.

Section 11 amends s. 63.062, F.S. to reflect the changes to the Chapter 120 hearing changes in Section 9 of the bill. The bill establishes that if parental rights to the minor have been terminated and the minor has been permanently committed to the DCF for subsequent adoption, the DCF must provide consent to the adoption, or the petitioner must include the court order finding the DCF unreasonably withheld consent as well as a favorable preliminary adoptive home study in the petition to adopt. This change ensures there is only one adoption petition filed for each child ¹³⁴

Statewide Adoption Services (Sections 10, 12, 16, and 18)

The bill makes changes throughout Ch. 63 and Ch. 409, F.S., to centralize statewide adoption services by removing the requirement that CBCs provide adoption services and supports. The bill delays the effective date of these sections until July 1, 2025.

Section 10 amends the definition of "agency" in s. 63.032(12), F.S., to "licensed child-placing agency" to have the same meaning as s. 39.01, F.S., which defines "licensed child-placing agency as a person, society, association, or institution licensed by the DCF to care for, receive, or board children and to place children in licensed child-caring institution or a foster or adoptive home. This change in definition to conform to other changes made in the bill.

Section 12 amends s. 63.093, F.S. to require the DCF to contract with one or more licensed child-placing agencies to provide adoptive services, complete the adoption processes for children permanently committed to the DCF, and to support adoptive families. The bill allows a contracted licensed child-placing agency to subcontract for the provision of adoptive services.

The bill requires the contracted licensed child-placing agency, rather than a CBC, to:

¹³⁴ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 9-10, (on file with the Senate Committee on Children, Families, and Elder Affairs).

• Respond to an initial inquiry from a prospective adoptive parent within seven business days after receipt of the inquiry to inform the prospective adoptive parent of the adoption process and requirements for adopting a child from the child welfare system.

- Refer a prospective adoptive parent interested in adopting a child in DCF's custody to a DCF-approved adoptive parent training program.
- Complete an adoptive home study of a prospective adoptive parent that includes observation, screening, and evaluation of the child and the prospective adoptive parent. The bill allows the home study to serve as the adoptive home study if the child was placed in the home prior to the termination of parental rights.
- Complete a preparation process, as established by DCF rule, with the prospective adoptive parent.
- Approve or deny the home study within 14 business days after receipt of the recommendation of approval of the prospective adoptive parent's appropriateness to adopt.

The bill requires the DCF to adopt rules that eliminate duplicative practices and delays in the adoption home study process for active service members seeking to adopt in Florida, including, but not limited to, giving credit for adoption classes that have been taken in another state that substantially comply with s. 409.175(14)(b), F.S.

The bill also requires the DCF to annually report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of adoptions in Florida by November 15.

Section 16 repeals s. 409.1662, F.S. that requires the DCF to create an adoption incentive program that awards incentive payments to CBCs for specific adoption performance standards.

Section 18 amends s. 409.988, F.S. to remove the requirement of CBCs to serve children who were adopted from the child welfare system and families that require postadoption supports.

Adoption Costs and Adoption Benefits (Sections 13, 15, and 17)

Section 13 amends s. 63.097(3), F.S. to reduce the fees, costs, and expenses that private adoption entities are permitted to charge prospective adoptive parents without court approval. The bill requires an adoption entity to receive court approval when the fees, costs, and expenses exceed:

- \$2,500 in legal or other fees, as opposed to \$5,000 in current law.
- \$2,500 in reasonable and necessary living and medical expenses, as opposed to \$5,000 in current law.

The bill prohibits the court from approving fees, excluding reasonable, medically necessary expenses, if they exceed the total amount of the Federal Adoption Tax Credit for the current tax year. The current Federal Adoption Tax Credit is \$15,950 per child. 135

¹³⁵ Internal Revenue Service, *Topic No. 607*, *Adoption Credit and Adoption Assistance Programs*, available at: https://www.irs.gov/taxtopics/tc607#:~:text=The%20maximum%20adoption%20credit%20allowable%20in%202023%20is,dollar%20limit%20for%202023%20less%20%248%2C000%20previously%20claimed%29. (last visited Jan. 14, 2024).

Section 15 amends s. 409.166(4), F.S., to expand the eligibility for adoption assistance by reducing the age requirement a child must be for an adoptive parent to receive payments. The bill allows an adoptive parent who entered into an initial adoption assistance agreement when a child was 14 to receive adoption assistance payments, rather than when the child was 16. The DCF estimates this will increase the eligible population by 550 individuals, with 165 participating in the program. ¹³⁶

Section 17 amends s. 409.1664, F.S. to make health care practitioners¹³⁷ as listed in s. 456. 001(4), F.S., who hold an active status license from the Department of Health (DOH) and whose individual income does not exceed \$150,000 to be eligible to receive adoption benefits when adopting a child from the child welfare system. The bill increases the amount of the adoption benefit from \$10,000 to \$25,000 when the child being adopted is "difficult to place" and from \$5,000 to \$10,000 when the child being adopted is not "difficult to place."

The bill allows a health care practitioner to apply for the adoption benefit if he or she is domiciled in Florida and adopts a child in the child welfare system on or after July 1, 2024. The bill requires a health care practitioner to apply to the DOH to obtain the benefit. The bill does not preclude a health care practitioner from qualifying for or receiving another type of adoption assistance.

Independent Living Services (Section 14)

Section 14 amends s. 409.1451(2), F.S. to increase the number of young adults eligible to receive PESS by allowing a young adult who was at least 14 years of age (rather than 16 years of age) to receive services, provided other eligibility requirements are met. The DCF estimates this will make an additional 351 young adults eligible to receive PESS services, with an estimated 71 choosing to participate in the program. ¹³⁸

Effective Dates

Section 19 provides an effective date of July 1, 2024, notwithstanding Sections, 10, 12, 16, and 18

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³⁶ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 8, (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹³⁷ Section 456.001(4) defines health care practitioner as any person licensed under chapters 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, part I, part II, part II, part XI, part XIV of chapter 468, 478, 480, part I, part II, and part III of chapter 483, 484, 486, 490, or 491.

¹³⁸ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 8, (on file with the Senate Committee on Children, Families, and Elder Affairs).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Community-Based Care Lead Agencies

There is an indeterminate, but likely negative, fiscal impact on CBCs with the removal of the requirements that CBCs provide adoptive and post-adoptive services. The CBCs will no longer receive funding to provide these services.

Child-Placing Agencies

There is an indeterminate, but likely positive, fiscal impact on child-placing agencies. The bill requires the DCF to contract with licensed child-placing agencies to provide adoptive and post-adoptive services. Contract licensed child-placing agencies will be able to receive funding to provide these services.

Adoption Entities

There is an indeterminate, but likely significant, negative fiscal impact on private adoption entities due to the bill reducing the type and amount of fees, costs, and expenses that a private adoption entity can charge to a prospective adoptive parent without court approval. This will reduce the revenues of private adoption entities.

C. Government Sector Impact:

Expansion of Independent Living Services

The DCF estimates a significant negative fiscal impact due to the expansion of independent living services in sections 7 and 14 of the bill. 139

¹³⁹ The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 18-19, (on file with the Senate Committee on Children, Families, and Elder Affairs).

Service Expanded	Increased Fiscal
Extended Post-18 Adoption and	\$3,216,000
Guardianship Assistance Payments	
Postsecondary Education Services and	\$1,465,440
Support (PESS)	
Aftercare Services	\$3,428,700
Total	\$8,110,140

Expansion of the Adoption Benefits Program

There is an indeterminate, but likely significant, negative fiscal impact due to making health care practitioners eligible to receive adoption benefits when adopting a child from the child welfare system. There is also an indeterminate, but likely, negative fiscal impact due to increasing the monetary amounts that eligible employees can receive.

Court System

There is an indeterminate, but likely insignificant, negative fiscal impact on the court system due to adoption review hearings being done by the dependency court, rather than an administrative hearing pursuant to Chapter 120, F.S.

There is an indeterminate positive fiscal impact on the DCF in workload due to the streamlining the adoption review hearings and reducing the work of DCF attorneys.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 39.01, 39.0138, 39.202, 39.522, 39.6221, 39.6225, 39.801, 39.812, 63.032, 63.093, 63.097, 409.1451, 409.166, 409.1664, and 409.988, Florida Statutes. This bill creates s. 39.5035, Florida Statutes.

This bill repeals s. 409.1662, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

LEGISLATIVE ACTION Senate House Comm: TP 01/17/2024

The Committee on Children, Families, and Elder Affairs (Collins) recommended the following:

Senate Amendment (with title amendment)

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Delete everything after the enacting clause

4 and insert: 5

Section 1. Subsection (88) is added to section 39.01, Florida Statutes, to read:

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

- (88) "Visitor" means a person who:
- (a) Provides care or supervision to a child in the home; or

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(b) Is 12 years of age or older, other than a child in care, and who will be in the child's home at least:

- 1. Five consecutive days; or
- 2. Seven days or more in 1 month.

Section 2. Subsections (1) and (5) of section 39.0138, Florida Statutes, are amended to read:

39.0138 Criminal history and other records checks; limit on placement of a child.-

(1) The department shall conduct a records check through the Comprehensive State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other frequent visitors 18 years of age and older to the home. The department shall conduct a name-based check of criminal history records of all visitors to the home. An out-ofstate criminal history records check must be initiated for any person 18 years of age or older who resided in another state if that state allows the release of such records. The department must complete the records check within 14 business days after

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receiving a person's criminal history results, unless additional information is required to complete the processing. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

- (5)(a) If a child has been sheltered pursuant to s. 39.402 and must be placed in out-of-home care in an emergency placement, the department must conduct a name-based check of criminal history records to ascertain if the person with whom placement of the child is being considered and any other adult household members of such person are disqualified. For the purposes of this subsection, the term "emergency placement" refers to when the department is placing a child in the home of private individuals, including neighbors, friends, or relatives, as a result of a sudden removal pursuant to s. 39.402.
- (b) The department may place a child in the $\frac{1}{2}$ home if the person with whom placement of the child is being considered and any other adult household members of such person are not disqualified by the name-based check, but, unless exempt, such persons must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized under s. 943.053(13). Unless exempt, within 7 calendar days after the name-based check, the department, vendor, entity, or agency must submit the fingerprints to the Department of Law Enforcement for state processing. Within 15 calendar days after the name-based check was conducted, the Department of Law Enforcement must forward the fingerprints to the Federal Bureau of Investigation for national processing that otherwise meets placement

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requirements if a name check of state and local criminal history records systems does not disqualify the applicant and if the department submits fingerprints to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the state and national criminal history records check.

(c) The department shall seek a court order to immediately remove the child from the home if the person with whom placement of the child is being considered or any other adult household members of such person fail to provide their fingerprints within 15 calendar days after the name-based check is conducted and such persons are not exempt from a criminal history records check.

Section 3. Paragraph (o) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

- 39.202 Confidentiality of reports and records in cases of child abuse or neglect; exception.-
- (2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:
- (o) Any person in the event of the death of a child determined by the department at the closure of its investigation in accordance with s. 39.301(16) to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect may shall not be released. Any information otherwise made confidential or exempt by law may shall not be released pursuant to this paragraph.

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Section 4. Section 39.5035, Florida Statutes, is created to read:

39.5035 .Deceased parents; special procedures.-

- (1) (a) 1. If both parents of a child are deceased or the last known living parent of a child is deceased and a legal custodian has not been appointed for the child through a probate or guardianship proceeding, then an attorney for the department or any other person who has knowledge of the facts alleged or is informed of the alleged facts, and believes them to be true, may initiate a proceeding by filing a petition for adjudication and permanent commitment.
- 2. If a child has been placed in shelter status by order of the court but has not yet been adjudicated, a petition for adjudication and permanent commitment must be filed within 21 days after the shelter hearing. In all other cases, the petition must be filed within a reasonable time after the date the petitioner first becomes aware of the facts that support the petition for adjudication and permanent commitment.
- (b) If both parents die or the last known living parent dies after a child has already been adjudicated dependent, an attorney for the department or any other person who has knowledge of the facts alleged or is informed of the alleged facts, and believes them to be true, may file a petition for permanent commitment. The petition must be filed within a reasonable time after the petitioner first becomes aware of the facts that support the petition for permanent commitment.
 - (2) The petition must be:
- (a) In writing, identify the alleged deceased parents, and provide facts that establish that both parents of the child are

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deceased or the last known living parent is deceased and that a legal custodian has not been appointed for the child through a probate or quardianship proceeding.

- (b) Signed by the petitioner under oath stating the petitioner's good faith in filing the petition.
- (3) When a petition for adjudication and permanent commitment or a petition for permanent commitment has been filed, the clerk of court must set the case before the court for an adjudicatory hearing. The adjudicatory hearing must be held as soon as practicable after the petition is filed, but no later than 30 days after the filing date.
- (4) Notice of the date, time, and place of the adjudicatory hearing and a copy of the petition must be served on the following persons:
 - (a) Any person who has physical custody of the child.
- (b) A living relative of each parent of the child, unless a living relative cannot be found after a diligent search or inquiry.
- (c) The quardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.
- (5) The court shall conduct adjudicatory hearings without a jury and apply the rules of evidence in use in civil cases, adjourning the hearings as necessary. The court must determine whether the petitioner has established by clear and convincing evidence that both parents of the child are deceased, or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry, and that a legal custodian has not been appointed for the child through a

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probate or guardianship proceeding. A certified copy of the death certificate for each parent is sufficient evidence of the parents' deaths.

- (6) Within 30 days after an adjudicatory hearing on a petition for adjudication and permanent commitment:
- (a) If the court finds that the petitioner has met the clear and convincing standard, the court must enter a written order adjudicating the child dependent and permanently committing the child to the custody of the department for the purpose of adoption. A disposition hearing must be scheduled no later than 30 days after the entry of the order, in which the department must provide a case plan that identifies the permanency goal for the child to the court. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete all steps necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court must hold hearings every 6 months to review the progress being made toward permanency for the child.
- (b) If the court finds that clear and convincing evidence does not establish that both parents of a child are deceased, or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry, and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding, but that a preponderance of the evidence establishes that the child does not have a parent or legal custodian capable of providing supervision or care, the court must enter a written order

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adjudicating the child dependent. A disposition hearing must be scheduled no later than 30 days after the entry of the order as provided in s. 39.521.

- (c) If the court finds that the petitioner has not met the clear and convincing standard and that a preponderance of the evidence does not establish that the child does not have a parent or legal custodian capable of providing supervision or care, the court must enter a written order so finding and dismiss the petition.
- (7) Within 30 days after an adjudicatory hearing on a petition for permanent commitment:
- (a) If the court finds that the petitioner has met the clear and convincing standard, the court must enter a written order permanently committing the child to the custody of the department for purposes of adoption. A disposition hearing must be scheduled no later than 30 days after the entry of the order, in which the department must provide an amended case plan that identifies the permanency goal for the child to the court. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete all steps necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court must hold hearings every 6 months to review the progress being made toward permanency for the child.
- (b) If the court finds that clear and convincing evidence does not establish that both parents of a child are deceased or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry, the

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court must enter a written order denying the petition. The order has no effect on the child's prior adjudication. The order does not bar the petitioner from filing a subsequent petition for permanent commitment based on newly discovered evidence that establishes that both parents of a child are deceased, or that the last known living parent is deceased, and that a legal custodian has not been appointed for the child through a probate or quardianship proceeding.

Section 5. Subsection (7) is added to section 39.522, Florida Statutes, to read:

- 39.522 Postdisposition change of custody.-
- (7) Notwithstanding any other provision of this section, a child's case manager, an authorized agent of the department, or a law enforcement officer may, at any time, remove a child from a court-ordered placement and take the child into custody if the court-ordered caregiver of the child requests immediate removal of the child from the home. Additionally, an authorized agent of the department or a law enforcement officer may, at any time, remove a child from a court-ordered placement and take the child into custody if there is probable cause as required under s. 39.401(1)(b).
- (a) If, at the time of the removal, the child was not placed in licensed care in the department's custody, the department must file a motion to modify placement within 1 business day after the child is taken into custody. The court must then set a hearing within 24 hours after the motion is filed unless all of the parties and the current caregiver agree to the change of placement. At the hearing, the court must determine if the department has established probable cause to

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support the immediate removal of the child from his or her current placement. The court may base its determination on a sworn petition or affidavit or on testimony and may hear all relevant and material evidence, including oral or written reports, to the extent of their probative value, even if such evidence would not be competent evidence at an adjudicatory hearing.

- (b) If the court finds that the department did not establish probable cause to support the removal of the child from his or her current placement, the court must enter an order that the child be returned to such placement. An order by the court to return the child to his or her current placement does not preclude a party from filing a subsequent motion pursuant to subsection (2).
- (c) If the current caregiver admits that a change of placement is needed or the department establishes probable cause to support removal of the child, the court must enter an order changing the placement of the child. The new placement for the child must meet the home study criteria in this chapter if the child is not placed in foster care.
- (d) If the court finds probable cause and modifies the child's placement, the court must conduct a hearing pursuant to subsection (2) or subsection (3), unless such hearing is waived by all parties and the caregiver.
- Section 6. Paragraph (a) of subsection (1) of section 39.6221, Florida Statutes, is amended to read:
 - 39.6221 Permanent quardianship of a dependent child.-
- (1) If a court determines that reunification or adoption is not in the best interest of the child, the court may place the

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child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

(a) The child has been in the placement for not less than the preceding 6 months, or the preceding 3 months if the caregiver has been named as the successor guardian on the child's guardianship assistance agreement.

Section 7. Subsection (9) of section 39.6225, Florida Statutes, is amended to read:

- 39.6225 Guardianship Assistance Program. -
- (9) Guardianship assistance payments may not shall only be made for a young adult unless the young adult's whose permanent quardian entered into a quardianship assistance agreement after the child attained 14 16 years of age but before the child attained 18 years of age and if the child is:
- (a) Completing secondary education or a program leading to an equivalent credential;
- (b) Enrolled in an institution that provides postsecondary or vocational education;
- (c) Participating in a program or activity designed to promote or eliminate barriers to employment;
 - (d) Employed for at least 80 hours per month; or
- (e) Unable to participate in programs or activities listed in paragraphs (a)-(d) full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation. Any such barrier to participation must be supported by documentation in the child's case file or school or medical records of a physical, intellectual, emotional, or psychiatric condition that impairs the child's ability to perform one or



more life activities.

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Section 8. Paragraph (d) of subsection (3) of section 39.801, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection to read:

39.801 Procedures and jurisdiction; notice; service of process.-

- (3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:
- (d) Personal appearance of a person at the advisory hearing as provided in s.39.013(13) obviates the necessity of serving process on that person and the court may proceed with the advisory hearing and any subsequently noticed hearing.

(e) (d) If the person served with notice under this section fails to appear at the advisory hearing, either physically or, by agreement of the parties or at the discretion of the court, through audio-video communication technology, the failure to appear constitutes consent for termination of parental rights by the person given notice. If a parent appears for the advisory hearing and the court orders that parent to appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of the hearing and, if applicable, instructions for appearance through audio-video communication technology, then failure of that parent to appear, either physically or, by agreement of the parties or at the discretion of the court, through audio-video communication technology, at the adjudicatory hearing constitutes consent for termination of parental rights.

Section 9. Subsections (4), (5), and (6) of section 39.812,

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Florida Statutes, are amended to read:

- 39.812 Postdisposition relief; petition for adoption.
- (4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may:
- (a) Review the appropriateness of the adoptive placement of the child if good cause is shown by the guardian ad litem for the child.
- (b) Review the department's denial of an application to adopt a child. The department's decision to deny an application to adopt a child is only reviewable under this section and is not subject to chapter 120.
- 1. If the department denies an application to adopt a child, the department must file written notification of the denial with the court and provide copies to all parties within 10 business days after the department's decision.
- 2. A denied applicant may file a motion to have the court review the department's denial within 30 business days after the issuance of the department's written notification of its decision to deny the application to adopt a child. The motion to review must allege that the department unreasonably denied the application to adopt and request that the court allow the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.

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- 3. A denied applicant only has standing under this chapter to file a motion to review the department's denial and to present evidence in support of such motion. Such standing is terminated upon the entry of the court's order.
- 4. The court shall hold a hearing within 30 business days after the denied applicant files the motion to review. The court may only consider whether the department's denial of the application is consistent with its policies and if the department made such decision in an expeditious manner. The standard of review is whether the department's denial of the application is an abuse of discretion.
- 5. If the department selected a different applicant to adopt the child, the selected applicant may participate in the hearing as a participant, as defined in s. 39.01, and may be granted leave by the court to be heard without the need to file a motion to intervene.
- 6. Within 15 business days after the conclusion of the hearing, the court must enter a written order denying the motion to review or finding that the department unreasonably denied the application to adopt and authorizing the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.
- (5) When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the

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foster home or custodian, except when:

- (a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;
- (b) Thirty business days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed;
- (c) A motion to review the department's denial of an application to adopt a child under paragraph (4)(b) has been denied; or
- (d) (c) The foster parent or custodian agrees to the child's removal.
- (6) The petition for adoption must be filed in the division of the circuit court which entered the judgment terminating parental rights, unless a motion for change of venue is granted pursuant to s. 47.122. A copy of the consent to adopt executed by the department must be attached to the petition, unless such consent is waived under pursuant to s. 63.062(7). The petition must be accompanied by a statement, signed by the prospective adoptive parents, acknowledging receipt of all information required to be disclosed under s. 63.085 and a form provided by the department which details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The prospective adoptive parents may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63.
 - (7) (a) Once a child's adoption is finalized, the

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department or its contracted child-placing agency communitybased care lead agency must make a reasonable effort to contact the adoptive family by telephone 1 year after the date of finalization of the adoption as a postadoption service. For purposes of this subsection, the term "reasonable effort" means the exercise of reasonable diligence and care by the department or its contracted child-placing agency community-based care lead agency to make contact with the adoptive family. At a minimum, the department or its contracted child-placing agency must document the following:

- 1. The number of attempts made by the department or its contracted child-placing agency community-based care lead agency to contact the adoptive family and whether those attempts were successful;
- 2. The types of postadoption services that were requested by the adoptive family and whether those services were provided by the department or its contracted child-placing agency community-based care lead agency; and
- 3. Any feedback received by the department or its contracted child-placing agency community-based care lead agency from the adoptive family relating to the quality or effectiveness of the services provided.
- (b) The contracted child-placing agency community-based care lead agency must report annually to the department on the outcomes achieved and recommendations for improvement under this subsection.

Section 10. Subsection (6) and (7) of section 63.032, Florida Statutes, are renumbered as subsection (7) and (6), respectively, and present subsection (6) of that section is



amended to read:

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63.032 Definitions.—As used in this chapter, the term:

(7) (6) "Child-placing agency" means an any child-placing agency licensed by the department pursuant to s. 63.202 to place minors for adoption.

Section 11. Subsection (7) of section 63.062, Florida Statutes, is amended to read:

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.-

(7) If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required. If the minor has been permanently committed to the department for subsequent adoption, the department must consent to the adoption or the court order finding that the department unreasonably denied the application to adopt entered under s. 39.812(4) must be attached to the petition to adopt, and The consent of the department shall be waived upon a determination by the court that such consent is being unreasonably withheld and if the petitioner shall file has filed with the court a favorable preliminary adoptive home study as required under s. 63.092.

Section 12. Section 63.093, Florida Statutes, is amended to read:

63.093 Adoption of children from the child welfare system.-

(1) Beginning July 1, 2025, the department shall contract with one or more child-placing agencies to provide adoptive services to prospective adoptive parents, complete the adoption processes for children permanently committed to the department,

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and support adoptive families. The department may allow a contracted child-placing agency to subcontract with other entities to provide the duties required in this section.

- (2) (1) The department, through its contracted child-placing agency or community-based care lead agency as defined in s. 409.986(3), or its subcontracted agency, must respond to an initial inquiry from a prospective adoptive parent within 7 business days after receipt of the inquiry. The response must inform the prospective adoptive parent of the adoption process and the requirements for adopting a child from the child welfare system.
- (3) (2) The department, through its contracted child-placing agency or community-based care lead agency, or its subcontracted agency, must refer a prospective adoptive parent who is interested in adopting a child in the custody of the department to a department-approved adoptive parent training program. A prospective adoptive parent must successfully complete the training program, unless the prospective adoptive parent is a licensed foster parent or a relative or nonrelative caregiver who has:
- (a) Attended the training program within the last 5 years;
- (b) Had the child who is available for adoption placed in their home for 6 months or longer and has been determined to understand the challenges and parenting skills needed to successfully parent the child who is available for adoption.
- (4) A prospective adoptive parent must complete an adoption application created by the department.
 - (5) (4) Before a child is placed in an adoptive home, the

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department, through its contracted child-placing agency, community-based care lead agency or its subcontracted agency must complete an adoptive home study of a prospective adoptive parent that includes observation, screening, and evaluation of the child and the prospective adoptive parent. An adoptive home study must be updated every is valid for 12 months after the date on which the study was approved. If the child was placed before the termination of parental rights, the updated placement or licensed home study may serve as the adoption home study. In addition, the department, through its contracted child-placing agency, community-based care lead agency or its subcontracted agency must complete a preparation process, as established by department rule, with the prospective adoptive parent.

(6)(5) At the conclusion of the adoptive home study and preparation process, a decision must shall be made about the prospective adoptive parent's appropriateness to adopt. This decision shall be reflected in the final recommendation included in the adoptive home study. If the recommendation is for approval, the adoptive parent application file must be submitted to the department, through its contracted child-placing agency, community-based care lead agency or its subcontracted agency for approval. The contracted child-placing agency community-based care lead agency or its subcontracted agency must approve or deny the home study within 14 business days after receipt of the recommendation.

(7) The department shall adopt rules to eliminate duplicative practices and delays in the adoption home study process for a member of a uniformed service on active duty seeking to adopt in the state, including, but not limited to,



providing a credit for adoption classes that have been taken in another state which substantially cover the preservice training required under s. 409.175(14)(b).

(8) By November 15 of each year, the department shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of adoptions within the state.

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Notwithstanding subsections (2) and (3) $\frac{(1)}{(1)}$ and $\frac{(2)}{(2)}$, this section does not apply to a child adopted through the process provided in s. 63.082(6).

Section 13. Subsections (6) of section 63.097, Florida Statutes, is renumbered as subsection (7), paragraphs (a) and (c) of subsection (3) are amended, and a new subsection (6) is added to that section, to read:

63.097 Fees.-

- (3) Approval of the court is not required until the total of amounts permitted under subsection (2) exceeds:
 - (a) \$2,500 \$5,000 in legal or other fees;
 - (b) \$800 in court costs; or
- (c) \$2,500 \$5,000 in reasonable and necessary living and medical expenses.
- (6) Excluding reasonable medically necessary expenses, the court may not approve the fees per child specified in this section if the fees exceed the total amount of the federal adoption tax credit for the current tax year.
- (7) Unless otherwise indicated in this section, when an adoption entity uses the services of a licensed child-placing agency, a professional, any other person or agency pursuant to

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s. 63.092, or, if necessary, the department, the person seeking to adopt the child must pay the licensed child-placing agency, professional, other person or agency, or the department an amount equal to the cost of all services performed, including, but not limited to, the cost of conducting the preliminary home study, counseling, and the final home investigation.

Section 14. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 409.1451, Florida Statutes, are amended to read:

- 409.1451 The Road-to-Independence Program. -
- (2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.-
- (a) A young adult is eligible for services and support under this subsection if he or she:
- 1. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 14 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;
- 2. Spent at least 6 months in licensed care before reaching his or her 18th birthday;
- 3. Earned a standard high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent pursuant to s. 1003.435;
- 4. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term "full-time" means 9 credit hours or the vocational school equivalent. A student may enroll part-time if

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he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor;

- 5. Has reached 18 years of age but is not yet 23 years of age;
- 6. Has applied, with assistance from the young adult's caregiver and the community-based lead agency, for any other grants and scholarships for which he or she may qualify;
- 7. Submitted a Free Application for Federal Student Aid which is complete and error free; and
- 8. Signed an agreement to allow the department and the community-based care lead agency access to school records.
 - (3) AFTERCARE SERVICES.-
- (a) 1. Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age and is:
 - a. Not in foster care.
- b. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.
- c. Eligible for the Extended Guardianship Assistance Program under s. 39.6225(9) or the extended adoption assistance program under s. 409.166(4), but is not participating in either program.
- 2. Subject to available funding, aftercare services as specified in subparagraph (b) 8. are also available to a young adult who is between the ages of 18 and 22, is receiving financial assistance under subsection (2), is experiencing an

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emergency situation, and whose resources are insufficient to meet the emergency situation. Such assistance shall be in addition to any amount specified in paragraph (2) (b).

Section 15. Paragraph (d) of subsection (4) of section 409.166, Florida Statutes, is amended to read:

409.166 Children within the child welfare system; adoption assistance program. -

- (4) ADOPTION ASSISTANCE.-
- (d) Effective January 1, 2019, adoption assistance payments may be made for a child whose adoptive parent entered into an initial adoption assistance agreement after the child reached 14 16 years of age but before the child reached 18 years of age. Such payments may be made until the child reaches age 21 if the child is:
- 1. Completing secondary education or a program leading to an equivalent credential;
- 2. Enrolled in an institution that provides postsecondary or vocational education;
- 3. Participating in a program or activity designed to promote or eliminate barriers to employment;
 - 4. Employed for at least 80 hours per month; or
- 5. Unable to participate in programs or activities listed in subparagraphs 1.-4. full time due to a physical, an intellectual, an emotional, or a psychiatric condition that limits participation. Any such barrier to participation must be supported by documentation in the child's case file or school or medical records of a physical, an intellectual, an emotional, or a psychiatric condition that impairs the child's ability to perform one or more life activities.



649 Section 16. Section 409.1662, Florida Statutes, is 650 repealed. Section 17. Section 409.1664, Florida Statutes, is amended 651 652 to read: 653 409.1664 Adoption benefits for qualifying adoptive 654 employees of state agencies, veterans, servicemembers, and law 655 enforcement officers, health care practitioners, and tax 656 collector employees.-657 (1) As used in this section, the term: 658 (a) "Child within the child welfare system" has the same meaning as provided in s. 409.166(2). 659 660 (b) "Health care practitioner" means a person listed in s. 661 456.001(4) who holds an active license from the Department of 662 Health and whose gross income does not exceed \$150,000 per year. 663 (c) (b) "Law enforcement officer" has the same meaning as 664 provided in s. 943.10(1). 665 (d) (c) "Qualifying adoptive employee" means a full-time or 666 part-time employee of a state agency, a charter school established under s. 1002.33, or the Florida Virtual School 667 668 established under s. 1002.37, who is not an independent 669 contractor and who adopts a child within the child welfare 670 system pursuant to chapter 63 on or after July 1, 2015. The term 671 includes instructional personnel, as defined in s. 1012.01, who 672 are employed by the Florida School for the Deaf and the Blind, 673 and includes other-personal-services employees who have been 674 continuously employed full time or part time by a state agency 675 for at least 1 year.

(e) (d) "Servicemember" has the same meaning as in s.

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- (f) (e) "State agency" means a branch, department, or agency of state government for which the Chief Financial Officer processes payroll requisitions, a state university or Florida College System institution as defined in s. 1000.21, a school district unit as defined in s. 1001.30, or a water management district as defined in s. 373.019.
- (g) "Tax collector employee" means an employee of an office of county tax collector in the state.
 - (h) (f) "Veteran" has the same meaning as in s. 1.01(14).
- (2) A qualifying adoptive employee, veteran, law enforcement officer, health care practitioner, tax collector employee, or servicemember who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$25,000 \\$10,000 per such child, subject to applicable taxes. A law enforcement officer who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$25,000 per such child, subject to applicable taxes. A qualifying adoptive employee, veteran, law enforcement officer, health care practitioner, tax collector employee, or servicemember who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of \$10,000 $\frac{$5,000}{}$ per such child, subject to applicable taxes. A law enforcement officer who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary

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benefit in the amount of \$10,000 per each such child, subject applicable taxes. A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the monetary benefit provided in this subsection if such employee was employed by a charter school or the Florida Virtual School when he or she adopted a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. A veteran or servicemember may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2020. A law enforcement officer may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2022. A health care practitioner and tax collector employee may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2024.

- (a) Benefits paid to a qualifying adoptive employee who is a part-time employee must be prorated based on the qualifying adoptive employee's full-time equivalency at the time of applying for the benefits.
- (b) Monetary benefits awarded under this subsection are limited to one award per adopted child within the child welfare system.
- (c) The payment of a lump-sum monetary benefit for adopting a child within the child welfare system under this section is subject to a specific appropriation to the department for such



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- (3) A qualifying adoptive employee must apply to his or her agency head, or to his or her school director in the case of a qualifying adoptive employee of a charter school or the Florida Virtual School, to obtain the monetary benefit provided in subsection (2). A veteran, or servicemember, or tax collector employee must apply to the department to obtain the benefit. A law enforcement officer must apply to the Department of Law Enforcement to obtain the benefit. A health care practitioner must apply to the Department of Health to obtain the benefit. Applications must be on forms approved by the department and must include a certified copy of the final order of adoption naming the applicant as the adoptive parent. Monetary benefits shall be approved on a first-come, first-served basis based upon the date that each fully completed application is received by the department.
- (4) This section does not preclude a qualifying adoptive employee, veteran, servicemember, health care practitioner, tax collector employee, or law enforcement officer from receiving adoption assistance for which he or she may qualify under s. 409.166 or any other statute that provides financial incentives for the adoption of children.
- (5) Parental leave for a qualifying adoptive employee must be provided in accordance with the personnel policies and procedures of his or her employer.
- (6) The department may adopt rules to administer this section. The rules may provide for an application process such as, but not limited to, an open enrollment period during which qualifying adoptive employees, veterans, servicemembers, health

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care practitioners, tax collector employees, or law enforcement officers may apply for monetary benefits under this section.

- (7) The Chief Financial Officer shall disburse a monetary benefit to a qualifying adoptive employee upon the department's submission of a payroll requisition. The Chief Financial Officer shall transfer funds from the department to a state university, a Florida College System institution, a school district unit, a charter school, the Florida Virtual School, or a water management district, as appropriate, to enable payment to the qualifying adoptive employee through the payroll systems as long as funds are available for such purpose.
- (8) To receive an approved monetary benefit under this section, a veteran or servicemember must be registered as a vendor with the state.
- (9) Each state agency shall develop a uniform procedure for informing employees about this benefit and for assisting the department in making eligibility determinations and processing applications. Any procedure adopted by a state agency is valid and enforceable if the procedure does not conflict with the express terms of this section.

Section 18. Subsections (1) through (4) of section 409.167, Florida Statutes, are amended to read:

- 409.167 Statewide adoption exchange; establishment; responsibilities; registration requirements; rules.-
- (1) The Department of Children and Families shall establish, either directly or through purchase, a statewide adoption exchange, with a photo listing component, which serves shall serve all authorized licensed child-placing agencies in the state as a means of recruiting adoptive families for

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children who have been legally freed for adoption and who have been permanently placed with the department or a licensed childplacing agency. The statewide adoption exchange must shall provide, in accordance with rules adopted by the department, descriptions and photographs of such children, as well as any other information deemed useful in the recruitment of adoptive families for each child. The photo listing component of the statewide adoption exchange must be updated monthly and may not be accessible to the public, except to persons who have completed or are in the process of completing an adoption home study.

- (2) (a) Each district of the department shall refer each child in its care who has been legally freed for adoption to the statewide adoption exchange no later than 30 days after the date of acceptance by the department for permanent placement. The referral must be accompanied by a photograph and description of the child.
- (b) The department shall establish criteria by which a district may determine that a child need not be registered with the statewide adoption exchange. Within 30 days after the date of acceptance by the department for permanent placement, the name of the child accepted for permanent placement must be forwarded to the statewide adoption exchange by the district together with reference to the specific reason why the child should not be placed on the statewide adoption exchange. If the child has not been placed for adoption within 3 months after the date of acceptance by the department for permanent placement, the district must shall provide the statewide adoption exchange with the necessary photograph and information for registration

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of the child with the statewide adoption exchange and the child must shall be placed on the statewide adoption exchange. The department shall establish procedures for monitoring the status of children who are not placed on the statewide adoption exchange within 30 days after the date of acceptance by the department for permanent placement.

- (3) In accordance with rules established by the department, the statewide adoption exchange may accept, from licensed childplacing agencies, information pertaining to children meeting the criteria of this section, and to prospective adoptive families, for registration with the statewide adoption exchange.
- (4) For purposes of facilitating family-matching between children and prospective adoptive parents, the statewide adoption exchange must shall provide the photo listing component service to all licensed child-placing agencies and, in accordance with rules adopted established by the department, to all appropriate citizen groups and other organizations and associations interested in children's services. The photo listing component of the statewide adoption exchange may not be accessible to the public, except to persons who have completed or are in the process of completing an adoption home study.

Section 19. Effective July 1, 2025, paragraph (a) of subsection (1) of section 409.988, Florida Statutes, is amended to read:

- 409.988 Community-based care lead agency duties; general provisions.-
 - (1) DUTIES.—A lead agency:
 - (a) 1. Shall serve:
 - a. all children referred as a result of a report of abuse,

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neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred.

b. Children who were adopted from the child welfare system and whose families require postadoption supports.

2. May also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024

======= T I T L E A M E N D M E N T ========= And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to permanency for children; amending s. 39.01, F.S.; defining the term "visitor"; amending s. 39.0138, F.S.; renaming the "State Automated Child Welfare Information System" as the "Comprehensive Child Welfare Information System"; requiring the Department of Children and Families to conduct a criminal history records check of certain frequent

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visitors to a home in which a child is placed; requiring the department to conduct a name-based check of criminal history records of all visitors to such home and certain other persons in specified circumstances; requiring certain persons to submit their fingerprints to the department or other specified entities; requiring the department or such entities to submit such fingerprints to the Department of Law Enforcement for state processing within a specified timeframe; requiring the Department of Law Enforcement to forward such fingerprints to the Federal Bureau of Investigation within a specified timeframe; requiring a child to be immediately removed from a home if certain persons fail to provide their fingerprints and are not otherwise exempt from a criminal history records check; amending s. 39.202, F.S.; authorizing certain information to be provided to any person in the event of the death of a child if the department concludes that the death was a result of abuse, abandonment, or neglect; creating s. 39.5035, F.S.; providing procedures and requirements relating to deceased parents of a dependent child; amending s. 39.522, F.S.; authorizing certain persons to remove a child from a court-ordered placement under certain circumstances; requiring the Department of Children and Families to file a specified motion, and the court to set a hearing, within specified timeframes under certain circumstances; requiring a certain determination by the court to support

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immediate removal of a child; authorizing the court to base its determination on certain evidence; requiring the court to enter certain orders and conduct certain hearings under certain circumstances; amending s. 39.6221, F.S.; revising a requisite condition for placing a child in a permanent quardianship; amending s. 39.6225, F.S.; revising eligibility for payments under the Guardianship Assistance Program; amending s. 39.801, F.S.; providing that service of process is not necessary under certain circumstances; amending s. 39.812, F.S.; authorizing the court to review the Department of Children and Families' denial of an application to adopt a child; requiring the department to file written notification of its denial with the court and provide copies to certain persons within a specified timeframe; authorizing a denied applicant to file a motion to review such denial within a specified timeframe; requiring the court to hold a hearing within a specified timeframe; providing standing to certain persons; authorizing certain persons to participate in the hearing under certain circumstances; requiring the court to enter an order within a specified timeframe; providing an exception to authorize the department to remove a child from his or her foster home or custodian; requiring the department or its contracted child-placing agency to conduct certain postadoption duties; conforming provisions to changes made by the act; amending s. 63.032, F.S.; revising a definition; amending s.

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63.062, F.S.; conforming provisions to changes made by the act; amending s. 63.093, F.S.; requiring the Department of Children and Families to contract with one or more child-placing agencies to provide adoption services; authorizing such agency to subcontract with other entities to provide certain duties; requiring an adoptive home study to be updated every 12 months after the date on which the first study was approved; requiring the department to adopt certain rules; requiring the department to submit an annual report to the Governor and Legislature by a specified date; conforming provisions to changes made by the act; amending s. 63.097, F.S.; revising and prohibiting certain fees; amending s. 409.1451, F.S.; revising the age requirements for receiving postsecondary education services and support; revising the requirements for receiving aftercare services; amending s. 409.166, F.S.; revising the age requirements for receiving adoption assistance; repealing s. 409.1662, F.S., relating to children within the child welfare system and the adoption incentive program; amending s. 409.1664, F.S.; providing definitions; providing certain adoption benefits to health care practitioners and tax collector employees; specifying methods for such persons to apply for such benefits; increasing the amount of monetary adoption benefits certain persons are eligible to receive; conforming provisions to changes made by the act; amending s. 409.167, F.S.; providing requirements for the statewide adoption



exchange and its photo listing component; authorizing
only certain persons to access such photo listing
component; conforming provisions to changes made by
the act; amending s. 409.988, F.S.; revising the
children a community-based care lead agency must
serve; providing effective dates.

Page 35 of 35

FOR CONSIDERATION By the Committee on Children, Families, and Elder Affairs

586-01952A-24 20247034pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 394.464, F.S., which provides an exemption from public records requirements for petitions for voluntary and involuntary admission for mental health treatment, court orders, related records, and personal identifying information regarding persons seeking mental health treatment and services; abrogating the scheduled repeal of the exemption; providing an effective date.

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

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Section 1. Section 394.464, Florida Statutes, is amended to read:

394.464 Court records; confidentiality.-

- (1) All petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under this part are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to any of the following:
 - (a) The petitioner.
 - (b) The petitioner's attorney.
 - (c) The respondent.
 - (d) The respondent's attorney.
- (e) The respondent's guardian or guardian advocate, if applicable.

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586-01952A-24 20247034pb

(f) In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

- (g) The respondent's treating health care practitioner.
- (h) The respondent's health care surrogate or proxy.
- (i) The Department of Children and Families, without charge.
- (j) The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.
- (k) A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the person or entity's need for the information against potential harm to the respondent from the disclosure.
- (2) This section does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.
- (3) The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file.
- (4) A person or entity receiving information pursuant to this section shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- (5) The exemption under this section applies to all documents filed with a court before, on, or after July 1, 2019.
- (6) This section is subject to the Open Government Sunset
 Review Act in accordance with s. 119.15 and shall stand repealed

586-01952A-24 20247034pb on October 2, 2024, unless reviewed and saved from repeal 59 through reenactment by the Legislature. 60 Section 2. This act shall take effect October 1, 2024. 61

Page 3 of 3

The Florida Senate

APPEARANCE RECORD

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January 17, 2024

Meeting Date	- AFF	EARANCE RECOR	7034
Children Families	Senate	Deliver both copies of this form to professional staff conducting the meeting	Bill Number or Topic
Name Barney Bisho			Amendment Barcode (if applicable) 350-510-9922
Address 1454 Vieux C	arre Drive		Barney@BarneyBishop.com
Tallahassee	FL	32308	
City Speaking: For	State Against Inform	zip nation OR Waive Speakii	ng: 🗾 In Support 🔲 Against
I am appearing without compensation or sponsorship.	I am repi	CHECK ONE OF THE FOLLOWING on a registered lobbyist, bresenting: a Smart Justice Alliance	I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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.)

				en, Families, and Elder Affairs
SPB 7034				
For considera	ation by	the Children,	Families, and Eld	der Affairs Committee
OGSR/Information Regarding Persons Seeking Mental Health Treatment and Services				
January 15, 2	2024	REVISED:		
ANALYST 1. Hall			REFERENCE	ACTION Submitted as Committee Bill/Fav
	For considera OGSR/Inform January 15, 2	For consideration by OGSR/Information R January 15, 2024	For consideration by the Children, OGSR/Information Regarding Per January 15, 2024 REVISED:	For consideration by the Children, Families, and Eld OGSR/Information Regarding Persons Seeking Mer January 15, 2024 REVISED:

I. Summary:

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after reenactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Mental Health Act, otherwise known as the Baker Act, provides legal procedures for voluntary and involuntary mental health examination and treatment. A person may be admitted for mental health treatment on a voluntary or involuntary basis. Current law makes all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records filed with or by a court pursuant to a Baker Act confidential and exempt from public record requirements. The information contained in these court files may only be released to certain entities and individuals.

SPB 7034 saves from repeal the public records exemption relating to all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court pursuant to a Baker Act.

The bill takes effect October 1, 2024.

II. Present Situation:

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

² Section 119.15(3), F.S.

¹ Section 119.15, F.S.

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a
 governmental program, which administration would be significantly impaired without the
 exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exemption to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Florida Mental Health Act

The Florida Mental Health Act, otherwise known as the Baker Act (Baker Act) was enacted I 1971 to revise the state's mental health commitment laws.⁵ It provides legal procedures for mental health examination and treatment. It also protects the rights of all individuals examined or treated for mental illness in Florida.⁶ Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.⁷

Voluntary Admissions

The Baker Act allow for the voluntary admission of persons for psychiatric care, but only when the individual is over the age of 18, deemed to be competent, expresses informed consent, and is suitable for treatment.⁸ Any person age 17 or under may be admitted voluntarily if a parent or legal guardian applies for admission and only after a clinical review to verify the minor's willingness to volunteer for treatment under a Baker Act.⁹ If any condition for voluntary admission is not met, then that person shall be extended the due process rights assured under the involuntary provisions of the Baker Act.¹⁰

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 394.451, F.S.

⁶ Section 394.459, F.S.

⁷ Sections 394.4625 and 394.463, F.S.

⁸ Section 394.4625(1)(a), F.S.

⁹ *Id*.

¹⁰ Section 394.4625, F.S.

Involuntary Examinations

An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, the person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary, and either of the following determinations are made:¹¹

- Without care or treatment, the person is likely to suffer from neglect or refuse care for himself or herself; such neglect poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is substantial likelihood that, without care or treatment, the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

The involuntary examination may be initiated in one of three ways: 12

- A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony. The order of the court shall be made a part of the patient's clinical record.
- A law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record.
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating that observations upon which that conclusion is based. The report and certificate shall be made a part of the patient's clinical record.

Involuntary patients must be taken to either a public or private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. ¹³ A receiving facility has up to 72 hours to examine an involuntary patient. ¹⁴ During those 72 hours, the patient must be examined by a physician, a clinical psychologist, or, in certain circumstances, by a psychiatric nurse to determine if the criteria for involuntary services are met. ¹⁵ Within that 72-hour examination period, one of the following must happen: ¹⁶

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;

¹¹ Section 394.463(1), F.S.

¹² Section 394.463(2)(a), F.S.

¹³ Section 394.461, F.S.

¹⁴ Section 394.463(2)(g), F.S.

¹⁵ Section 394.463(2)(f), F.S.

¹⁶ *Id*.

• The patient, unless charged with a crime, must give express and informed consent to be placed and admitted as a voluntary patient; or

• A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.

The receiving facility may not release an involuntary examination patient without the documental approval of a psychiatrist, a clinical psychologist, or in certain circumstances, a psychiatric nurse.¹⁷

Involuntary Inpatient Placements

A court may order a person into involuntary inpatient treatment if it finds that a person has a mental illness and, because of that mental illness, has refused voluntary inpatient treatment, is incapable of surviving alone or with the help of willing and responsible family or friends and, without treatment, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being, or will inflict serious bodily harm on him or herself or others in the near future based on recent behavior. Additionally, the court must find that all available less restrictive treatment alternatives which would offer an opportunity for improvement of their condition are inappropriate.

Involuntary Outpatient Services

Involuntary outpatient placement, also known as assistant outpatient treatment, is a court-ordered, community-based treatment programs for individuals with severe mental illness designed to assist individuals with severe mental illness who have a history of treatment and medication noncompliance but do not require hospitalization.²⁰ A petition for involuntary outpatient services may be filed with a court by the administrator of either a receiving facility or a treatment facility.²¹ There are strict legal requirements for individuals to be ordered into involuntary outpatient placement and only circuit judges have the authority to issue such an order.²²

Public Record Exemption under Review

In 2019, the Legislature made all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court pursuant to the

 $^{^{17}}$ Id

¹⁸ Section 394.467(1), F.S.

¹⁹ Id.

²⁰ Section 394.4655, F.S.

²¹ Section 394.4655(4), F.S.

²² Section 394.4655(2), F.S.

Baker Act confidential and exempt²³ from public record requirements.²⁴ The records may only be released to:²⁵

- The petitioner.
- The petitioner's attorney.
- The respondent.
- The respondent's attorney.
- The respondent's guardian or guardian advocate, if applicable.
- In the case of a minor respondent, the respondent's legal custodian, or guardian advocate.
- The respondent's treating health care practitioner.
- The respondent's health care surrogate or proxy.
- The Department of Children and Families, without charge.
- The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.
- A person or entity authorized to view records upon a court order for good cause.²⁶

The Clerk of the Court is prohibited from publishing any personal identifying information on a court docket or in a publicly accessible file. However, the Clerk of the Court is not prohibited from submitting the protected information to the Department of Law Enforcement for purposes of a criminal histor4y record check relating to the sale of firearms.²⁷

In 2019, the public necessity statement²⁸ stated that:

The mental health of a person, including a minor, is a medical condition, which should be protected from dissemination to the public. A person's mental health is also an immensely private matter. The public stigma associated with a mental health condition may cause persons in need of treatment to avoid seeking treatment and related services if the record of such condition is accessible to the public. Without treatment, a person's condition may worsen, the person may harm himself or herself or others, and the person may become a financial burden on the state. The content of such records or personal identifying information should not be made public merely because they are filed with or by a court or placed on a docket. Making such petitions,

²³ There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designated a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04- 09 (2004).

²⁴ Section 394.464, F.S.

²⁵ Section 394.464(1), F.S.

²⁶ In determining if good cause exists, the court must weigh the person or entity's need for the information against the potential harm to the respondent of disclosure. Section 394.464(1)(k), F.S.

²⁷ Section 394.464(2), F.S.

²⁸ Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personl information which could damage their and their families' reputations.²⁹

Pursuant to the OGSR Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.

During the 2023 interim, House and Senate staff sent a questionnaire to the Clerks of Court as part of its review under the OGSR Act. In total, staff received 42 responses from Clerks' offices. Respondents indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Clerk staff noted that the Florida Supreme Court had incorporated the public record exemption into Rule 2.420 of the Rules of General Practice and Judicial Administration. All respondents recommended the exemption be reenacted as is.

III. Effect of Proposed Changes:

Section 1 of the bill removes the scheduled repeal of the public record exemption, thereby maintaining the public record exemption for all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court pursuant to the Baker Act.

Section 2 of the bill provides an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity

²⁹ Chapter 2019-51, L.O.F.

³⁰ Open Government Sunset Review Questionnaire, Public Records Related to The Baker responses on file with the Children, Families, and Elder Affairs Committee.

³¹ See Rule 2.420(d)(1)(B)(viii), Fla. R. Gen. Prac. & Jud. Admin. (2021).

Page 7 **BILL: SPB 7034**

> justifying the exemption. This bill continues a current public records and public meetings exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records ct

	The purpose of the law is to protect portions of a public postsecondary educational institution's campus emergency response to protect the health and safety of students, faculty, staff, and the public at large. The bill exempts only information relating to a
	public postsecondary educational institution's response to or plan for responding to an accomplish or other public safety crisis or emergency. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.
C.	Trust Funds Restrictions:
	None.
D.	State Tax or Fee Increases:
	None.
E.	Other Constitutional Issues:
	None identified.
Fiscal	I Impact Statement:
A.	Tax/Fee Issues:
	None.
B.	Private Sector Impact:
	None.
C.	Government Sector Impact:
	None.
Techr	nical Deficiencies:
None.	
Relate	ed Issues:

VI. Tecl

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VII. Rela

None.

VIII. **Statutes Affected:**

This bill substantively amends s. 394.464, Florida Statutes.

Additional Information: IX.

A.

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Children, Families, and Elder Affairs

586-01951-24 20247036pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 39.202, F.S., which provides a public records exemption for identifying information of persons reporting child abuse, abandonment, or neglect; abrogating the scheduled repeal of the exemption and the reversion of specified statutory text; providing an effective date.

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

Section 1. Section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect; exception.—

- (1) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section.
- (2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the

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following persons, officials, and agencies:

- (a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Education, or county agencies responsible for carrying out:
 - 1. Child or adult protective investigations;
 - 2. Ongoing child or adult protective services;
 - 3. Early intervention and prevention services;
 - 4. Healthy Start services;
- 5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapters 393 and 394, family day care homes, providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children;
- 6. Employment screening for caregivers in residential group homes and facilities licensed under chapters 393, 394, and 409; or
- 7. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

- (b) Criminal justice agencies of appropriate jurisdiction.
- (c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.
 - (d) The parent or legal custodian of any child who is

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alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 60 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

- (e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 60 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.
- (f) A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.
- (g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.
- (h) Any appropriate official of the department, the Agency for Health Care Administration, or the Agency for Persons with Disabilities who is responsible for:

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1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

- 2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or
- 3. Employing and continuing employment of personnel of the department or the agency.
- (i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and shall not be released in any form.
- (j) The Division of Administrative Hearings for purposes of any administrative challenge.
- (k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the guardian ad litem for the child.
 - (1) Employees or agents of an agency of another state that

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has comparable jurisdiction to the jurisdiction described in paragraph (a).

- (m) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information which specifically identifies persons other than the employee.
- (n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.
- (o) Any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.
- (p) An employee of the local school district who is designated as a liaison between the school district and the department pursuant to an interagency agreement required under s. 39.0016 and the principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the liaison or the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.
- (q) An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.
- (r) Staff of a children's advocacy center that is established and operated under s. 39.3035.

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(s) A physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health professional licensed under chapter 491 engaged in the care or treatment of the child.

- (t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed child-caring agency as defined in s. 39.01(41), an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.
- (3) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse or neglect.
- (4) Notwithstanding any other provision of law, when a child under investigation or supervision of the department or its contracted service providers is determined to be missing, the following shall apply:
- (a) The department may release the following information to the public when it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child:
 - 1. The name of the child and the child's date of birth;
- 2. A physical description of the child, including at a minimum the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child; and
 - 3. A photograph of the child.

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(b) With the concurrence of the law enforcement agency primarily responsible for investigating the incident, the department may release any additional information it believes likely to assist efforts in locating the child or to promote the safety or well-being of the child.

- (c) The law enforcement agency primarily responsible for investigating the incident may release any information received from the department regarding the investigation, if it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child.
- The good faith publication or release of this information by the department, a law enforcement agency, or any recipient of the information as specifically authorized by this subsection shall not subject the person, agency or entity releasing the information to any civil or criminal penalty. This subsection does not authorize the release of the name of the reporter, which may be released only as provided in subsection (5).
- (5) The department may not release the name of, or other identifying information with respect to, any person reporting child abuse, abandonment, or neglect to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the Child Protection Team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person

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made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he or she makes the report, request that the department notify him or her that a child protective investigation occurred as a result of the report. Any person specifically listed in s. 39.201(1) who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation. The department shall mail such a notice to the reporter within 10 days after completing the child protective investigation.

- (6) All records and reports of the Child Protection Team of the Department of Health are confidential and exempt from the provisions of ss. 119.07(1) and 456.057, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, the department, and necessary professionals, in furtherance of the treatment or additional evaluative needs of the child, by order of the court, or to health plan payors, limited to that information used for insurance reimbursement purposes.
- (7) Custodians of records made confidential and exempt under this section must grant access to such records within 7 business days after such records are requested by a legislative committee under s. 11.143, if requested within that timeframe.
- (8) The department shall make and keep reports and records of all cases under this chapter and shall preserve the records pertaining to a child and family until the child who is the subject of the record is 30 years of age, and may then destroy the records. Within 90 days after the child leaves the department's custody, the department shall give a notice to the person having legal custody of the child, or to the young adult

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who was in the department's custody, which specifies how the records may be obtained.

- (9) A person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of s. 39.205. This notice shall be prominently displayed on the first sheet of any documents released pursuant to this section.
- (10) The expansion of the public records exemption under this section to include other identifying information with respect to any person reporting child abuse, abandonment, or neglect is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. If the expansion of the exemption is not saved from repeal, this section shall revert to that in existence on June 30, 2019, except that any other amendments made to this section, other than by this act, are preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text that expire under this subsection.

Section 2. This act shall take effect October 1, 2024.

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 Children, Families, and Elder Affairs					
BILL:	SPB 7036				
INTRODUCER:	For consideration by the Children, Families, and Elder Affairs Committee				
SUBJECT: OGSR/Iden Neglect		tifying Information of Persons Reporting Child Abuse, Abandonment, or			
DATE:	January 18, 2024 REVISED:				
ANALYST 1. Rao		STAFF DIRECTOR Tuszynski		REFERENCE	ACTION Submitted as Committee Bill/Fav

I. Summary:

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports of child abuse, abandonment, or neglect 24 hours a day, seven days a week. Any person who knows or suspects that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare must report such information or suspicion to the hotline. Current law provides a public record exemption for the name of any person reporting child abuse, abandonment, or neglect, as well as other identifying information of such reporter.

SPB 7036 saves from repeal the public record exemption concerning all identifying information of a person —other than a person's name, which is already protected by law—reporting child abuse, abandonment, or neglect.

The bill takes effect October 1, 2024

II. Present Situation:

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It

¹ Section 119.15, F.S.

requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Florida Central Abuse Hotline

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week of known or suspected child abuse, abandonment, or neglect.⁵ Reports may be made to the hotline in writing, through a call to the statewide toll-free number, or through electronic reporting.⁶

Current law requires any person to immediately report to the hotline if the person knows or suspects that a child:⁷

- Has been abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare;
- Is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;
- Has been abused by an adult other than a parent, legal custodian, caregiver or other person responsible for the child's welfare; or
- Is the victim of sexual abuse or juvenile sexual abuse.⁸

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 39.101(1)(a), F.S.

⁶ Sections 39.201(1)(a) and 39.101(1)(a), F.S.

⁷ Sections 39.201(1)(a)1 F.S., and 39.201(1)(a)2., F.S.

⁸ "Juvenile sexual abuse" means any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion. Section 39.01(38), F.S. For definitions of "coercion," "consent," and "equality," see s. 39.01(38), F.S.

Generally, reports from the general public to the hotline may be made anonymously; however, certain reporters must provide their names to the hotline because of their occupation. These occupational categories include:

- Physicians, osteopathic physicians, medical examiners, chiropractic physicians, nurses, hospital personnel engaged in the admission, examination, care, or treatment of persons or any other health care or mental health professional.
- Practitioners who rely solely on spiritual means for healing.
- School teachers or other school officials or personnel.
- Social workers, day care center workers, or other professional child care, foster care, residential, or institutional workers.
- Law enforcement officers.
- Judges.
- Animal control officers. 11

If a reporter provides his or her name, the name is entered into the record of the report but is confidential and exempt from public record requirements and may not be disclosed except as specifically authorized by law.¹²

DCF uses electronic equipment that automatically provides the telephone number or the Internet protocol address from which the report is received. ¹³ This information becomes part of the report but is confidential and exempt from public record requirements. ¹⁴

Failure to report known or suspected child abuse, abandonment, or neglect is a crime.¹⁵ A person who knowingly and willfully fails to make a report of abuse, abandonment, or neglect, or who knowingly and willfully prevents another person from making a report, is guilty of a third-degree felony.¹⁶ Any person who makes a child abuse, abandonment, or neglect report in good faith is immune from criminal or civil liability that might otherwise result from reporting.¹⁷

Child Protective Investigations

Once the hotline receives a report, if the allegations of the report meet the statutory criteria for child abuse, abandonment, or neglect, the report must be accepted as a child protective investigation. ¹⁸ If the allegations meet such criteria, an investigation must be commenced either

⁹ Section 39.201(1)(b)1., F.S.

¹⁰ Section 39.201(1)(b)2., F.S.

¹¹ Id

¹² Sections 39.201(1)(c) and 39.202(1), F.S.

¹³ Section 39.101(3)(b)1. and 2., F.S.

¹⁴ Section 39.101(3)(b)3., F.S.

¹⁵ Section 39.205(1), F.S.

 $^{^{16}}$ A third-degree felony is punishable by up to five years in prison, or a fine of up to \$5,000. See s. 775.082(3)(e) and 775.083(1)(c), F.S.

¹⁷ Section 39.203(1)(a), F.S.

¹⁸ Section 39.201(4)(a), F.S.

immediately or within 24 hours after the report is received, depending on the nature of the allegation. ¹⁹ Such investigations must be performed by DCF or its agent. ²⁰

The child protective investigation assesses the safety and perceived needs of the child and family. It includes a face-to-face interview with the child, other siblings, parents, and other adults in the household, as well as an onsite assessment of the child's residence. Based upon the information received by the hotline, interviews with each family member, and a review of the family's history, the investigator must determine which collateral sources, including neighbors, teachers, friends, and professional sources, are likely to have relevant and reliable information about the child's situation. The investigator interviews the collateral sources and, under DCF operating procedure, must protect their identities to the extent possible when discussing information shared by collateral sources with the child's family.

Confidentiality of Records

Current law provides that all records concerning child abuse, abandonment, or neglect, including hotline reports and all records generated as a result of such reports, are confidential and exempt²⁵ from public record requirements.²⁶ Access to records concerning child abuse, abandonment, or neglect —excluding the name, or other identifying information of the reporter— is granted to:

- Certain employees, authorized agents, or contract providers of DCF, the Department of
 Juvenile Justice, the Department of Health, the Agency for Persons with Disabilities, the
 Agency for Health Care Administration, the Department of Education, and county agencies
 responsible for carrying out specific duties related to these agencies, and agencies with
 comparable jurisdictions in other states.
- Criminal justice agencies and the state attorney of the judicial circuit where the child resides or the alleged abuse or neglect occurred.
- The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child and their attorneys.
- Any person alleged to have caused the abuse, abandonment, or neglect of a child. If that
 person is not a parent, the record will be limited to information about the protective
 investigation and will not include any information about the subsequent dependency
 proceedings.

¹⁹ Section 39.101(2), F.S.

²⁰ Section 39.301(8), F.S.

²¹ Section 39.301(7), F.S.

 $^{^{22}}$ Id

²³ Department of Children and Families Operating Procedure CFOP 170-5, Interviewing Collateral Contacts, (Sept. 20, 2023), https://www.myflfamilies.com/sites/default/files/2023-09/CFOP% 20170-05% 20 Child% 20 Protective% 20 Investigations.pdf (last visited Jan. 9, 2023)

²⁴ *Id*.

²⁵ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See WFTV, Inc. v. Sch. Bd. of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004); State v. Wooten, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); City of Rivera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04- 09 (2004).

²⁶ Section 39.202(1), F.S.

• A court, if access to such records is necessary for the determination of an issue before it, and a grand jury, if access is necessary for its official business.

- Any appropriate official of DCF, the Agency for Health Care Administration, or the Agency
 for Persons with Disabilities who is responsible for administering or supervising the agency's
 program for the prevention, investigation, or treatment of child abuse, abandonment, or
 neglect; for taking administrative action concerning agency employees who are alleged to be
 have committed such acts; or for employing and continuing employment of agency
 personnel.
- Any person authorized by DCF who uses information of child abuse, abandonment, or neglect for research, statistical, or audit purposes. Information identifying the subjects of such records or information must be treated as confidential by the researcher and may not be released in any form.
- The Division of Administrative Hearings for purposes of any administrative challenge.
- An official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect.
- An official of the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law.
- The Guardian ad Litem for the child.
- The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed under s. 447.207, F.S.
- Employees or agents of the Department of Revenue responsible for child support enforcement activities.
- Any person in the event that the death of a child is the result of abuse, abandonment, or neglect.
- An employee of a local school district who is the designated liaison between the school
 district and DCF and the principal of a public school, private school, or charter school where
 the child is a student.
- An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.
- Staff of a children's advocacy center that is established and operated under s. 39.3035, F.S.
- A physician, psychologist, or mental health professional licensed in Florida and engaged in the care or treatment of the child.
- Persons with whom DCF is seeking to place the child or to whom placement has been granted, including foster parents, the designee of a licensed child-caring agency as defined in s. 39.523, an approved relative or nonrelative with whom a child is placed, preadoptive parents, adoptive parents, or an adoptive entity acting on behalf of preadoptive or adoptive parents.

A reporter may, however, provide written consent to release his or her name or other identifying information to these entities.²⁷ A reporter's name or other identifying information may be released without that person's written consent to DCF employees responsible for child protective

²⁷ Section 39.202(5), F.S.

services, the hotline, law enforcement, child protection teams, ²⁸ or the appropriate state attorney. ²⁹

An individual who knowingly or willfully discloses any confidential information contained in the hotline or in the records of any child abuse, abandonment, or neglect case to anyone other than an authorized person commits a second-degree misdemeanor.³⁰

Public Record Exemption under Review

In 2019, the Legislature created the public record exemption for other identifying information (as the name was already protected) with respect to any person reporting child abuse, abandonment, or neglect.³¹ Such information is confidential and exempt³² from public record requirements.³³

The 2019 public necessity statement³⁴ noted that prior to the existence of the public record exemption under review, the statute only protected the name of the reporter.³⁵ The public necessity statement asserted that:

By protecting only the name of the reporter of child abuse, abandonment, or neglect, the identity of the individual may be discerned by other identifying information, thus rendering the protection ineffective. Providing robust protections to reporters of child abuse, abandonment, or neglect improves the mandatory reporting scheme by ensuring that instances of suspected child abuse, abandonment, or neglect are reported to the Department of Children and Families. Therefore, it is necessary that individuals who are considered reporters under the current statutory scheme have their identifying information protected.³⁶

Pursuant to the OGSR Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.³⁷ If the expansion of the exemption to include other identifying information with respect to any person reporting child abuse, abandonment, or neglect is not reenacted by the Legislature, the public record exemption will revert back to protecting only the name of such reporter.³⁸

²⁸ 'Child Protection Team' means a team of professionals established by the Department of Health to receive re ferrals from the protective investigators and protective supervision staff of DCF and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. Child protection teams must provide consultation t o other programs of DCF and other persons regarding child abuse, abandonment, or neglect cases. Section 39.01(12), F.S.

²⁹ Section 39.202(5), F.S.

³⁰ Section 39.205(6), F.S. A second-degree misdemeanor is punishable by up to 60 days imprisonment, or a fine of up to \$500. See ss. 775.082(4)(b) and 775.083(1)(e), F.S.

³¹ Chapter 2019-49, Laws of Fla.., codified as s. 39.202(2) and (5), F.S

³² Supra note 25.

³³ Section 39.202(1), F.S.

³⁴ Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

³⁵ Chapter 2019-49, Laws of Fla.

³⁶ Chapter 2019-49, s. 2, Laws of Fla.

³⁷ Section 39.202(10), F.S.

³⁸ Chapter 2019-49, s. 9, Laws of Fla., codified as s. 39.202(10), F.S

During the 2023 interim, House and Senate staff met with staff from DCF. DCF stated that the agency has not had any issues interpreting or applying the exemption and has not been a party to any litigation regarding the agency's interpretation of the exemption. DCF recommended the exemption be reenacted as is.

III. Effect of Proposed Changes:

Section 1 of the bill removes the scheduled repeal of the exemption, thereby maintaining the public record exemption for certain identifying information of a reporter to the hotline held by an agency.

Section 2 of the bill provides an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records and public meetings exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect portions of a public postsecondary educational institution's campus emergency response to protect the health and safety of students, faculty, staff, and the public at large. The bill exempts only information relating to a public postsecondary educational institution's response to or plan for responding to an act of terrorism or other public safety crisis or emergency. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

BILL: SPB 7036 Page 8 D. State Tax or Fee Increases: None. E. Other Constitutional Issues: None identified. ٧. **Fiscal Impact Statement:** A. Tax/Fee Issues: None. B. Private Sector Impact: None. Government Sector Impact: C. None. VI. **Technical Deficiencies:** None. VII. Related Issues: None. VIII. **Statutes Affected:** This bill substantively amends s. 39.202, Florida Statutes. IX. **Additional Information:** Committee Substitute – Statement of Changes: A. (Summarizing differences between the Committee Substitute and the prior version of the bill.) None.

B. Amendments:

None.

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