

| <b>Tab 1 SB 634 by Rouson (CO-INTRODUCERS) Berman, Perry; (Similar to CS/H 00315) Child Welfare</b>                      |    |   |              |                         |       |          |
|--|----|---|--------------|-------------------------|-------|----------|
| 614880   | D  | S | CF, Rouson   | Delete everything after | 03/29 | 03:56 PM |
| 325640   | AA | S | CF, Rouson   | Delete L.37 - 40:       | 04/01 | 11:03 AM |
| <b>Tab 2 SB 1154 by Berman; (Identical to H 01307) Decedents' Property</b>   |    |   |              |                         |       |          |
| 113228   | A  | S | CF, Berman   | Delete L.61 - 142.      | 03/29 | 03:56 PM |
| <b>Tab 3 CS/SB 1174 by JU, Bean; (Similar to H 00917) Custody of Minor Children by Extended Family</b>                   |    |   |              |                         |       |          |
| <b>Tab 4 SB 1338 by Rodriguez; (Similar to CS/H 01085) Guardianship</b>  |    |   |              |                         |       |          |
| <b>Tab 5 SB 1418 by Powell; Admission to Mental Health Facilities</b>  |    |   |              |                         |       |          |
| 178120   | D  | S | CF, Powell   | Delete everything after | 03/29 | 03:57 PM |
| <b>Tab 6 SB 1622 by Montford; (Similar to CS/H 01249) Public Records/Foster Parent and Foster Parent Applicant Names</b> |    |   |              |                         |       |          |
| 714972   | D  | S | CF, Montford | Delete everything after | 03/29 | 03:57 PM |

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

**CHILDREN, FAMILIES, AND ELDER AFFAIRS**

**Senator Book, Chair**  
**Senator Mayfield, Vice Chair**

**MEETING DATE:** Monday, April 1, 2019

**TIME:** 4:00—6:00 p.m.

**PLACE:** 301 Senate Building

**MEMBERS:** Senator Book, Chair; Senator Mayfield, Vice Chair; Senators Bean, Harrell, Rader, Torres, and Wright

| TAB | BILL NO. and INTRODUCER                                  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION   |
|-----|--|---|--|
| 1   | <b>SB 634</b><br>Rouson<br>(Similar CS/H 315)            | Child Welfare; Citing this act as "Jordan's Law"; requiring the Florida Court Educational Council to establish certain standards for instruction of circuit and county court judges for dependency cases; requiring the Department of Children and Families to notify local law enforcement agencies of certain people involved in a child protective investigation; providing training requirements for the recognition and treatment of head trauma and brain injury in specified children, etc.  | CF      04/01/2019<br>AHS<br>AP                          |
| 2   | <b>SB 1154</b><br>Berman<br>(Identical H 1307)           | Decedents' Property; Abolishing certain common law requirements relating to joint tenancies with right of survivorship and tenancies by the entirety; specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; expanding the list of sales or encumbrances that are voidable by interested persons under certain circumstances; specifying when an attorney or a person related to the attorney is deemed appointed in a trust instrument, etc. | JU      03/18/2019 Favorable<br>CF      04/01/2019<br>RC |
| 3   | <b>CS/SB 1174</b><br>Judiciary / Bean<br>(Similar H 917) | Custody of Minor Children by Extended Family; Providing that a petition for concurrent custody may include certain requests; providing requirements for orders granting concurrent or temporary custody; requiring the court to establish any conditions for the transition of custody of the child to the parent which are in the child's best interest under certain circumstances, etc.  | JU      03/18/2019 Fav/CS<br>CF      04/01/2019<br>RC    |

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Monday, April 1, 2019, 4:00—6:00 p.m.

| TAB | BILL NO. and INTRODUCER                            | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION                               |
|-----|--|--|--|
| 4   | <b>SB 1338</b><br>Rodriguez<br>(Similar CS/H 1085) | Guardianship; Applying provisions relating to the determination of venue in proceedings for the appointment of a guardian to minors; requiring that a court dismiss a petition for determination of incapacity if all members of the examining committee conclude that the person is not incapacitated, unless a certain motion is filed within a specified period, etc.   | JU 03/18/2019 Favorable<br>CF 04/01/2019<br>RC |
| 5   | <b>SB 1418</b><br>Powell<br>(Compare CS/S 838)     | Admission to Mental Health Facilities; Requiring a court to appoint a public guardian for a person who is subject to a petition for involuntary services under certain circumstances; requiring the administrator of a receiving facility to file a petition for voluntary placement within a specified timeframe after a person younger than a specified age is admitted for services or transferred to voluntary status except when specified parties agree in writing that treatment is in the person's best interest, etc. | CF 04/01/2019<br>GO<br>RC                      |
| 6   | <b>SB 1622</b><br>Montford<br>(Similar CS/H 1249)  | Public Records/Foster Parent and Foster Parent Applicant Names; Expanding exemptions from public records requirements to include the names of foster parent applicants and foster parents, and their spouses, minor children, and other adult household members, held by the Department of Children and Families; providing for future legislative review and repeal of the expanded exemptions; providing a statement of public necessity, etc.   | CF 04/01/2019<br>GO<br>RC                      |

| TAB | OFFICE and APPOINTMENT (HOME CITY) | FOR TERM ENDING | COMMITTEE ACTION |
|-----|------------------------------------|-----------------|------------------|
|-----|------------------------------------|-----------------|------------------|

**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

**Secretary of Elderly Affairs**

|   |                               |                      |
|---|-------------------------------|----------------------|
| 7 | Prudom, Richard (Tallahassee) | Pleasure of Governor |
|---|-------------------------------|----------------------|

**Director, Agency for Persons with Disabilities**

|   |                                  |                      |
|---|----------------------------------|----------------------|
| 8 | Palmer, Barbara Jo (Tallahassee) | Pleasure of Governor |
|---|----------------------------------|----------------------|

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Monday, April 1, 2019, 4:00—6:00 p.m.

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| TAB | BILL NO. and INTRODUCER            | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|------------------------------------|--|------------------|
| 9   | Presentation on Suicide Prevention |  |                  |

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 634

INTRODUCER: Senator Rouson and others

SUBJECT: Child Welfare

DATE: March 29, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Preston | Hendon         | CF        | <b>Pre-meeting</b> |
| 2. | _____   | _____          | AHS       | _____              |
| 3. | _____   | _____          | AP        | _____              |

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**I. Summary:**

SB 634 is titled “Jordan’s Law” and makes a number of changes to the laws related to the child welfare system in an attempt to address issues that were identified in the case of Jordan Belliveau, a two-year old boy who was killed by his mother.

The bill creates a process for an exchange of information between the Department of Children and Families (DCF or department) and the Florida Department of Law Enforcement (FDLE) that requires the department to share information on a parent or caregiver who is the subject of a child protective investigation with local law enforcement agencies. If a law enforcement officer has contact with the named parent or caregiver, the officer may notify the department by calling the central abuse hotline and providing information related to the contact. The central abuse hotline is then required to determine if any further action is appropriate.

The bill amends several statutes to require specified child welfare professionals, judges, and law enforcement officers to receive training on the recognition of and response to head trauma and brain injury in a child from birth to 5 years of age.

The bill requires community based care lead agencies to provide intensive family reunification services that combine child welfare and mental health services for families with dependent children under six years of age.

Finally, the bill requires the Agency for Health Care Administration (AHCA or agency) to establish a targeted case management pilot project in the Sixth (Pasco and Pinellas Counties) and Thirteenth (Hillsborough County) Judicial Circuits.

The bill has a significant fiscal impact on the state and has an effective date of July 1, 2019.

## II. Present Situation:

### Jordan Belliveau

Jordan Belliveau, Jr., was murdered by his mother in September 2018 when he was two-years-old. At the time of his death, the family was under court-ordered protective supervision as Jordan, who had been removed from his parent's custody in October 2016, was reunified with his mother, 21-year-old Charisee Stinson, in May 2018. In addition to the open service case, there was also an active child abuse investigation due to on-going domestic violence between his mother and father, 22-year-old Jordan Belliveau, Sr.

Due to lack of communication to the court, lack of communication between the Pinellas County Sheriff's Office and DCF, and lack of evidence provided by Directions for Living, the contacted case management organization for Eckerd Connects, regarding the parent's case plan compliance, on-going family issues that created an unsafe home environment for Jordan were never addressed. Jordan was initially reported missing by his mother in September 2018 and a statewide Amber Alert was issued. His body was found 4 days after his death by law enforcement. His mother was charged with aggravated child abuse and first-degree murder. His mother admitted to killing Jordan by hitting him, which caused the back of his head to hit a wall within the house.

### Special Review of the Case Involving Jordan Belliveau Jr.

#### *Case Summary*

Given the circumstances of the case, former Interim Secretary Rebecca Kapusta immediately initiated a special review to evaluate the circumstances surrounding Jordan's death and to assess the service that had been in place during the course of his 17-month removal episode and continuing upon his reunification with his mother in May 2018. The multidisciplinary team was not only comprised of individuals who specialize in child welfare, but also those with mental health, and domestic violence expertise (both from a treatment and law enforcement perspective) to address the reunification decision and actions that occurred when subsequent concerns were identified.<sup>1</sup>

Jordan's family first came in contact with DCF in October 2016 when a report was made to the hotline alleging Jordan was in an unsafe home environment that included gang violence. Jordan was placed in foster care after his mother was unable to obtain alternative housing. He was subsequently adjudicated dependent on November 1, 2016, and placed in foster care. His parents had a case plan with tasks including finding stable housing and receiving mental health services and counseling.

Throughout Jordan's case, his mother and father were either non-compliant or only partially compliant with their case plans. Nevertheless, due to lack of communication to the court and lack of evidence provided by the case management organization, Directions for Living, regarding

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<sup>1</sup> Department of Children and Families, Special Review of the Case Involving Jordan Belliveau, Jr. (Jan. 11, 2019), available at <http://www.dcf.state.fl.us/newsroom/docs/Belliveau%20Special%20Review%202018-632408.pdf>. (Last visited March 25, 2019).

compliance, Jordan was still eventually reunified with his mother and father. After reunification and while still under judicial supervision, domestic violence continued between the parents, with Jordan's father being arrested for domestic violence against Jordan's mother in July 2018. However, the incident was not immediately reported to the hotline upon arrest, and thus the incident was not reported to the court at a hearing the next day regarding Jordan's reunification.

When the incident was reported to the hotline three weeks later, a child protective investigation was conducted by the Pinellas County Sheriff's Office. However, the investigator determined that Jordan was not currently in danger, and therefore, found there was no need to remove him from the home. Given the on-going and escalating level of violence between the parents, the inability to control the situation in the home, and the risk of harm posed to Jordan should his parent engage in further altercations, an unsafe home environment should have been identified.

However, with no concerns for Jordan's safety raised after the investigation or during subsequent hearings, there was no consideration for an emergency modification of his placement and Jordan's reunification with his father occurred. On August 31, 2018, a case manager visited Jordan's parents to discuss several issues regarding lack of cooperation with the Guardian ad Litem and case plan tasks. The case manager emphasized the continued need for Jordan's parents to participate in services or risk losing custody of Jordan. Less than 24 hours after the visit, Jordan was reported missing by his mother. Four days later his body was found, and his mother admitting to killing Jordan by hitting him in a "moment of frustration" which "in turn caused the back of his head to strike an interior wall of her home."<sup>2</sup>

### ***Findings in the Report***

- The decision to reunify Jordan was driven primarily by the parents' perceived compliance to case plan tasks and not behavioral change. There was a noted inability by all parties involved to recognize and address additional concerns that became evident throughout the life of the case. Instead, case decisions were solely focused on mitigating the environmental reasons Jordan came into care and failed to address the overall family conditions.
- Following reunification, policies and procedures to ensure child safety and well-being were not followed. In addition, Directions for Living case management staff did not take action on the mother's lack of compliance and her failure to participate with the reunification program prior to and following reunification.
- When the new child abuse report was received in August 2018, alleging increased volatility between the parents, present danger was not appropriately assessed and identified. The Pinellas County Sheriff's -child protective investigator's (CPI) assessment was based solely on the fact that the incident wasn't reported to the Florida Abuse Hotline when it initially occurred. The CPI failed to identify the active danger threats occurring within the household that were significant, immediate, and clearly observable. Given the circumstances, a modification of Jordan's placement should have been considered.
- Despite the benefit of co-location, there was a noted lack of communication and collaboration between the Pinellas County Sheriff's Office CPID unit and Directions for Living case management staff in shared cases involving Jordan and his family, especially regarding the August 2018 child abuse investigation.

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<sup>2</sup> *Id.*

- In addition to the lack of communication and collaboration between frontline investigations and case management staff noted above, there was an absence of shared ownership between all entities involved throughout the life of Jordan's case which demonstrates a divided system of care. In addition, the lack of multidisciplinary team approach resulted in an inability to adequately address the identified concerns independent of one another.
- The biopsychosocial assessments failed to consider the history and information provided by the parents and resulted in treatment plans that were ineffective to address behavioral change. Moreover, there was an over-reliance on the findings of the biopsychosocial assessments as to whether focused evaluations were warranted (e.g., substance abuse, mental health, domestic violence, etc.), despite the abundance of information to support such evaluations were necessary.<sup>3</sup>

### ***Conclusion***

The report's findings and conclusion do not indicate that Jordan's death was the result of any shortcomings or loopholes in the law or lack of training related to the identification of brain injury, but rather due to the multiple failures of individuals working with children in the child welfare system to communicate, coordinate and cooperate:

Complex child welfare cases are difficult enough when high caseloads and continual staff turnover plague an agency. However, it is further impacted when those involved in the case (protective investigations, case management, clinical providers, legal, GAL and the judiciary) fail to work together to ensure the best decisions are being made on behalf of the child and their family.

This case highlights the fractured system of care in Circuit 6, Pinellas County, with each of the various parts of the system operating independently of one another, without regard or respect as to the role their part plays in the overall child welfare system. Until the pieces of the local child welfare system are made whole, decision-making will continue to be fragmented and based on isolated views of a multi-faceted situation.<sup>4</sup>

### **Current Training Requirements**

Currently, all case managers, Guardian ad Litem staff and volunteers, dependency court judges, child protective investigators, Children's Legal Services attorneys, and law enforcement officers are required to complete required training for their position. Typically, this is done as preservice and continuing education training. None of the required training includes the recognition of and response to head trauma and brain injury in a child from birth to five years of age.<sup>5</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> For specific training requirements see ss. 25.385, 39.8296, 402.402, 409.988, 943.13 and 943.135, F.S.



## DCF/Law Enforcement Data Systems

### *Florida Safe Families Network*

The Florida Safe Families Network (FSFN) is the department's Statewide Automated Child Welfare Information System. FSFN serves as the statewide electronic case record for all child abuse investigations and case management activities in Florida for the department. It was designed to capture all reports of child maltreatment, investigations, and service history information in a single electronic child welfare record for each child reported, investigated, and served.

### *Florida Crime Information Center*

The Florida Crime Information Center (FCIC), administered by the Florida Department of Law Enforcement, is a state database that houses actionable criminal justice information. When law enforcement comes in contact with an individual, the officer runs the individual's identifying information in FCIC to see if there are any open wants or warrants for their arrest. FDLE's Criminal Justice Information Services (CJIS) is the central repository of criminal history records for the state and provides criminal identification screening to criminal justice and non-criminal justice agencies.<sup>6</sup> The CJIS helps ensure the quality of data available on the FCIC system. Only agencies approved by FDLE can view or enter information in the CJIS.

### *Targeted Case Management*

Case management services are "furnished to assist individuals, eligible under the State plan who reside in a community setting or are transitioning to a community setting, in gaining access to needed medical, social, educational, and other services. Targeted Case Management (TCM) refers to case management for specific Medicaid beneficiary groups or for individuals who reside in state-designated geographic areas. So essentially, at least when used by Medicaid, TCM has to do with providing case management services to specific "target" populations.<sup>7</sup>

Currently, Florida Medicaid covers three types of targeted case management services:

- ***Mental Health Targeted Case Management:*** Recipients must have a mental health diagnosis and require supportive services to attain self-sufficiency. Mental health targeted case management is available statewide to recipients of all ages and is covered under both the fee-for-service and the managed care delivery systems.
- ***Child Health Services Targeted Case Management:*** Children must be ages birth to three years old and be receiving services under the Department of Health Early Steps program. This service is covered in both the fee-for-service and the managed care delivery systems.
- ***Children At-Risk for Abuse and Neglect Targeted Case Management:*** Children must be ages birth to 18 years old, reside in Duval, Hillsborough, Pinellas, Martin, Palm Beach, Broward, or Miami-Dade counties, and be at-risk for abuse and neglect. This service is only

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<sup>6</sup> Florida Department of Law Enforcement, Criminal Justice Information Services, *Available at:* <http://www.fdle.state.fl.us/CJIS/CJIS-Home.aspx> (Last visited Mar. 25, 2019)

<sup>7</sup> Social Solutions, *Targeted Case Management: The Next Revolution in Case Management Services*, *Available at:* <https://www.socialsolutions.com/blog/targeted-case-management-the-next-revolution-in-case-management-services/> (Last visited March 26, 2019).

covered through the fee-for-service delivery system and is provided through children's service councils and local government entities.<sup>8</sup>

The agency contracts with a specialty plan serving the child welfare population. The Child Welfare Specialty Plan has a collaborative partnership with the Community Based Care for Integrated Health, a consortium of community based care lead agencies that partner together to provide innovative services, data exchanges, and technology innovation. The Child Welfare Specialty Plan provides case management through a fully integrated model that includes collaboration and coordination for all Medicaid covered services, primary health and behavioral health providers, and other provider types, and the child welfare system, through multiple communication, coordination, and integration mechanisms.<sup>9</sup>

Due to the prevalence of behavioral health conditions in the child welfare population, the child welfare specialty plan funds nurses and behavioral health clinicians, called community based care coordinators, which are located in each of the community based care agencies. The community based care coordinators bridge care management and care coordination activities and communications between the Child Welfare Specialty Plan, the entire health delivery system, and the community based care/dependency system. The Child Welfare Specialty Plan enrollees have access to a full array of case management programs, such as chronic condition coaching and management, enhanced care coordination for medically complex children, transitional care management, and more.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** provides a short title to the bill. The bill is titled "Jordan's Law" after Jordan Belliveau, a child in Florida's child welfare dependency system, who was murdered by his mother in September 2018 when he was two years old.

**Section 2** amends s. 25.385, F.S., relating to standards for instruction of circuit and county court judges in domestic violence cases, to require the Florida Court Educational Council to establish standards for instruction of circuit and county court judges who have responsibility for dependency cases related to the recognition and treatment of brain injury in a child from birth to 5 years of age. The training is to be provided periodically. Magistrates often hear dependency cases but they are not included in the training requirement.

**Section 3** creates s. 39.0142, F.S., relating to notifying law enforcement of parent or caregiver names, to require the department to enter the name of a parent or caregiver who is the subject of a child protective investigation into the Florida Crime Information Center (FCIC) to notify local law enforcement agencies that this individual is involved in the child welfare system. If a law enforcement officer has contact with the named parent or caregiver, the officer may notify the department by calling the central abuse hotline and providing information related to the contact. The central abuse hotline is then required to determine if any further action is appropriate.

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<sup>8</sup> Agency for Health Care Administration, 2019 Agency Legislative Bill Analysis, SB 634, January 28, 2019.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

The bill also requires the department to remove the name of the parent or caregiver from the FCIC when there is no longer an active investigation or when judicial supervision has ended.

**Section 4** creates s. 39.0143, F.S., relating to training on the recognition and treatment of head trauma and brain injury, to require that training on the recognition and treatment of head trauma and brain injury in a child from birth to 5 years of age include, at a minimum, the prevention, symptoms, risks, and treatment of head trauma or brain injuries. The bill does not specify who is responsible for developing the training.

**Section 5** amends s. 39.8296, F.S., relating to the statewide Guardian ad Litem Office, to require that training for guardians ad litem include information on the prevention, symptoms, risks, and treatment of head trauma or brain injuries in children from birth to 5 years of age.

**Section 6** amends s. 402.402, F.S. relating to child protection and child welfare personnel and attorneys employed by the department, to require that specialized training for all child protective investigators, child protection investigation supervisors, and attorneys handling child welfare cases include information on the prevention, symptoms, risks, and treatment of head trauma or brain injuries in children from birth to 5 years of age. This training requirement applies to these employees in the department and the sheriff's offices that conduct child abuse investigations..

**Section 7** amends s. 409.908, F.S., relating to optional Medicaid services, to require the Agency for Health Care Administration to establish a targeted case management pilot project in the Sixth and Thirteenth Judicial Circuits. Current law limits the number of children who are eligible to receive targeted case management to the number for whom the department has matching General Revenue funds to cover the costs.

**Section 8** amends s. 409.988, F.S., relating to duties of the community-based care lead agencies, to require that all individuals providing care to dependent children employed by the community-based care lead agencies receive training on the recognition and treatment of head trauma and brain injury in a child from birth to 5 years of age.

**Section 9** creates s. 943.17297, F.S., relating to training in the recognition of and response to head trauma and brain injury, to require the Criminal Justice Standards and Training Commission to establish standards, including, but not limited to, the training requirements under s. 39.0143, F.S., for the instruction of law enforcement officers on the recognition and treatment of head trauma and brain injury in a child from birth to 5 years of age. Each law enforcement officer must successfully complete the training as part of the basic recruit training to obtain initial certification or as a part of continuing training or education.

#### **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.

V. **Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

**Florida Department of Children and Families (DCF)**

DCF reports the fiscal impact to the agency as follows:<sup>11</sup>

- **Training** – It will cost an estimated \$35,000 to develop a training on the recognition and treatment of head trauma and brain injury in a child from ages birth to five years. This will include the cost of research, a front-end analysis to further define scope, subject matter experts, and the design and development of materials.
- **Targeted Case Management Pilot** – The cost to implement the pilot is indeterminate but will require additional General Revenue to match the Medicaid funds spent on targeted case management services. Current law limits the number of children who are eligible to receive targeted case-management to the number of children for whom the department has matching General Revenue funds to cover the costs. There will be a General Revenue cost to the department, but it will be based on the number of children that are included in the pilot.
- **Information Sharing With FDLE** – The cost is indeterminate but the requirement of staff to manually enter an estimated 731,986 FCIC submissions, along with implementing a validation process to ensure the information entered in FCIC is correct, will create a significant staffing/workload issue for the department.

**Agency for Health Care Administration (AHCA)**

AHCA has reported the following fiscal impact to the agency:<sup>12</sup>

<sup>11</sup> Florida Department of Children and Families, 2019 Agency Legislative Bill Analysis, SB 634, February 5, 2019.

<sup>12</sup> Agency for Health Care Administration, 2019 Agency Legislative Bill Analysis, SB 634, January 28, 2019.

- There is an estimated fiscal impact in state fiscal year 2019-2020 of \$40.1 million to the Florida Medicaid program, of which \$15,455,906 is General Revenue that will be billed by the Agency to Department of Children and Families as state matching funds. The annual impact to the Medicaid program for future fiscal years is estimated to be \$53.5 million of which \$20,554,390 is General Revenue for state fiscal year 2020-2021.
- The federal portion of the Medicaid expenditures would produce a federal fiscal impact of approximately \$25 million in state fiscal year 2019-2020 (61.47%). This amount will change each year based on the Federal Medical Assistance Percentage.

### **Florida Department of Law Enforcement (FDLE)**

FDLE has reported the following fiscal impact to the agency:<sup>13</sup>

- There will be \$45,000 cost to the technology systems which they will be able to absorb by diverting existing resources. This will necessitate extending timelines for existing agency projects.
- There will be a \$9.955 cost to design, develop and implement the new required training curricula.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

Both DCF and FDLE have raised questions and concerns about section 3 of the bill which requires DCF to notify law enforcement of names of parents or caregivers who is the subject of a protective investigation.

- In order to enter data in the FCIC system, the department would need to reach agreement with FDLE regarding the creation of a new status file type (as used by law enforcement personnel in the notification of active protection orders, sex offender files, pick up orders, etc.). This new status file type would be shared between the department's CCWIS (Comprehensive Child Welfare Information System), an electronic case file of record, and FCIC. This would require approval by FDLE and changes in the existing Department of Children and Families/FDLE Criminal Justice User Agreement. FDLE could require the department to develop a validation process to ensure all records are accurate and current and meet FDLE's standard for "entering agencies" to have staff available within one hour for the enquiring officer. The department is unclear as to whether access to hotline counselors will satisfy this requirement and FDLE may request actual contact with the child protective investigator or case manager assigned to the family.<sup>14</sup>
- FDLE has raised the following questions relating to provisions in the bill:
  - Impacts to FDLE CJIS

<sup>13</sup> Florida Department of Law Enforcement, 2019 FDLE Legislative Bill Analysis, SB 634, February 12, 2019.

<sup>14</sup> Florida Department of Children and Families, 2019 Agency Legislative Bill Analysis, SB 634, February 5, 2019.

- FCIC houses actionable criminal justice information. This proposal represents a shift in FCIC policy to house raw investigative information which has not been vetted and may later be determined to be unfounded.
  - System and training documentation will have to be updated.
  - Law enforcement agencies will have to be trained on new FCIC file.
  - DCF will have to be audited to ensure proper entry and removal of records. Entries will have to meet minimum criteria (name, race, sex, and DOB). Individuals reported to the hotline by first name, nickname, or street name only will not be able to be entered until the minimum criteria have been gathered.<sup>15</sup>
- **Impact on Local Law Enforcement**  
Local law enforcement agencies would have to develop new policy and procedures for notification to DCF when having contact with a person in this file. The bill is unclear as to what constitutes “having contact with” an individual. For example, would a traffic infraction require the officer to check for this data? The bill is also unclear as to whether law enforcement has the authority to detain or delay this individual until notification to DCF can be accomplished.<sup>16</sup>
  - **Additional Considerations**  
DCF is primarily a non-criminal justice entity; the central abuse hotline has a criminal justice designation and has access to query FCIC. Thus it is reasonable to believe this group will be responsible for all entry and removal since they are the only entity with access to FCIC. Their current certification level is “limited access” as they only make inquiries. FDLE will have to invest time in certifying these individuals as “full access” system users so that they can make entries into FCIC.<sup>17</sup>

The Agency for Health Care Administration has raised issues related to section 7 of the bill which requires the agency to establish a targeted case management pilot project in the Sixth and Thirteenth Circuits.

## **VIII. Statutes Affected:**

The bill amends ss. 25.385, 39.8296, 402.402, 409.906, and 409.988 of the Florida Statutes. The bill creates ss. 39.0142, 39.0143, and 943.17297 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.

<sup>15</sup> Florida Department of Law Enforcement, 2019 FDLE Legislative Bill Analysis, SB 634, February 12, 2019.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

B. Amendments:

None.

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

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614880

LEGISLATIVE ACTION

Senate

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House

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The Committee on Children, Families, and Elder Affairs (Rouson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as "Jordan's Law."

Section 2. Section 25.385, Florida Statutes, is amended to  
read:

25.385 Standards for instruction of circuit and county  
court judges ~~in handling domestic violence cases.~~—

(1) The Florida Court Educational Council shall establish





614880

11 standards for instruction of circuit and county court judges who  
12 have responsibility for domestic violence cases, and the council  
13 shall provide such instruction on a periodic and timely basis.

14 ~~(2) As used in this subsection, section:~~

15 ~~(a) the term "domestic violence" has the meaning set forth~~  
16 ~~in s. 741.28.~~

17 ~~(b) "Family or household member" has the meaning set forth~~  
18 ~~in s. 741.28.~~

19 (2) The Florida Court Educational Council shall establish  
20 standards for instruction of circuit and county court judges who  
21 have responsibility for dependency cases regarding the  
22 recognition of and responses to head trauma and brain injury in  
23 a child under 6 years of age. The council shall provide such  
24 instruction on a periodic and timely basis.

25 Section 3. Section 39.0142, Florida Statutes, is created to  
26 read:

27 39.0142 Notifying law enforcement officers of parent or  
28 caregiver names.—The Department of Law Enforcement shall provide  
29 information to a law enforcement officer stating whether a  
30 person is a parent or caregiver who is currently the subject of  
31 a child protective investigation for alleged child abuse,  
32 abandonment, or neglect or is a parent or caregiver of a child  
33 who has been allowed to return to or remain in the home under  
34 judicial supervision after an adjudication of dependency. This  
35 information shall be provided via a Florida Crime Information  
36 Center query into the department's child protection database.

37 (1) All interactions between a law enforcement officer and  
38 a parent or caregiver as described in this section, shall be  
39 reported and details provided by the law enforcement officer to



614880

40 the central abuse hotline immediately after the interaction.

41 (2) The central abuse hotline shall provide any relevant  
42 information to:

43 (a) The child protective investigator, if the parent or  
44 caregiver is the subject of a child protective investigation; or

45 (b) The child's case manager and the attorney representing  
46 the department, if the parent or caregiver has a child under  
47 judicial supervision after an adjudication of dependency.

48 Section 4. Paragraph (b) of subsection (2) of section  
49 39.8296, Florida Statutes, is amended to read:

50 39.8296 Statewide Guardian Ad Litem Office; legislative  
51 findings and intent; creation; appointment of executive  
52 director; duties of office.-

53 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a  
54 Statewide Guardian Ad Litem Office within the Justice  
55 Administrative Commission. The Justice Administrative Commission  
56 shall provide administrative support and service to the office  
57 to the extent requested by the executive director within the  
58 available resources of the commission. The Statewide Guardian Ad  
59 Litem Office shall not be subject to control, supervision, or  
60 direction by the Justice Administrative Commission in the  
61 performance of its duties, but the employees of the office shall  
62 be governed by the classification plan and salary and benefits  
63 plan approved by the Justice Administrative Commission.

64 (b) The Statewide Guardian Ad Litem Office shall, within  
65 available resources, have oversight responsibilities for and  
66 provide technical assistance to all guardian ad litem and  
67 attorney ad litem programs located within the judicial circuits.

68 1. The office shall identify the resources required to



614880

69 implement methods of collecting, reporting, and tracking  
70 reliable and consistent case data.

71 2. The office shall review the current guardian ad litem  
72 programs in Florida and other states.

73 3. The office, in consultation with local guardian ad litem  
74 offices, shall develop statewide performance measures and  
75 standards.

76 4. The office shall develop a guardian ad litem training  
77 program, which shall include, but not be limited to, training on  
78 the recognition of and responses to head trauma and brain injury  
79 in a child under 6 years of age. The office shall establish a  
80 curriculum committee to develop the training program specified  
81 in this subparagraph. The curriculum committee shall include,  
82 but not be limited to, dependency judges, directors of circuit  
83 guardian ad litem programs, active certified guardians ad litem,  
84 a mental health professional who specializes in the treatment of  
85 children, a member of a child advocacy group, a representative  
86 of the Florida Coalition Against Domestic Violence, and a social  
87 worker experienced in working with victims and perpetrators of  
88 child abuse.

89 5. The office shall review the various methods of funding  
90 guardian ad litem programs, shall maximize the use of those  
91 funding sources to the extent possible, and shall review the  
92 kinds of services being provided by circuit guardian ad litem  
93 programs.

94 6. The office shall determine the feasibility or  
95 desirability of new concepts of organization, administration,  
96 financing, or service delivery designed to preserve the civil  
97 and constitutional rights and fulfill other needs of dependent



614880

98 children.

99           7. In an effort to promote normalcy and establish trust  
100 between a court-appointed volunteer guardian ad litem and a  
101 child alleged to be abused, abandoned, or neglected under this  
102 chapter, a guardian ad litem may transport a child. However, a  
103 guardian ad litem volunteer may not be required or directed by  
104 the program or a court to transport a child.

105           8. The office shall submit to the Governor, the President  
106 of the Senate, the Speaker of the House of Representatives, and  
107 the Chief Justice of the Supreme Court an interim report  
108 describing the progress of the office in meeting the goals as  
109 described in this section. The office shall submit to the  
110 Governor, the President of the Senate, the Speaker of the House  
111 of Representatives, and the Chief Justice of the Supreme Court a  
112 proposed plan including alternatives for meeting the state's  
113 guardian ad litem and attorney ad litem needs. This plan may  
114 include recommendations for less than the entire state, may  
115 include a phase-in system, and shall include estimates of the  
116 cost of each of the alternatives. Each year the office shall  
117 provide a status report and provide further recommendations to  
118 address the need for guardian ad litem services and related  
119 issues.

120           Section 5. Subsections (2) and (4) of section 402.402,  
121 Florida Statutes, are amended to read:

122           402.402 Child protection and child welfare personnel;  
123 attorneys employed by the department.—

124           (2) SPECIALIZED TRAINING.—All child protective  
125 investigators and child protective investigation supervisors  
126 employed by the department or a sheriff's office must complete



614880

127 the following specialized training:

128 (a) Training on the recognition of and responses to head  
129 trauma and brain injury in a child under 6 years of age.

130 (b) Training that is either focused on serving a specific  
131 population, including, but not limited to, medically fragile  
132 children, sexually exploited children, children under 3 years of  
133 age, or families with a history of domestic violence, mental  
134 illness, or substance abuse, or focused on performing certain  
135 aspects of child protection practice, including, but not limited  
136 to, investigation techniques and analysis of family dynamics.

137 The specialized training may be used to fulfill continuing  
138 education requirements under s. 402.40(3)(e). Individuals hired  
139 before July 1, 2014, shall complete the specialized training by  
140 June 30, 2016, and individuals hired on or after July 1, 2014,  
141 shall complete the specialized training within 2 years after  
142 hire. An individual may receive specialized training in multiple  
143 areas.

144 (4) ATTORNEYS EMPLOYED BY THE DEPARTMENT TO HANDLE CHILD  
145 WELFARE CASES.—Attorneys hired on or after July 1, 2014, whose  
146 primary responsibility is representing the department in child  
147 welfare cases shall, within the first 6 months of employment,  
148 receive training in all of the following:

149 (a) The dependency court process, including the attorney's  
150 role in preparing and reviewing documents prepared for  
151 dependency court for accuracy and completeness.†

152 (b) Preparing and presenting child welfare cases, including  
153 at least 1 week shadowing an experienced children's legal  
154 services attorney preparing and presenting cases.†

155 (c) Safety assessment, safety decisionmaking tools, and



614880

156 safety plans.~~†~~

157 (d) Developing information presented by investigators and  
158 case managers to support decisionmaking in the best interest of  
159 children.~~†~~and

160 (e) The experiences and techniques of case managers and  
161 investigators, including shadowing an experienced child  
162 protective investigator and an experienced case manager for at  
163 least 8 hours.

164 (f) The recognition of and responses to head trauma and  
165 brain injury in a child under 6 years of age.

166 Section 6. Paragraph (f) of subsection (1) and subsection  
167 (3) of section 409.988, Florida Statutes, are amended to read:

168 409.988 Lead agency duties; general provisions.—

169 (1) DUTIES.—A lead agency:

170 (f) Shall ensure that all individuals providing care for  
171 dependent children receive appropriate training and meet the  
172 minimum employment standards established by the department.

173 Appropriate training shall include, but is not limited to,  
174 training on the recognition of and responses to head trauma and  
175 brain injury in a child under 6 years of age.

176 (3) SERVICES.—A lead agency must provide dependent children  
177 with services that are supported by research or that are  
178 recognized as best practices in the child welfare field. The  
179 agency shall give priority to the use of services that are  
180 evidence-based and trauma-informed and may also provide other  
181 innovative services, including, but not limited to, family-  
182 centered and cognitive-behavioral interventions designed to  
183 mitigate out-of-home placements and intensive family  
184 reunification services that combine child welfare and mental



614880

185 health services for families with dependent children under 6  
186 years of age.

187 Section 7. Subsection (24) is added to section 409.996,  
188 Florida Statutes, to read:

189 409.996 Duties of the Department of Children and Families.-  
190 The department shall contract for the delivery, administration,  
191 or management of care for children in the child protection and  
192 child welfare system. In doing so, the department retains  
193 responsibility for the quality of contracted services and  
194 programs and shall ensure that services are delivered in  
195 accordance with applicable federal and state statutes and  
196 regulations.

197 (24) The department, in collaboration with the lead  
198 agencies serving the judicial circuits selected in paragraph  
199 (a), may create and implement a program to more effectively  
200 provide case management services for dependent children under 6  
201 years of age.

202 (a) The department may select up to three judicial circuits  
203 in which to develop and implement a program under this  
204 subsection. Priority shall be given to a circuit that has a high  
205 removal rate, significant budget deficit, significant case  
206 management turnover rate, and the highest numbers of children in  
207 out-of-home care or a significant increase in the number of  
208 children in out-of-home care over the last 3 fiscal years.

209 (b) The program shall:

210 1. Include caseloads for dependency case managers comprised  
211 solely of children who are under 6 years of age, except as  
212 provided in paragraph (c). The maximum caseload for a case  
213 manager shall be no more than 15 children if possible.



614880

214 2. Include case managers who are trained specifically in:  
215 a. Critical child development for children under 6 years of  
216 age.

217 b. Specific practices of child care for children under 6  
218 years of age.

219 c. The scope of community resources available to children  
220 under 6 years of age.

221 d. Working with a parent or caregiver and assisting him or  
222 her in developing the skills necessary to care for the health,  
223 safety, and well-being of a child under 6 years of age.

224 (c) If a child being served through the program has a  
225 dependent sibling, the sibling may be assigned to the same case  
226 manager as the child being served through the program; however,  
227 each sibling counts toward the case manager's maximum caseload  
228 as provided under paragraph (b).

229 (d) The department shall evaluate the permanency, safety,  
230 and well-being of children being served through the program and  
231 submit a report to the Governor, the President of the Senate,  
232 and the Speaker of the House of Representatives by October 1,  
233 2024, detailing its findings.

234 Section 8. Section 943.17297, Florida Statutes, is created  
235 to read:

236 943.17297 Training in the recognition of and responses to  
237 head trauma and brain injury.—The commission shall establish  
238 standards for the instruction of law enforcement officers in the  
239 subject of recognition of and responses to head trauma and brain  
240 injury in a child from under 6 years of age to aid an officer in  
241 the detection of head trauma and brain injury due to child  
242 abuse. By July 1, 2021, each law enforcement officer must





614880

243 successfully complete the training as part of the basic recruit  
244 training for a law enforcement officer, as required under s.  
245 943.13(9), or as a part of continuing training or education  
246 required under s. 943.135(1).

247 Section 9. This act shall take effect July 1, 2019.

248  
249 ===== T I T L E A M E N D M E N T =====

250 And the title is amended as follows:

251 Delete everything before the enacting clause  
252 and insert:

253 A bill to be entitled  
254 An act relating to child welfare; providing a short  
255 title; amending s. 25.385, F.S.; requiring the Florida  
256 Court Educational Council to establish certain  
257 standards for instruction of circuit and county court  
258 judges for dependency cases; creating s. 39.0142,  
259 F.S.; requiring the Department of Law Enforcement to  
260 provide certain information to law enforcement  
261 officers relating to specified individuals; providing  
262 how such information shall be provided to law  
263 enforcement officers; providing requirements for law  
264 enforcement officers and the central abuse hotline  
265 relating to specified interactions with certain  
266 persons and how to relay details of such interactions;  
267 amending s. 39.8296, F.S.; requiring that the guardian  
268 ad litem training program include training on the  
269 recognition of and responses to head trauma and brain  
270 injury in children younger than a specified age;  
271 amending s. 402.402, F.S.; requiring certain



614880

272 investigators, supervisors, and attorneys to complete  
273 training on the recognition of and responses to head  
274 trauma and brain injury in specified children;  
275 amending s. 409.988, F.S.; requiring lead agencies to  
276 provide certain individuals with training on the  
277 recognition of and responses to head trauma and brain  
278 injury in specified children; authorizing lead  
279 agencies to provide intensive family reunification  
280 services that combine child welfare and mental health  
281 services to certain families; amending s. 409.996,  
282 F.S.; requiring the department and certain lead  
283 agencies to create and implement a program to more  
284 effectively provide case management services to  
285 specified children; providing criteria for selecting  
286 judicial circuits for participation the program;  
287 specifying requirements of the program; requiring the  
288 Department of Children and families to evaluate the  
289 effectiveness of the program and submit a report to  
290 the Legislature and Governor by a specified date;  
291 creating s. 943.17297, F.S.; requiring the Criminal  
292 Justice Standards and Training Commission to  
293 incorporate specified training for law enforcement  
294 officers; requiring law enforcement officers, as of a  
295 specified date, to successfully complete such training  
296 as part of basic recruit training or continuing  
297 training or education; providing an effective date.



325640

LEGISLATIVE ACTION

Senate

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. .  
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House

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The Committee on Children, Families, and Elder Affairs (Rouson) recommended the following:

**Senate Amendment to Amendment (614880)**

Delete lines 37 - 40

and insert:

(1) If a law enforcement officer has an interaction with a parent or caregiver as described in this section and the interaction results in the officer having a concern about a child's health, safety, or well-being, the law enforcement officer shall report the relevant details of the interaction to the central abuse hotline immediately after the interaction even



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11 if the requirements of s. 39.201, relating to reporting of  
12 knowledge or suspicion of abuse, abandonment, or neglect, are  
13 not met.

By Senator Rouson

19-01072A-19

2019634\_\_

1 A bill to be entitled  
 2 An act relating to child welfare; providing a short  
 3 title; amending s. 25.385, F.S.; requiring the Florida  
 4 Court Educational Council to establish certain  
 5 standards for instruction of circuit and county court  
 6 judges for dependency cases; creating s. 39.0142,  
 7 F.S.; requiring the Department of Children and  
 8 Families to notify local law enforcement agencies of  
 9 certain people involved in a child protective  
 10 investigation; authorizing a law enforcement officer  
 11 to call the central abuse hotline in certain  
 12 situations; creating s. 39.0143, F.S.; providing  
 13 training requirements for the recognition and  
 14 treatment of head trauma and brain injury in specified  
 15 children; amending s. 39.8296, F.S.; requiring that  
 16 the guardian ad litem training program include  
 17 training on the recognition and treatment of head  
 18 trauma and brain injury in specified children;  
 19 amending s. 402.402, F.S.; requiring certain entities  
 20 to provide training to certain parties on the  
 21 recognition and treatment of head trauma and brain  
 22 injury in specified children; removing obsolete  
 23 language; amending s. 409.906, F.S.; requiring the  
 24 Agency for Health Care Administration, in consultation  
 25 with the department, to establish a targeted case-  
 26 management pilot project in certain judicial circuits;  
 27 amending s. 409.988, F.S.; authorizing lead agencies  
 28 to provide intensive family reunification services  
 29 that combine child welfare and mental health services

Page 1 of 10

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19-01072A-19

2019634\_\_

30 to certain families; creating s. 943.17297, F.S.;  
 31 requiring the Criminal Justice Standards and Training  
 32 Commission to incorporate training for specified  
 33 purposes; requiring law enforcement officers to  
 34 complete training on the recognition and treatment of  
 35 head trauma and brain injury in specified children for  
 36 certification or continued employment; providing an  
 37 effective date.

38  
 39 Be It Enacted by the Legislature of the State of Florida:

40  
 41 Section 1. This act may be cited as "Jordan's Law."  
 42 Section 2. Section 25.385, Florida Statutes, is amended to  
 43 read:  
 44 25.385 Standards for instruction of circuit and county  
 45 court judges ~~in handling domestic violence cases.~~  
 46 (1) The Florida Court Educational Council shall establish  
 47 standards for instruction of circuit and county court judges who  
 48 have responsibility for domestic violence cases, and the council  
 49 shall provide such instruction on a periodic and timely basis.  
 50 ~~(2) As used in this subsection, section:~~  
 51 ~~(a) the term "domestic violence" has the meaning set forth~~  
 52 ~~in s. 741.28.~~  
 53 ~~(b) "Family or household member" has the meaning set forth~~  
 54 ~~in s. 741.28.~~  
 55 (2) The Florida Court Educational Council shall establish  
 56 standards for instruction of circuit and county court judges who  
 57 have responsibility for dependency cases regarding the  
 58 recognition and treatment of head trauma and brain injury in a

Page 2 of 10

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19-01072A-19

2019634\_\_

59 child from birth to 5 years of age. The council shall provide  
60 such instruction on a periodic and timely basis.

61 Section 3. Section 39.0142, Florida Statutes, is created to  
62 read:

63 39.0142 Notifying law enforcement of parent or caregiver  
64 names.—

65 (1) The department shall enter the name of a parent or  
66 caregiver who is the subject of a child protective investigation  
67 into the Florida Crime Information Center for the purpose of  
68 notifying local law enforcement agencies that there is an active  
69 investigation. If a law enforcement officer has contact with the  
70 named parent or caregiver, the officer may notify the department  
71 by calling the central abuse hotline and providing a synopsis of  
72 the interaction. The central abuse hotline shall determine the  
73 next appropriate action, if any.

74 (2) The department shall remove the name of the parent or  
75 caregiver from the Florida Crime Information Center when there  
76 is no longer an active investigation or when judicial  
77 supervision has ended.

78 Section 4. Section 39.0143, Florida Statutes, is created to  
79 read:

80 39.0143 Training on the recognition and treatment of head  
81 trauma and brain injury.—Training on the recognition and  
82 treatment of head trauma and brain injury in a child from birth  
83 to 5 years of age must include, at a minimum, the prevention,  
84 symptoms, risks, and treatment of head trauma or brain injuries.

85 Section 5. Paragraph (b) of subsection (2) of section  
86 39.8296, Florida Statutes, is amended to read:

87 39.8296 Statewide Guardian Ad Litem Office; legislative

Page 3 of 10

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19-01072A-19

2019634\_\_

88 findings and intent; creation; appointment of executive  
89 director; duties of office.—

90 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a  
91 Statewide Guardian Ad Litem Office within the Justice  
92 Administrative Commission. The Justice Administrative Commission  
93 shall provide administrative support and service to the office  
94 to the extent requested by the executive director within the  
95 available resources of the commission. The Statewide Guardian Ad  
96 Litem Office shall not be subject to control, supervision, or  
97 direction by the Justice Administrative Commission in the  
98 performance of its duties, but the employees of the office shall  
99 be governed by the classification plan and salary and benefits  
100 plan approved by the Justice Administrative Commission.

101 (b) The Statewide Guardian Ad Litem Office shall, within  
102 available resources, have oversight responsibilities for and  
103 provide technical assistance to all guardian ad litem and  
104 attorney ad litem programs located within the judicial circuits.

105 1. The office shall identify the resources required to  
106 implement methods of collecting, reporting, and tracking  
107 reliable and consistent case data.

108 2. The office shall review the current guardian ad litem  
109 programs in Florida and other states.

110 3. The office, in consultation with local guardian ad litem  
111 offices, shall develop statewide performance measures and  
112 standards.

113 4. The office shall develop a guardian ad litem training  
114 program, which must include, but not be limited to, the training  
115 requirements under s. 39.0143. The office shall establish a  
116 curriculum committee to develop the training program specified

Page 4 of 10

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19-01072A-19

2019634\_\_

117 in this subparagraph. The curriculum committee shall include,  
 118 but not be limited to, dependency judges, directors of circuit  
 119 guardian ad litem programs, active certified guardians ad litem,  
 120 a mental health professional who specializes in the treatment of  
 121 children, a member of a child advocacy group, a representative  
 122 of the Florida Coalition Against Domestic Violence, and a social  
 123 worker experienced in working with victims and perpetrators of  
 124 child abuse.

125 5. The office shall review the various methods of funding  
 126 guardian ad litem programs, shall maximize the use of those  
 127 funding sources to the extent possible, and shall review the  
 128 kinds of services being provided by circuit guardian ad litem  
 129 programs.

130 6. The office shall determine the feasibility or  
 131 desirability of new concepts of organization, administration,  
 132 financing, or service delivery designed to preserve the civil  
 133 and constitutional rights and fulfill other needs of dependent  
 134 children.

135 7. In an effort to promote normalcy and establish trust  
 136 between a court-appointed volunteer guardian ad litem and a  
 137 child alleged to be abused, abandoned, or neglected under this  
 138 chapter, a guardian ad litem may transport a child. However, a  
 139 guardian ad litem volunteer may not be required or directed by  
 140 the program or a court to transport a child.

141 8. The office shall submit to the Governor, the President  
 142 of the Senate, the Speaker of the House of Representatives, and  
 143 the Chief Justice of the Supreme Court an interim report  
 144 describing the progress of the office in meeting the goals as  
 145 described in this section. The office shall submit to the

Page 5 of 10

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19-01072A-19

2019634\_\_

146 Governor, the President of the Senate, the Speaker of the House  
 147 of Representatives, and the Chief Justice of the Supreme Court a  
 148 proposed plan including alternatives for meeting the state's  
 149 guardian ad litem and attorney ad litem needs. This plan may  
 150 include recommendations for less than the entire state, may  
 151 include a phase-in system, and shall include estimates of the  
 152 cost of each of the alternatives. Each year the office shall  
 153 provide a status report and provide further recommendations to  
 154 address the need for guardian ad litem services and related  
 155 issues.

156 Section 6. Subsections (2) and (4) of section 402.402,  
 157 Florida Statutes, are amended to read:

158 402.402 Child protection and child welfare personnel;  
 159 attorneys employed by the department.—

160 (2) SPECIALIZED TRAINING.—All child protective  
 161 investigators and child protective investigation supervisors  
 162 employed by the department or a sheriff's office must complete  
 163 the following specialized training:

164 (a) Training that includes the requirements under s.  
 165 39.0143.

166 (b) Training that is either focused on serving a specific  
 167 population, including, but not limited to, medically fragile  
 168 children, sexually exploited children, children under 3 years of  
 169 age, or families with a history of domestic violence, mental  
 170 illness, or substance abuse, or focused on performing certain  
 171 aspects of child protection practice, including, but not limited  
 172 to, investigation techniques and analysis of family dynamics.  
 173 ~~The specialized training may be used to fulfill continuing~~  
 174 ~~education requirements under s. 402.40(3)(e). Individuals hired~~

Page 6 of 10

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19-01072A-19

2019634

175 ~~before July 1, 2014, shall complete the specialized training by~~  
 176 ~~June 30, 2016, and individuals hired on or after July 1, 2014,~~  
 177 shall complete the specialized training required under this  
 178 paragraph within 2 years after hire. The specialized training  
 179 may be used to fulfill continuing education requirements under  
 180 s. 402.40(3)(e). An individual may receive specialized training  
 181 in multiple areas.

182 (4) ATTORNEYS EMPLOYED BY THE DEPARTMENT TO HANDLE CHILD  
 183 WELFARE CASES.—Attorneys hired on or after July 1, 2014, whose  
 184 primary responsibility is representing the department in child  
 185 welfare cases shall, within the first 6 months of employment,  
 186 receive training in all of the following:

187 (a) The dependency court process, including the attorney's  
 188 role in preparing and reviewing documents prepared for  
 189 dependency court for accuracy and completeness.†

190 (b) Preparing and presenting child welfare cases, including  
 191 at least 1 week shadowing an experienced children's legal  
 192 services attorney preparing and presenting cases.†

193 (c) Safety assessment, safety decisionmaking tools, and  
 194 safety plans.†

195 (d) Developing information presented by investigators and  
 196 case managers to support decisionmaking in the best interest of  
 197 children.† ~~and~~

198 (e) The experiences and techniques of case managers and  
 199 investigators, including shadowing an experienced child  
 200 protective investigator and an experienced case manager for at  
 201 least 8 hours.

202 (f) The recognition and treatment of head trauma and brain  
 203 injury in a child from birth to 5 years of age.

19-01072A-19

2019634

204 Section 7. Subsection (24) of section 409.906, Florida  
 205 Statutes, is amended to read:

206 409.906 Optional Medicaid services.—Subject to specific  
 207 appropriations, the agency may make payments for services which  
 208 are optional to the state under Title XIX of the Social Security  
 209 Act and are furnished by Medicaid providers to recipients who  
 210 are determined to be eligible on the dates on which the services  
 211 were provided. Any optional service that is provided shall be  
 212 provided only when medically necessary and in accordance with  
 213 state and federal law. Optional services rendered by providers  
 214 in mobile units to Medicaid recipients may be restricted or  
 215 prohibited by the agency. Nothing in this section shall be  
 216 construed to prevent or limit the agency from adjusting fees,  
 217 reimbursement rates, lengths of stay, number of visits, or  
 218 number of services, or making any other adjustments necessary to  
 219 comply with the availability of moneys and any limitations or  
 220 directions provided for in the General Appropriations Act or  
 221 chapter 216. If necessary to safeguard the state's systems of  
 222 providing services to elderly and disabled persons and subject  
 223 to the notice and review provisions of s. 216.177, the Governor  
 224 may direct the Agency for Health Care Administration to amend  
 225 the Medicaid state plan to delete the optional Medicaid service  
 226 known as "Intermediate Care Facilities for the Developmentally  
 227 Disabled." Optional services may include:

228 (24) CHILD-WELFARE-TARGETED CASE MANAGEMENT.—The Agency for  
 229 Health Care Administration, in consultation with the Department  
 230 of Children and Families, may establish a targeted case-  
 231 management project in those counties identified by the  
 232 Department of Children and Families and for all counties with a



19-01072A-19 2019634\_\_

community-based child welfare project, as authorized under s. 409.987 which have been specifically approved by the department. Beginning October 1, 2019, the Agency for Health Care Administration, in consultation with the Department of Children and Families, shall establish a targeted case-management pilot project in the Sixth and Thirteenth Judicial Circuits. The covered group of individuals who are eligible to receive targeted case management include children who are eligible for Medicaid; who are between the ages of birth through 21; and who are under protective supervision or postplacement supervision, under foster-care supervision, or in shelter care or foster care. The number of individuals who are eligible to receive targeted case management is limited to the number for whom the Department of Children and Families has matching funds to cover the costs. The general revenue funds required to match the funds for services provided by the community-based child welfare projects are limited to funds available for services described under s. 409.990. The Department of Children and Families may transfer the general revenue matching funds as billed by the Agency for Health Care Administration.

Section 8. Paragraph (f) of subsection (1) and subsection (3) of section 409.988, Florida Statutes, are amended to read:

409.988 Lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(f) Shall ensure that all individuals providing care for dependent children receive appropriate training and meet the minimum employment standards established by the department. Appropriate training must include, but is not limited to, the training requirements under s. 39.0143 on the recognition and

19-01072A-19 2019634\_\_

treatment of head trauma and brain injury in a child from birth to 5 years of age.

(3) SERVICES.—A lead agency must provide dependent children with services that are supported by research or that are recognized as best practices in the child welfare field. The agency shall give priority to the use of services that are evidence-based and trauma-informed and may also provide other innovative services, including, but not limited to, family-centered and cognitive-behavioral interventions designed to mitigate out-of-home placements and intensive family reunification services that combine child welfare and mental health services for families with dependent children up to 5 years of age.

Section 9. Section 943.17297, Florida Statutes, is created to read:

943.17297 Basic skills training in the recognition and treatment of head trauma and brain injury.—The commission shall establish standards, including, but not limited to, the training requirements under s. 39.0143, for the instruction of law enforcement officers in the subject of recognition and treatment of head trauma and brain injury in a child from birth to 5 years of age to aid an officer in the detection of head trauma and brain injury due to child abuse. Each law enforcement officer must successfully complete the training as part of the basic recruit training required for a law enforcement officer to obtain initial certification or as a part of continuing training or education required under s. 943.135(1).

Section 10. This act shall take effect July 1, 2019.



# 2019 FDLE LEGISLATIVE BILL ANALYSIS



| <b>BILL INFORMATION</b> |                      |
|-------------------------|----------------------|
| <b>BILL NUMBER:</b>     | SB0634               |
| <b>BILL TITLE:</b>      | <b>Child Welfare</b> |
| <b>BILL SPONSOR:</b>    | Rouson               |
| <b>EFFECTIVE DATE:</b>  | July 1, 2019         |

| <b>COMMITTEES OF REFERENCE</b> |
|--------------------------------|
| 1)                             |
| 2)                             |
| 3)                             |
| 4)                             |
| 5)                             |

| <b>CURRENT COMMITTEE</b> |
|--------------------------|
|                          |

| <b>SIMILAR BILLS</b> |         |
|----------------------|---------|
| <b>BILL NUMBER:</b>  | HB0315  |
| <b>SPONSOR:</b>      | Latvala |

| <b>PREVIOUS LEGISLATION</b> |  |
|-----------------------------|--|
| <b>BILL NUMBER:</b>         |  |
| <b>SPONSOR:</b>             |  |
| <b>YEAR:</b>                |  |
| <b>LAST ACTION:</b>         |  |

| <b>IDENTICAL BILLS</b> |  |
|------------------------|--|
| <b>BILL NUMBER:</b>    |  |
| <b>SPONSOR:</b>        |  |

| <b>Is this bill part of an agency package?</b> |
|--|
| No   |

| <b>BILL ANALYSIS INFORMATION</b> |                                      |
|----------------------------------|--------------------------------------|
| <b>DATE OF ANALYSIS:</b>         | February 12, 2019                    |
| <b>LEAD AGENCY ANALYST:</b>      | Dean Register, Charles Schaeffer     |
| <b>ADDITIONAL ANALYST(S):</b>    | Dwight Floyd, Becky Bezemek          |
| <b>LEGAL ANALYST:</b>            | Jason Jones, Chris Bufano, Joe White |
| <b>FISCAL ANALYST:</b>           | Cynthia Barr, Deshawn Byrd           |

## POLICY ANALYSIS

### **1. EXECUTIVE SUMMARY**

This bill establishes certain standards for instruction of circuit and county court judges in the recognition and treatment of head trauma and brain injury in children five years of age and younger; requires the Department of Children and Families (DCF) to inform local law enforcement agencies of certain people involved in child protective investigation; authorizes law enforcement officer to call central abuse hotline in certain situations; requires certain entities to provide training on recognition and treatment of head trauma and brain injury in specified children; requires AHCA, in consultation with department, to establish targeted case-management pilot project in certain judicial circuits; authorizes lead agencies to provide intensive family reunification services to certain families; and requires law enforcement officers to complete specified training for certification or continued employment.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

In compliance with s. 943.13, F.S., applicants must complete the 770 hour law enforcement basic recruit training program to meet the qualifications for becoming a certified law enforcement officer. Recognition and treatment of head trauma and brain injury due to child abuse is not included as part of the basic training.

In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every four years. The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC or Commission) through the Automated Training Management System (ATMS). The Commission does not offer post-basic training on recognition and treatment of head trauma and brain injury due to child abuse.

DCF's investigative information is contained within a system used primarily by DCF and not accessible to law enforcement in general. There is no authority in s. 943.05, F.S., to house investigative data of this nature in the Florida Crime Information Center (FCIC).

#### **2. EFFECT OF THE BILL:**

Requires CJSTC to incorporate training on recognition and treatment of head trauma and brain injury due to child abuse into the law enforcement basic recruit training program and establish a continued employment training component under s 943.135, F.S. To develop basic and post-basic training curricula to meet the need, staff will conduct curriculum development workshops, incorporate the relevant content into the basic curriculum, and to ensure post-basic training is available, develop a separate course on the topic. Staff will also have to amend the ATMS and follow up with agencies to document completions.

Requires FDLE to create a file in the FCIC to house the identifying information of parents or caregivers who are the subject of a child protective investigation and requires law enforcement agencies to notify the central abuse hotline when there is contact with a subject who appears to be a match to a name indexed within this file. DCF shall enter names from this file when a parent or caregiver becomes the subject of an investigation and remove them when the parent or caregiver is no longer involved in an active investigation or under judicial supervision.

#### **1. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y N**

|   |   |
|---|---|
| If yes, explain:  | CJSTC will have to amend rule 11B-27.00212, F.A.C., Maintenance of Officer Certification, which list continuing education requirements established under s. 943.135(1). |
| What is the expected impact to the agency's core mission? |   |
| Rule(s) impacted (provide references to F.A.C., etc.):    | 11B-27.00212, F.A.C.  |

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

|  |         |
|--|---------|
| List any known proponents and opponents:                       | Unknown |
| Provide a summary of the proponents' and opponents' positions: |         |

**3. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

|                                |  |
|--------------------------------|--|
| If yes, provide a description: |  |
| Date Due:                      |  |
| Bill Section Number:           |  |

**4. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y  N**

|                         |  |
|-------------------------|--|
| Board:                  |  |
| Board Purpose:          |  |
| Who Appointments:       |  |
| Appointee Term:         |  |
| Changes:                |  |
| Bill Section Number(s): |  |

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

|   |         |
|---|---------|
| Revenues:   |         |
| Expenditures:   | Unknown |
| Does the legislation increase local taxes or fees?  |         |
| 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? |         |

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y  N** 

|  |   |
|--|---|
| Revenues:  | None  |
| Expenditures:  | The bill requires CJSTC develop instruction on the recognition and treatment of head trauma and brain injury due to child abuse. It is estimated that the development of the training curricula will cost approximately \$9,955. This is based on current estimates for curriculum development workshops and the cost of additional (OPS) staffing to develop the training. |
| Does the legislation contain a State Government appropriation? | No  |
| If yes, was this appropriated last year?                       |   |

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N** 

|               |  |
|---------------|--|
| Revenues:     |  |
| Expenditures: |  |
| Other:        |  |

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

|   |  |
|---|--|
| Does the bill increase 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****1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y  N** 

|  |  |
|--|--|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | FDLE will absorb the fiscal impact by diverting existing staff/resources to meet the needs of this bill. Reassigning resources to accomplish the goals of this legislation will result in the extension of existing agency project timelines. The current effective date of this bill is upon becoming law, so it is recommended that the effective date be moved to June 30, 2021. The project cost is estimated at \$45,000. |
|--|--|

**FEDERAL IMPACT****1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N** 

|  |  |
|--|--|
| If yes, describe the anticipated impact including any fiscal impact. |  |
|--|--|

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

|  |   |
|--|---|
| Issues/concerns/comments and recommended action: | Given the confidentiality provisions in s. 39.202, F.S., it may be advisable to include a clarification in Section 3 of the bill to specifically authorize FDLE to disseminate the names of a parent or caregiver under child protective investigation to other Florida law enforcement agencies. |
|--|---|

## ADDITIONAL COMMENTS

- This bill would require all officers to receive training on recognition and treatment of head trauma and brain injury due to child abuse either through basic training or continuing education. Staff recommends greater specificity in stating the intent of this bill by deleting lines 277 through 288 and replacing that language with the following:

943.17297 Training in recognition and treatment of head trauma and brain injury due to child abuse.--Each certified law enforcement officer must successfully complete training on recognizing and treating head trauma or brain injury due to child abuse as a part of the basic recruit training of the officer required in s. 943.13(9) or continuing education under s. 943.135(1) before June 30, 2021.

- It is anticipated that the new curriculum will be completed in the fall of 2019. The June 30, 2021 date will allow time for staff to create the training and officers complete it. After June 30, 2021 all current officers will have the training and new recruits will continue to receive it as part of the basic recruit training program.
- To meet the requirements of HB0315, FDLE will need to design, develop and implement new training curricula. We anticipate additional cost in the development of the training curricula as follows:

### BUDGET: Recognition and Treatment of Brain Injury and Head Trauma Due to Child Abuse

| Tasks   | Hours | Cost*              |
|---|-------|--------------------|
| <b>Analysis</b>   |       |                    |
| Identify SMEs   | 40    | \$ 744             |
| Research existing material  | 40    | \$ 744             |
| SME Workshop- Instructional Analysis (5 days)<br>(SME travel, hotel, and per diem for SMEs) | 40    | \$ 744<br>\$ 4,115 |
| <b>Design/Development</b>   |       |                    |
| Develop course content (15 days)  | 120   | \$ 2,232           |
| <b>Review/Revisions</b> (5 days)  | 40    | \$ 744             |
| <b>Implementation</b>   |       |                    |
| Course Edit (2 days)  | 16    | \$ 297             |
| Present to the Criminal Justice Standards and Training Commission for Approval (1 day)      | 8     | \$ 149             |
| Upload course for internet access   | 2     | \$ 37              |
| Notify agencies of new post-basic course available  | 8     | \$ 149             |
|   |       | <b>\$ 9,955</b>    |

\*Includes cost for OPS Research and Training Specialist Salary @ \$18.59 per hour. Not included in this estimate is time and cost for editing and quality control.

### IMPACTS TO FDLE CJIS

- FCIC houses actionable criminal justice information. This proposal represents a shift in FCIC policy to house raw investigative information which has not been vetted and may later be determined to be unfounded.
- System and training documentation will have to be updated.
- Law enforcement agencies will have to be trained on new FCIC file.
- DCF will have to be audited to ensure proper entry and removal of records. Entries will have to meet minimum criteria (name, race, sex, and DOB). Individuals reported to the hotline by first name, nickname, or street name only will not be able to be entered until the minimum criteria have been gathered.

While the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional criminal justice information related bills could rise to the level requiring additional staffing and other resources

### **IMPACTS TO LOCAL LAW ENFORCEMENT**

Develop policy and implement new procedures for notification to DCF when encountering a person in this file. Unclear as to what constitutes an 'encounter' – a traffic ticket? Complainant, victim, or witness to a crime? Does law enforcement have the authority to detain or delay this individual until notification to DCF can be accomplished?

### **OTHER CONSIDERATIONS**

DCF (overall) is a non-criminal justice entity; the central abuse hotline has a criminal justice designation and has access to query FCIC. Thus it is reasonable to believe this group will be responsible for all entry and removal since they are the only entity with access to FCIC. Their current certification level is "limited access" as they only make queries. FDLE will have to invest time in certifying these individuals as "full access" system users so that they can make entries into FCIC.



# 2019 FDLE LEGISLATIVE BILL ANALYSIS



| BILL INFORMATION |                      |
|------------------|----------------------|
| BILL NUMBER:     | SB0634               |
| BILL TITLE:      | <b>Child Welfare</b> |
| BILL SPONSOR:    | Rouson               |
| EFFECTIVE DATE:  | July 1, 2019         |

| COMMITTEES OF REFERENCE |
|-------------------------|
| 1)                      |
| 2)                      |
| 3)                      |
| 4)                      |
| 5)                      |

| CURRENT COMMITTEE |
|-------------------|
|                   |

| SIMILAR BILLS |         |
|---------------|---------|
| BILL NUMBER:  | HB0315  |
| SPONSOR:      | Latvala |

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

| IDENTICAL BILLS |  |
|-----------------|--|
| BILL NUMBER:    |  |
| SPONSOR:        |  |

| Is this bill part of an agency package? |
|---|
| No                                      |

| BILL ANALYSIS INFORMATION |                                      |
|---------------------------|--------------------------------------|
| DATE OF ANALYSIS:         | February 12, 2019                    |
| LEAD AGENCY ANALYST:      | Dean Register, Charles Schaeffer     |
| ADDITIONAL ANALYST(S):    | Dwight Floyd, Becky Bezemek          |
| LEGAL ANALYST:            | Jason Jones, Chris Bufano, Joe White |
| FISCAL ANALYST:           | Cynthia Barr, Deshawn Byrd           |



## POLICY ANALYSIS

### **1. EXECUTIVE SUMMARY**

This bill establishes certain standards for instruction of circuit and county court judges in the recognition and treatment of head trauma and brain injury in children five years of age and younger; requires the Department of Children and Families (DCF) to inform local law enforcement agencies of certain people involved in child protective investigation; authorizes law enforcement officer to call central abuse hotline in certain situations; requires certain entities to provide training on recognition and treatment of head trauma and brain injury in specified children; requires AHCA, in consultation with department, to establish targeted case-management pilot project in certain judicial circuits; authorizes lead agencies to provide intensive family reunification services to certain families; and requires law enforcement officers to complete specified training for certification or continued employment.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

In compliance with s. 943.13, F.S., applicants must complete the 770 hour law enforcement basic recruit training program to meet the qualifications for becoming a certified law enforcement officer. Recognition and treatment of head trauma and brain injury due to child abuse is not included as part of the basic training.

In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every four years. The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC or Commission) through the Automated Training Management System (ATMS). The Commission does not offer post-basic training on recognition and treatment of head trauma and brain injury due to child abuse.

DCF's investigative information is contained within a system used primarily by DCF and not accessible to law enforcement in general. There is no authority in s. 943.05, F.S., to house investigative data of this nature in the Florida Crime Information Center (FCIC).

#### **2. EFFECT OF THE BILL:**

Requires CJSTC to incorporate training on recognition and treatment of head trauma and brain injury due to child abuse into the law enforcement basic recruit training program and establish a continued employment training component under s 943.135, F.S. To develop basic and post-basic training curricula to meet the need, staff will conduct curriculum development workshops, incorporate the relevant content into the basic curriculum, and to ensure post-basic training is available, develop a separate course on the topic. Staff will also have to amend the ATMS and follow up with agencies to document completions.

Requires FDLE to create a file in the FCIC to house the identifying information of parents or caregivers who are the subject of a child protective investigation and requires law enforcement agencies to notify the central abuse hotline when there is contact with a subject who appears to be a match to a name indexed within this file. DCF shall enter names from this file when a parent or caregiver becomes the subject of an investigation and remove them when the parent or caregiver is no longer involved in an active investigation or under judicial supervision.

#### **1. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y N**

|   |   |
|---|---|
| If yes, explain:  | CJSTC will have to amend rule 11B-27.00212, F.A.C., Maintenance of Officer Certification, which list continuing education requirements established under s. 943.135(1). |
| What is the expected impact to the agency's core mission? |   |
| Rule(s) impacted (provide references to F.A.C., etc.):    | 11B-27.00212, F.A.C.  |

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

|  |         |
|--|---------|
| List any known proponents and opponents:                       | Unknown |
| Provide a summary of the proponents' and opponents' positions: |         |

**3. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

|                                |  |
|--------------------------------|--|
| If yes, provide a description: |  |
| Date Due:                      |  |
| Bill Section Number:           |  |

**4. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y  N**

|                         |  |
|-------------------------|--|
| Board:                  |  |
| Board Purpose:          |  |
| Who Appointments:       |  |
| Appointee Term:         |  |
| Changes:                |  |
| Bill Section Number(s): |  |

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

|   |         |
|---|---------|
| Revenues:   |         |
| Expenditures:   | Unknown |
| Does the legislation increase local taxes or fees?  |         |
| 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? |         |

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y  N** 

|  |   |
|--|---|
| Revenues:  | None  |
| Expenditures:  | The bill requires CJSTC develop instruction on the recognition and treatment of head trauma and brain injury due to child abuse. It is estimated that the development of the training curricula will cost approximately \$9,955. This is based on current estimates for curriculum development workshops and the cost of additional (OPS) staffing to develop the training. |
| Does the legislation contain a State Government appropriation? | No  |
| If yes, was this appropriated last year?                       |   |

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N** 

|               |  |
|---------------|--|
| Revenues:     |  |
| Expenditures: |  |
| Other:        |  |

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

|   |  |
|---|--|
| Does the bill increase 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****1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y  N** 

|  |  |
|--|--|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | FDLE will absorb the fiscal impact by diverting existing staff/resources to meet the needs of this bill. Reassigning resources to accomplish the goals of this legislation will result in the extension of existing agency project timelines. The current effective date of this bill is upon becoming law, so it is recommended that the effective date be moved to June 30, 2021. The project cost is estimated at \$45,000. |
|--|--|

**FEDERAL IMPACT****1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N** 

|  |  |
|--|--|
| If yes, describe the anticipated impact including any fiscal impact. |  |
|--|--|

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

|  |   |
|--|---|
| Issues/concerns/comments and recommended action: | Given the confidentiality provisions in s. 39.202, F.S., it may be advisable to include a clarification in Section 3 of the bill to specifically authorize FDLE to disseminate the names of a parent or caregiver under child protective investigation to other Florida law enforcement agencies. |
|--|---|

## ADDITIONAL COMMENTS

- This bill would require all officers to receive training on recognition and treatment of head trauma and brain injury due to child abuse either through basic training or continuing education. Staff recommends greater specificity in stating the intent of this bill by deleting lines 277 through 288 and replacing that language with the following:

943.17297 Training in recognition and treatment of head trauma and brain injury due to child abuse.--Each certified law enforcement officer must successfully complete training on recognizing and treating head trauma or brain injury due to child abuse as a part of the basic recruit training of the officer required in s. 943.13(9) or continuing education under s. 943.135(1) before June 30, 2021.

- It is anticipated that the new curriculum will be completed in the fall of 2019. The June 30, 2021 date will allow time for staff to create the training and officers complete it. After June 30, 2021 all current officers will have the training and new recruits will continue to receive it as part of the basic recruit training program.
- To meet the requirements of HB0315, FDLE will need to design, develop and implement new training curricula. We anticipate additional cost in the development of the training curricula as follows:

### BUDGET: Recognition and Treatment of Brain Injury and Head Trauma Due to Child Abuse

| Tasks   | Hours | Cost*              |
|---|-------|--------------------|
| <b>Analysis</b>   |       |                    |
| Identify SMEs   | 40    | \$ 744             |
| Research existing material  | 40    | \$ 744             |
| SME Workshop- Instructional Analysis (5 days)<br>(SME travel, hotel, and per diem for SMEs) | 40    | \$ 744<br>\$ 4,115 |
| <b>Design/Development</b>   |       |                    |
| Develop course content (15 days)  | 120   | \$ 2,232           |
| <b>Review/Revisions</b> (5 days)  | 40    | \$ 744             |
| <b>Implementation</b>   |       |                    |
| Course Edit (2 days)  | 16    | \$ 297             |
| Present to the Criminal Justice Standards and Training Commission for Approval (1 day)      | 8     | \$ 149             |
| Upload course for internet access   | 2     | \$ 37              |
| Notify agencies of new post-basic course available  | 8     | \$ 149             |
|   |       | <b>\$ 9,955</b>    |

\*Includes cost for OPS Research and Training Specialist Salary @ \$18.59 per hour. Not included in this estimate is time and cost for editing and quality control.

### IMPACTS TO FDLE CJIS

- FCIC houses actionable criminal justice information. This proposal represents a shift in FCIC policy to house raw investigative information which has not been vetted and may later be determined to be unfounded.
- System and training documentation will have to be updated.
- Law enforcement agencies will have to be trained on new FCIC file.
- DCF will have to be audited to ensure proper entry and removal of records. Entries will have to meet minimum criteria (name, race, sex, and DOB). Individuals reported to the hotline by first name, nickname, or street name only will not be able to be entered until the minimum criteria have been gathered.

While the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional criminal justice information related bills could rise to the level requiring additional staffing and other resources

### **IMPACTS TO LOCAL LAW ENFORCEMENT**

Develop policy and implement new procedures for notification to DCF when encountering a person in this file. Unclear as to what constitutes an 'encounter' – a traffic ticket? Complainant, victim, or witness to a crime? Does law enforcement have the authority to detain or delay this individual until notification to DCF can be accomplished?

### **OTHER CONSIDERATIONS**

DCF (overall) is a non-criminal justice entity; the central abuse hotline has a criminal justice designation and has access to query FCIC. Thus it is reasonable to believe this group will be responsible for all entry and removal since they are the only entity with access to FCIC. Their current certification level is "limited access" as they only make queries. FDLE will have to invest time in certifying these individuals as "full access" system users so that they can make entries into FCIC.



# 2019 FDLE LEGISLATIVE BILL ANALYSIS



| BILL INFORMATION |                      |
|------------------|----------------------|
| BILL NUMBER:     | SB0634               |
| BILL TITLE:      | <b>Child Welfare</b> |
| BILL SPONSOR:    | Rouson               |
| EFFECTIVE DATE:  | July 1, 2019         |

| COMMITTEES OF REFERENCE |
|-------------------------|
| 1)                      |
| 2)                      |
| 3)                      |
| 4)                      |
| 5)                      |

| CURRENT COMMITTEE |
|-------------------|
|                   |

| SIMILAR BILLS |         |
|---------------|---------|
| BILL NUMBER:  | HB0315  |
| SPONSOR:      | Latvala |

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

| IDENTICAL BILLS |  |
|-----------------|--|
| BILL NUMBER:    |  |
| SPONSOR:        |  |

| Is this bill part of an agency package? |
|---|
| No                                      |

| BILL ANALYSIS INFORMATION |                                      |
|---------------------------|--------------------------------------|
| DATE OF ANALYSIS:         | February 12, 2019                    |
| LEAD AGENCY ANALYST:      | Dean Register, Charles Schaeffer     |
| ADDITIONAL ANALYST(S):    | Dwight Floyd, Becky Bezemek          |
| LEGAL ANALYST:            | Jason Jones, Chris Bufano, Joe White |
| FISCAL ANALYST:           | Cynthia Barr, Deshawn Byrd           |

## POLICY ANALYSIS

### **1. EXECUTIVE SUMMARY**

This bill establishes certain standards for instruction of circuit and county court judges in the recognition and treatment of head trauma and brain injury in children five years of age and younger; requires the Department of Children and Families (DCF) to inform local law enforcement agencies of certain people involved in child protective investigation; authorizes law enforcement officer to call central abuse hotline in certain situations; requires certain entities to provide training on recognition and treatment of head trauma and brain injury in specified children; requires AHCA, in consultation with department, to establish targeted case-management pilot project in certain judicial circuits; authorizes lead agencies to provide intensive family reunification services to certain families; and requires law enforcement officers to complete specified training for certification or continued employment.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

In compliance with s. 943.13, F.S., applicants must complete the 770 hour law enforcement basic recruit training program to meet the qualifications for becoming a certified law enforcement officer. Recognition and treatment of head trauma and brain injury due to child abuse is not included as part of the basic training.

In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every four years. The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC or Commission) through the Automated Training Management System (ATMS). The Commission does not offer post-basic training on recognition and treatment of head trauma and brain injury due to child abuse.

DCF's investigative information is contained within a system used primarily by DCF and not accessible to law enforcement in general. There is no authority in s. 943.05, F.S., to house investigative data of this nature in the Florida Crime Information Center (FCIC).

#### **2. EFFECT OF THE BILL:**

Requires CJSTC to incorporate training on recognition and treatment of head trauma and brain injury due to child abuse into the law enforcement basic recruit training program and establish a continued employment training component under s 943.135, F.S. To develop basic and post-basic training curricula to meet the need, staff will conduct curriculum development workshops, incorporate the relevant content into the basic curriculum, and to ensure post-basic training is available, develop a separate course on the topic. Staff will also have to amend the ATMS and follow up with agencies to document completions.

Requires FDLE to create a file in the FCIC to house the identifying information of parents or caregivers who are the subject of a child protective investigation and requires law enforcement agencies to notify the central abuse hotline when there is contact with a subject who appears to be a match to a name indexed within this file. DCF shall enter names from this file when a parent or caregiver becomes the subject of an investigation and remove them when the parent or caregiver is no longer involved in an active investigation or under judicial supervision.

#### **1. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y N**

|   |   |
|---|---|
| If yes, explain:  | CJSTC will have to amend rule 11B-27.00212, F.A.C., Maintenance of Officer Certification, which list continuing education requirements established under s. 943.135(1). |
| What is the expected impact to the agency's core mission? |   |
| Rule(s) impacted (provide references to F.A.C., etc.):    | 11B-27.00212, F.A.C.  |

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

|  |         |
|--|---------|
| List any known proponents and opponents:                       | Unknown |
| Provide a summary of the proponents' and opponents' positions: |         |

**3. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

|                                |  |
|--------------------------------|--|
| If yes, provide a description: |  |
| Date Due:                      |  |
| Bill Section Number:           |  |

**4. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y  N**

|                         |  |
|-------------------------|--|
| Board:                  |  |
| Board Purpose:          |  |
| Who Appointments:       |  |
| Appointee Term:         |  |
| Changes:                |  |
| Bill Section Number(s): |  |

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

|   |         |
|---|---------|
| Revenues:   |         |
| Expenditures:   | Unknown |
| Does the legislation increase local taxes or fees?  |         |
| 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? |         |



**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y  N** 

|  |   |
|--|---|
| Revenues:  | None  |
| Expenditures:  | The bill requires CJSTC develop instruction on the recognition and treatment of head trauma and brain injury due to child abuse. It is estimated that the development of the training curricula will cost approximately \$9,955. This is based on current estimates for curriculum development workshops and the cost of additional (OPS) staffing to develop the training. |
| Does the legislation contain a State Government appropriation? | No  |
| If yes, was this appropriated last year?                       |   |

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N** 

|               |  |
|---------------|--|
| Revenues:     |  |
| Expenditures: |  |
| Other:        |  |

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

|   |  |
|---|--|
| Does the bill increase 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****1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y  N** 

|  |  |
|--|--|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | FDLE will absorb the fiscal impact by diverting existing staff/resources to meet the needs of this bill. Reassigning resources to accomplish the goals of this legislation will result in the extension of existing agency project timelines. The current effective date of this bill is upon becoming law, so it is recommended that the effective date be moved to June 30, 2021. The project cost is estimated at \$45,000. |
|--|--|

**FEDERAL IMPACT****1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N** 

|  |  |
|--|--|
| If yes, describe the anticipated impact including any fiscal impact. |  |
|--|--|

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

|  |   |
|--|---|
| Issues/concerns/comments and recommended action: | Given the confidentiality provisions in s. 39.202, F.S., it may be advisable to include a clarification in Section 3 of the bill to specifically authorize FDLE to disseminate the names of a parent or caregiver under child protective investigation to other Florida law enforcement agencies. |
|--|---|

## ADDITIONAL COMMENTS

- This bill would require all officers to receive training on recognition and treatment of head trauma and brain injury due to child abuse either through basic training or continuing education. Staff recommends greater specificity in stating the intent of this bill by deleting lines 277 through 288 and replacing that language with the following:

943.17297 Training in recognition and treatment of head trauma and brain injury due to child abuse.--Each certified law enforcement officer must successfully complete training on recognizing and treating head trauma or brain injury due to child abuse as a part of the basic recruit training of the officer required in s. 943.13(9) or continuing education under s. 943.135(1) before June 30, 2021.

- It is anticipated that the new curriculum will be completed in the fall of 2019. The June 30, 2021 date will allow time for staff to create the training and officers complete it. After June 30, 2021 all current officers will have the training and new recruits will continue to receive it as part of the basic recruit training program.
- To meet the requirements of HB0315, FDLE will need to design, develop and implement new training curricula. We anticipate additional cost in the development of the training curricula as follows:

### BUDGET: Recognition and Treatment of Brain Injury and Head Trauma Due to Child Abuse

| Tasks   | Hours | Cost*              |
|---|-------|--------------------|
| <b>Analysis</b>   |       |                    |
| Identify SMEs   | 40    | \$ 744             |
| Research existing material  | 40    | \$ 744             |
| SME Workshop- Instructional Analysis (5 days)<br>(SME travel, hotel, and per diem for SMEs) | 40    | \$ 744<br>\$ 4,115 |
| <b>Design/Development</b>   |       |                    |
| Develop course content (15 days)  | 120   | \$ 2,232           |
| <b>Review/Revisions</b> (5 days)  | 40    | \$ 744             |
| <b>Implementation</b>   |       |                    |
| Course Edit (2 days)  | 16    | \$ 297             |
| Present to the Criminal Justice Standards and Training Commission for Approval (1 day)      | 8     | \$ 149             |
| Upload course for internet access   | 2     | \$ 37              |
| Notify agencies of new post-basic course available  | 8     | \$ 149             |
|   |       | <b>\$ 9,955</b>    |

\*Includes cost for OPS Research and Training Specialist Salary @ \$18.59 per hour. Not included in this estimate is time and cost for editing and quality control.

### IMPACTS TO FDLE CJIS

- FCIC houses actionable criminal justice information. This proposal represents a shift in FCIC policy to house raw investigative information which has not been vetted and may later be determined to be unfounded.
- System and training documentation will have to be updated.
- Law enforcement agencies will have to be trained on new FCIC file.
- DCF will have to be audited to ensure proper entry and removal of records. Entries will have to meet minimum criteria (name, race, sex, and DOB). Individuals reported to the hotline by first name, nickname, or street name only will not be able to be entered until the minimum criteria have been gathered.

While the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional criminal justice information related bills could rise to the level requiring additional staffing and other resources

### **IMPACTS TO LOCAL LAW ENFORCEMENT**

Develop policy and implement new procedures for notification to DCF when encountering a person in this file. Unclear as to what constitutes an 'encounter' – a traffic ticket? Complainant, victim, or witness to a crime? Does law enforcement have the authority to detain or delay this individual until notification to DCF can be accomplished?

### **OTHER CONSIDERATIONS**

DCF (overall) is a non-criminal justice entity; the central abuse hotline has a criminal justice designation and has access to query FCIC. Thus it is reasonable to believe this group will be responsible for all entry and removal since they are the only entity with access to FCIC. Their current certification level is "limited access" as they only make queries. FDLE will have to invest time in certifying these individuals as "full access" system users so that they can make entries into FCIC.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1154

INTRODUCER: Senator Berman

SUBJECT: Decedents' Property

DATE: March 29, 2019

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

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Stallard</u> | <u>Cibula</u>  | <u>JU</u> | <u>Pre-meeting</u> |
| 2. | <u>Delia</u>    | <u>Hendon</u>  | <u>CF</u> | _____              |
| 3. | _____           | _____          | <u>RC</u> | _____              |

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**I. Summary:**

SB 1154 amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, conflicts of interest by personal representatives, and notice in probate proceedings. The bill also amends the trust code regarding compensation of attorneys who serve as trustees. Additionally, the bill makes various changes relating to co-owned personal property.

More specifically, the bill:

- Prohibits an attorney who prepared or supervised the preparation of a will from being compensated as a personal representative of the estate unless the attorney is a relative of the decedent or makes specified disclosures to the testator before the will is prepared;
- Provides a similar prohibition regarding an attorney who drafts a trust and serves as a trustee;
- Brings more types of transactions involving a personal representative's conflict of interest under the statute that renders these transactions voidable by an interested person;
- Attempts to clarify what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding;
- Eliminates the requirement that personal property held in a tenancy by the entirety or a joint tenancy with right of survivorship must be acquired by its co-owners at the same time and through the same instrument;
- Eliminates the requirement that personal property held in a joint tenancy with right of survivorship be held in equal shares or interests; and
- Creates a rebuttable presumption that an item of personal property owned by two spouses is owned in a tenancy by the entirety if the ownership document does not clearly indicate otherwise, the ownership document designates joint tenancy with right of survivorship and does not indicate that a tenancy by the entirety was not intended, or a spouse adds the other spouse's name to an ownership document;

- Creates a rebuttable presumption that an item of personal property is owned by joint tenants with right of survivorship if none of the above presumptions apply and the owner adds or designates another person's name in an ownership document indicating a joint tenancy with right of survivorship; and
- Categorizes as tangible property bullion and coins, such as collectible coins, that are not used as money.

The bill is not expected to have a fiscal impact on the state and has an effective date of October 1, 2019, except as otherwise provided.

## II. Present Situation:

### **Conflict of Interests by Personal Representatives**

Several types of transactions that involve a conflict of a personal representative's interests are avoidable by an interested person, except one who has consented after fair disclosure.<sup>1</sup> However, transactions that involve a conflict of the personal representative's interests are not avoidable if the will or a contract entered into by the decedent expressly authorized the transaction, or if it is authorized by a court after notice to interested persons.<sup>2</sup>

### **Compensation of Attorney Who Also Serves as Personal Representative or Trustee**

An attorney licensed by the Florida Bar who serves as a personal representative of an estate and has rendered legal services in connection with the administration of the estate is allowed a fee for the legal services in addition to his or her fee as personal representative.<sup>3</sup> However, the fee for legal services must be taken into account when determining the attorney's compensation for non-legal services as personal representative.<sup>4</sup>

Similarly, an attorney who provides legal services in his or her administration of the trust may accept reasonable compensation for the legal services in addition to his or her reasonable compensation as a trustee.<sup>5</sup>

### **Notice to Interested Persons in a Probate Proceeding**

Section 731.301(2), F.S., provides that, in a probate proceeding, "formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate or in the decedent's protected homestead." The courts have interpreted this to include jurisdiction over a person in an adversarial proceeding, including one in which an out-of-state law firm providing legal services for a Florida estate may be forced to pay money back to the estate.<sup>6</sup>

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<sup>1</sup> Section 733.610, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 733.617, F.S.

<sup>4</sup> Section 733.612(19), F.S.

<sup>5</sup> Section 733.0708(3), F.S.

<sup>6</sup> *See, e.g., Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995).

However, the Real Property, Probate and Trust Law Section of The Florida Bar asserts that the personal jurisdiction contemplated in s. 731.301(2), F.S., does not include this type of proceeding.<sup>7</sup> Rather, the Section asserts that formal notice is sufficient for the court to acquire jurisdiction over a person for the purpose of determining the person's rights to estate property.<sup>8</sup>

### **Co-tenancy**

An item of personal property, such as brokerage account or an automobile, may be owned by multiple people in one of a few arrangements, including “tenancy by the entirety” and “joint tenancy with right of survivorship.”<sup>9</sup> Although these forms of co-ownership are substantially similar, one key difference between them is that a tenancy by the entirety may be used only by two married people.<sup>10</sup>

### ***Joint Tenancy with Right of Survivorship***

A joint tenancy with right of survivorship requires five “unities” as to an item of property, which are the unities of:

- Possession (joint ownership and control);
- Interest (the interests must be the same);
- Title (the interests must originate in the same instrument);
- Time (the interests must commence simultaneously); and
- Survivorship (both spouses take property outright upon the other's death).<sup>11</sup>

### ***Tenancy by the Entirety***

A tenancy by the entirety requires an additional unity, the unity of marriage.<sup>12</sup> This means the co-owners of the property must be married at the time the property became titled in their joint names.

Due to the unities of time and title, a person may not create either of these forms of co-ownership by directly granting an interest in an item of property to another person. For example, a husband who is the sole owner of a brokerage account may not create a tenancy by the entirety in it with his wife by adding her name to the account—their interests in the account would have originated at different times and through different instruments.<sup>13</sup>

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<sup>7</sup> Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient* (2019) (on file with the Senate Committee on Judiciary).

<sup>8</sup> *Id.*

<sup>9</sup> See generally, *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 52 (Fla. 2001).

<sup>10</sup> *Id.*

<sup>11</sup> See *Sitomer v. Orlan*, 660 So. 2d 1111, 1113 (Fla. 4th DCA 1995).

<sup>12</sup> See *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 52 (Fla. 2001).

<sup>13</sup> Nonetheless, a husband or wife may create a tenancy by the entirety in real property (e.g., homes, land) by directly granting an interest to his or her spouse. See s. 689.11, F.S.

### ***Presumptions regarding a Tenancy by the Entirety or a Joint Tenancy with Right of Survivorship***

Beginning with the Florida Supreme Court in 2001, several courts have stated that personal property is presumed to be held as a tenancy by the entirety if it is owned:

- By two people who are married to each other; and
- In accordance with the six unities required for a tenancy by the entirety.<sup>14</sup>

The 2001 Supreme Court case addressed a bank account co-owned by a husband and wife. The court acknowledged that the law had long provided for a presumption of a tenancy by the entirety regarding *real property* held by a husband and wife. And the Court spoke in broad terms of extending this presumption of a tenancy by the entirety, not just to bank accounts, but to *personal property in general*. Though this language may be *dicta*, other courts have adopted it as law, applying it to other types of personal property, such as stock certificates.<sup>15</sup>

The holding of the 2001 Supreme Court case regarding bank accounts was codified in s. 655.79(1), F.S., which provides that “any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing.”<sup>16</sup> The presumption may be overcome “only by proof of fraud or undue influence or clear and convincing proof of a contrary intent.”<sup>17</sup>

As with personal property held jointly by two people who are married to each other, the Florida Statutes do not provide a presumption that all items of personal property co-owned by multiple *non-married* people are held as a joint tenancy with right of survivorship. However, s. 655.79(1), F.S., provides a presumption that the co-owners have a right of survivorship in a bank account. As with tenancies by the entirety in bank accounts, the presumption may be overcome “only by proof of fraud or undue influence or clear and convincing proof of a contrary intent.”<sup>18</sup>

### **Precious Metals and Collectible Coins as Probate Assets**

Florida law does not specify whether bullion or coins that are not commonly used as currency constitute tangible personal property. And according to the Real Property, Probate and Trust Law Section of The Florida Bar, there is a lack of consensus among practitioners regarding this issue.<sup>19</sup> Accordingly, it is unclear whether certain directions given in a will would apply to collectible coins and bullion. Moreover, it is unclear whether certain provisions of law apply to these items. For example, s. 732.515, F.S., requires that “items of tangible property” be “specifically disposed of” by the will or by a separate writing. Because it is unclear whether

<sup>14</sup> See *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 52 (Fla. 2001); *Cacciatore v. Fisherman’s Wharf Realty Ltd. Partnership ex rel. Emalfarb Investment Corp.*, 821 So. 2d 1251 (Fla. 4th DCA 2002); *Gibson v. Wells Fargo Bank, N.A.* 255 So. 3d 944, (Fla. 2nd DCA 2018).

<sup>15</sup> See generally, *Cacciatore v. Fisherman’s Wharf Realty Ltd. Partnership ex rel. Emalfarb Investment Corp.*, 821 So. 2d 1251 (Fla. 4th DCA 2002).

<sup>16</sup> Also, see *Wexler v. Rich*, 80 So. 3d 1097, 1101 (Fla. 4th DCA 2012), for a discussion of the common law rule that preceded the current version of s. 655.79(1), F.S.

<sup>17</sup> Section 655.79(2), F.S.

<sup>18</sup> Section 655.79(2), F.S.

<sup>19</sup> Probate Law and Procedure Committee, Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper: Proposed Addition of § 731.1065, Florida Statutes* (2019) (on file with the Senate Committee on Judiciary).

bullion and collectable coins are tangible property, it is unclear whether they must be specifically disposed of pursuant to this statute.

### III. Effect of Proposed Changes:

#### **Fewer Requirements for a Tenancy by the Entirety or Joint Tenancy with Right of Survivorship (Section 1)**

The bill abolishes the “unities” of time and title as requirements for a joint tenancy with right of survivorship or a tenancy by the entirety in personal property. As such, the persons who own an item of personal property need not have acquired their interests at the same time or through the same instrument in order to own the property in one of these tenancies. The bill also abolishes the unity of interest as a requirement for a joint tenancy with right of survivorship in personal property, which means owners do not need to have equal ownership interests.

#### **Rebuttable Presumptions (Section 1)**

##### *Tenancy by the Entirety*

The bill provides that there is a rebuttable presumption that personal property owned by both spouses is owned in a tenancy by the entirety if:

- An ownership document does not specify a different intent, either by “expressly indicating” that a tenancy by the entirety is not intended or by specifying a different form of ownership;
- There is a designation of joint tenancy with right of survivorship in an ownership document and no express indication that a tenancy by the entirety was not intended; or
- The co-ownership was created by a spouse adding his or her spouse’s name to an ownership document.

The *intent* to create a tenancy by the entirety in personal property is *conclusively* presumed when spouses designate this tenancy in an ownership document. This intent is also conclusively presumed when an owner adds the name of his or her spouse to an ownership document that designates a tenancy by the entirety, if the designation or addition was not the product of fraud, undue influence, or a lack of capacity.

##### *Joint Tenancy with Right of Survivorship*

The bill provides that there is a rebuttable presumption that personal property is owned in a joint tenancy with right of survivorship if the owner designates or adds the name of at least one other person in an ownership document. However, the document must indicate that the property is owned by these people in a joint tenancy with right of survivorship.

#### **Overcoming the Rebuttable Presumptions of a Joint Tenancy with Right of Survivorship or a Tenancy by the Entirety**

The rebuttable presumptions that personal property is owned in a tenancy by the entirety or a joint tenancy with right of survivorship may be overcome by proving:

- By a preponderance of the evidence the existence of fraud, undue influence, or lack of capacity; or
- By clear and convincing evidence that the presumed tenancy was not intended or created.



### ***Equal Interests in a Tenancy in Common or a Joint Tenancy with Right of Survivorship***

A third rebuttable presumption created by the bill is that the interests held by joint tenants with right of survivorship or tenants in common hold equal interests in personal property. This presumption may be overcome by proving by a preponderance of the evidence the existence of fraud, undue influence, lack of capacity, or contrary intent.

### **Precious Metals (Section 2)**

The bill provides that for the purposes of the probate code, precious metals in any tangible form, including bullion or coins kept for purposes such as collecting and not for use as legal tender for payment are tangible personal property. The bill provides that this clarifies current law, which does not clearly categorize these items. Accordingly, the bill states that these provisions apply to all written instruments, as well as to all probate proceedings except those in which a disposition of these items has not been finally determined.

### **Notice in a Probate Proceeding (Sections 3 - 4 )**

Current s. 731.301(2), F.S., states, “In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead.” Following this sentence, the bill adds: “Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving formal notice.” Accordingly, the bill with existing law provides that formal notice gives a court “jurisdiction over the person,” but not “personal jurisdiction.” Because jurisdiction over the person and personal jurisdiction appear to be the same concept, the effect of the new sentence is not clear.

According to the Real Property Probate and Trust Law Section of The Florida Bar, the added sentence is intended to limit the court’s jurisdiction under the first sentence. The added sentence, according to the Section, will also require service of process to give a court personal jurisdiction with respect to matters beyond a person’s interest in the estate. To avoid the potential for uncertainty, the Legislature may wish to revise the second sentence to clarify the circumstances under which a method other than “formal notice” is required to give a court personal jurisdiction in probate proceedings or to specify what constitutes an “interest in the estate.”<sup>20</sup>

### **Personal Representative’s Conflict of Interest (Section 5)**

The bill renders voidable more types of sales, transactions, and encumbrances that involve a personal representative’s conflict of interest than current law. Subject to exceptions, current law renders voidable a sale or encumbrance of estate assets to any corporation or trust in which the personal representative has a substantial beneficial interest. The bill also renders voidable any sale or encumbrance to a corporation, trust, *or other entity* in which the personal representative or his or her *spouse, agent, or attorney* has a substantial beneficial or *ownership* interest.

<sup>20</sup> According to the RPPTL Section, the sentence added to s. 731.301(2), F.S., is intended to overrule *Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995) in which the Fourth DCA found that formal notice to a New York law firm handling Florida probate proceedings gave the trial court jurisdiction over the firm with respect to a payment dispute. The law firm objected to the trial court’s assertion of jurisdiction because it had not been served with process. Implicit in the appellate court opinion is a finding that the payments from a decedent’s estate to a firm are also an “interest in the estate.”

**Compensation of a Personal Representative or Trustee Who is also an Attorney (Sections 6 - 8)**

The bill prohibits an attorney from being compensated as a personal representative if the attorney prepared or supervised the execution of a will that nominated the attorney or person related to the attorney as personal representative. However, the prohibition does not apply if the attorney or person nominated is related to the testator. The prohibition also does not apply if the attorney discloses the following things prior to the execution of the will:

- Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;
- Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and
- Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the personal representative.

However, for these disclosures to be sufficient, the testator must execute a written statement acknowledging that the disclosures were made before the will was executed. And the written statement must substantially be in the form set forth in the bill.

The bill provides virtually identical requirements regarding an attorney who serves as a trustee and desires to be compensated both in his or her role as attorney and as a trustee.

The bill takes effect October 1, 2019, except as otherwise provided.

**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:

The bill includes several provisions that are expressly intended to apply retroactively. In all but one of these instances, the provision is described in the bill as remedial or clarifying.

The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively.<sup>21</sup> First, there must be “clear evidence of legislative intent to apply the statute retrospectively.”<sup>22</sup> If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.”<sup>23</sup> Retroactive application is unconstitutional if deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated.<sup>24</sup>

Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.<sup>25</sup> Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”<sup>26</sup> Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.<sup>27</sup>

The bill’s provisions that are intended for retroactive application do not appear to be likely to impair vested rights. However, this analysis is inherently fact-specific, and therefore difficult to perform in the abstract. Accordingly, as these provisions are applied to myriad unique circumstances, it is possible that a court may find that one or more of the provisions has destroyed a vested right in a given case, and therefore cannot be applied retroactively in that case.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

<sup>21</sup> See, e.g., *Florida Ins. Guar. Ass’n, Inc. v. Devon Neighborhood Ass’n, Inc.*, 67 So. 3d 187, 194 (Fla. 2011).

<sup>22</sup> *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494 (Fla. 1999).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 503 (citing *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949)).

<sup>25</sup> See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

<sup>26</sup> *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n, Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

<sup>27</sup> See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

**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 the following sections 731.301, 733.610, 733.617, and 736.0708 of the Florida Statutes.

This bill creates sections 689.151 and 731.1065 and 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.



113228

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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The Committee on Children, Families, and Elder Affairs (Berman) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 61 - 142.

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

And the title is amended as follows:

Delete lines 2 - 18

and insert:

An act relating to decedents' property;

By Senator Berman

31-00330C-19

20191154\_\_

1 A bill to be entitled  
 2 An act relating to decedents' property; creating s.  
 3 689.151, F.S.; defining the terms "ownership  
 4 document," "personal property," and "record";  
 5 abolishing certain common law requirements relating to  
 6 joint tenancies with right of survivorship and  
 7 tenancies by the entirety; providing for the creation  
 8 of joint tenancies with right of survivorship and  
 9 tenancies by the entirety; specifying that there are  
 10 certain rebuttable presumptions for personal property  
 11 owned by both spouses and joint tenancies with right  
 12 of survivorship; providing that the presumption may be  
 13 overcome by a preponderance of the evidence or by  
 14 clear and convincing evidence under certain  
 15 circumstances; providing for the conclusive  
 16 presumption of an intent to create a tenancy by the  
 17 entirety; providing applicability; providing  
 18 construction; providing retroactive application;  
 19 creating s. 731.1065, F.S.; specifying that precious  
 20 metals are tangible personal property for the purposes  
 21 of the Florida Probate Code; providing for retroactive  
 22 application; amending s. 731.301, F.S.; specifying  
 23 that formal notice is not sufficient to invoke a  
 24 court's personal jurisdiction over a person receiving  
 25 such formal notice; providing applicability; amending  
 26 s. 733.610, F.S.; expanding the list of sales or  
 27 encumbrances that are voidable by interested persons  
 28 under certain circumstances; amending s. 733.617,  
 29 F.S.; specifying that certain attorneys and persons

Page 1 of 14

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31-00330C-19

20191154\_\_

30 are not entitled to compensation for serving as a  
 31 personal representative unless the attorney or person  
 32 is related to the testator or unless certain  
 33 disclosures are made before a will is executed;  
 34 requiring the testator to execute a written statement  
 35 that acknowledges certain disclosures were made;  
 36 providing requirements for the written statement;  
 37 specifying when an attorney is deemed to have prepared  
 38 or supervised the execution of a will; specifying how  
 39 a person may be related to an individual; specifying  
 40 when an attorney or person related to the attorney is  
 41 deemed to have been nominated in a will; providing  
 42 construction; providing applicability; amending s.  
 43 736.0708, F.S.; specifying that certain attorneys and  
 44 persons are not entitled to compensation for serving  
 45 as a trustee unless the attorney or person is related  
 46 to the settlor or unless certain disclosures are made  
 47 before the trust instrument is executed; requiring a  
 48 settlor to execute a written statement that  
 49 acknowledges certain disclosures were made; providing  
 50 requirements for the written statement; specifying  
 51 when an attorney is deemed to have prepared or  
 52 supervised the execution of a trust instrument;  
 53 specifying how a person may be related to an  
 54 individual; specifying when an attorney or a person  
 55 related to the attorney is deemed appointed in a trust  
 56 instrument; providing construction; providing  
 57 applicability; providing effective dates.  
 58

Page 2 of 14

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31-00330C-19

20191154\_\_

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

60  
61 Section 1. Section 689.151, Florida Statutes, is created to  
62 read:

63 689.151 Tenancies by the entirety, joint tenancies with  
64 right of survivorship, and tenancies in common in personal  
65 property.-

66 (1) As used in this section:

67 (a) "Ownership document" means an instrument or a record of  
68 transfer or an instrument or a record evidencing ownership.

69 (b) "Personal property" means all property except real  
70 property, as defined in s. 192.001(12), and an interest in a  
71 trust to which chapter 736 applies.

72 (c) "Record" has the same meaning as in s. 605.0102.

73 (2) With respect to joint tenancies with right of  
74 survivorship and tenancies by the entirety in personal property,  
75 the common law requirements of unity of time and title are  
76 abolished.

77 (a) A joint tenancy with right of survivorship in personal  
78 property may be created in the existing owner and one or more  
79 other persons through a direct transfer by the existing owner.

80 (b) A tenancy by the entirety may be created in personal  
81 property owned by one spouse through a direct transfer to both  
82 spouses.

83 (3) With respect to joint tenancies with right of  
84 survivorship in personal property, the common law requirement of  
85 unity of interest is abolished and the shares or interests of  
86 joint tenants may be equal or unequal.

87 (4) There is a rebuttable presumption that:

Page 3 of 14

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31-00330C-19

20191154\_\_

88 (a) Personal property owned by both spouses is owned by the  
89 spouses as tenants by the entirety if:

90 1. An ownership document does not specify a form of  
91 ownership or does not expressly indicate that a tenancy by the  
92 entirety is not intended; or

93 2. There is a designation of joint tenancy with right of  
94 survivorship in an ownership document and no express indication  
95 that a tenancy by the entirety was not intended.

96  
97 The rebuttable presumptions in this paragraph also apply when an  
98 owner of personal property adds the name of his or her spouse to  
99 such ownership document.

100 (b) Except as provided in paragraph (a), personal property  
101 is owned as joint tenants with right of survivorship when the  
102 owner designates or adds the name of one or more persons in an  
103 ownership document indicating that the owner and such persons  
104 own or hold the property as joint tenants with right of  
105 survivorship.

106 (c) The shares or interests held by joint tenants with  
107 right of survivorship or tenants in common in personal property  
108 are equal. Such presumption may be overcome by proving by a  
109 preponderance of the evidence the existence of fraud, undue  
110 influence, lack of capacity, or contrary intent.

111 (5) Unless otherwise stated, the rebuttable presumptions  
112 established in subsection (4) may be overcome by proving by a  
113 preponderance of the evidence the existence of fraud, undue  
114 influence, or lack of capacity or by proving by clear and  
115 convincing evidence that the presumed tenancy was not intended  
116 or created.

Page 4 of 14

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31-00330C-19

20191154\_\_

117 (6) The intent to create a tenancy by the entirety is  
 118 conclusively presumed when such a tenancy is designated by  
 119 spouses in an ownership document for personal property, or when  
 120 an owner of personal property adds the name of his or her spouse  
 121 to an ownership document with a designation of tenancy by the  
 122 entirety, if the designation or addition was not the product of  
 123 fraud, undue influence, or a lack of capacity.

124 (7) This section does not affect the application of s.  
 125 319.22, s. 655.78, s. 655.79, s. 655.80, s. 655.82, s. 689.115,  
 126 or ss. 711.50-711.512.

127 (8) The common law of joint tenancies with right of  
 128 survivorship and the common law of tenancies by the entirety  
 129 supplement this section except to the extent modified by it.

130 (9) The presumptions under this section apply to all  
 131 proceedings pending on or before October 1, 2019, and to all  
 132 proceedings commenced on or after October 1, 2019.

133 (10) Subsections (2) and (3) are remedial in nature and  
 134 apply to transactions occurring before October 1, 2019, to the  
 135 extent that those transactions relate to the existence of a  
 136 joint tenancy with right of survivorship or a tenancy by the  
 137 entirety on October 1, 2019; however, such application may not  
 138 impair any right acquired before October 1, 2019, if that right  
 139 is confirmed in a judicial proceeding commenced within 2 years  
 140 after October 1, 2019.

141 (11) This section does not impair the rights of any  
 142 lienholder or creditor acquired before October 1, 2019.

143 Section 2. Effective July 1, 2019, section 731.1065,  
 144 Florida Statutes, is created to read:

145 731.1065 Precious metals.-

31-00330C-19

20191154\_\_

146 (1) For the purposes of the code, precious metals in any  
 147 tangible form, such as bullion or coins kept and acquired for  
 148 their historical, artistic, collectable, or investment value  
 149 apart from their normal use as legal tender for payment, are  
 150 tangible personal property.

151 (2) This section is intended to clarify existing law and  
 152 applies retroactively to all written instruments executed  
 153 before, on, or after July 1, 2019, as well as all proceedings  
 154 pending or commenced before, on, or after July 1, 2019, in which  
 155 the disposition of precious metals in any tangible form has not  
 156 been finally determined.

157 Section 3. Effective upon this act becoming a law,  
 158 subsection (2) of section 731.301, Florida Statutes, is amended  
 159 to read:

160 731.301 Notice.-

161 (2) In a probate proceeding, formal notice is sufficient to  
 162 acquire jurisdiction over the person receiving formal notice to  
 163 the extent of the person's interest in the estate or in the  
 164 decedent's protected homestead. Formal notice is not sufficient  
 165 to invoke the court's personal jurisdiction over the person  
 166 receiving formal notice.

167 Section 4. The amendment made by this act to s. 731.301,  
 168 Florida Statutes, applies to all proceedings pending on or  
 169 before, or commenced after, the date this act becomes a law.

170 Section 5. Effective July 1, 2019, section 733.610, Florida  
 171 Statutes, is amended to read:

172 733.610 Sale, encumbrance, or transaction involving  
 173 conflict of interest.-Any sale or encumbrance to the personal  
 174 representative or the personal representative's spouse, agent,



31-00330C-19

20191154\_\_

175 or attorney, or any corporation, other entity, or trust in which  
 176 the personal representative, or the personal representative's  
 177 spouse, agent, or attorney, has a substantial beneficial or  
 178 ownership interest, or any transaction that is affected by a  
 179 conflict of interest on the part of the personal representative,  
 180 is voidable by any interested person except one who has  
 181 consented after fair disclosure, unless:

182 (1) The will or a contract entered into by the decedent  
 183 expressly authorized the transaction; or

184 (2) The transaction is approved by the court after notice  
 185 to interested persons.

186 Section 6. Subsection (6) of section 733.617, Florida  
 187 Statutes, is amended, and subsection (8) is added to that  
 188 section, to read:

189 733.617 Compensation of personal representative.—

190 (6) Except as otherwise provided in this section, if the  
 191 personal representative is a member of The Florida Bar and has  
 192 rendered legal services in connection with the administration of  
 193 the estate, then in addition to a fee as personal  
 194 representative, there also shall be allowed a fee for the legal  
 195 services rendered.

196 (8) (a) An attorney serving as a personal representative, or  
 197 a person related to the attorney, is not entitled to  
 198 compensation for serving as a personal representative if the  
 199 attorney prepared or supervised the execution of the will that  
 200 nominated the attorney or person related to the attorney as  
 201 personal representative, unless the attorney or person nominated  
 202 is related to the testator, or the attorney makes the following  
 203 disclosures to the testator before the will is executed:

Page 7 of 14

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31-00330C-19

20191154\_\_

204 1. Subject to certain statutory limitations, most family  
 205 members, regardless of their residence, and any other persons  
 206 who are residents of Florida, including friends and corporate  
 207 fiduciaries, are eligible to serve as a personal representative;

208 2. Any person, including an attorney, who serves as a  
 209 personal representative is entitled to receive reasonable  
 210 compensation for serving as a personal representative; and

211 3. Compensation payable to the personal representative is  
 212 in addition to any attorney fees payable to the attorney or the  
 213 attorney's firm for legal services rendered to the personal  
 214 representative.

215 (b)1. The testator must execute a written statement  
 216 acknowledging that the disclosures required under paragraph (a)  
 217 were made prior to the execution of the will. The written  
 218 statement must be in a separate writing from the will but may be  
 219 annexed to the will. The written statement may be executed  
 220 before or after the execution of the will in which the attorney  
 221 or related person is nominated as the personal representative.

222 2. The written statement must be in substantially the  
 223 following form:

224

225 I, ... (Name) ..., declare that:

226

227 I have designated my attorney, an attorney employed in the  
 228 same law firm as my attorney, or a person related to my attorney  
 229 as a nominated personal representative in my will or codicil  
 230 dated ... (insert date) ...

231

232 Before executing the will or codicil, I was informed that:

Page 8 of 14

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31-00330C-19 20191154\_\_

233 1. Subject to certain statutory limitations, most family  
 234 members, regardless of their residence, and any other  
 235 individuals who are residents of Florida, including friends and  
 236 corporate fiduciaries, are eligible to serve as a personal  
 237 representative.

238 2. Any person, including an attorney, who serves as a  
 239 personal representative is entitled to receive reasonable  
 240 compensation for serving as a personal representative.

241 3. Compensation payable to the personal representative is  
 242 in addition to any attorney fees payable to the attorney or the  
 243 attorney's firm for legal services rendered to the personal  
 244 representative.

245 ... (Signature) ...  
 246 ... (Testator) ...  
 247 ... (Insert date) ...

248  
 249  
 250 (c) For purposes of this subsection:

251 1. An attorney is deemed to have prepared or supervised the  
 252 execution of a will if the preparation or supervision of the  
 253 execution of the will was performed by an employee or attorney  
 254 employed by the same firm as the attorney at the time the will  
 255 was executed.

256 2. A person is "related" to an individual if, at the time  
 257 the attorney prepared or supervised the execution of the will,  
 258 the person is:

- 259 a. A spouse of the individual;
- 260 b. A lineal ascendant or descendant of the individual;
- 261 c. A sibling of the individual;

31-00330C-19 20191154\_\_

262 d. A relative of the individual or of the individual's  
 263 spouse with whom the attorney maintains a close, familial  
 264 relationship;

265 e. A spouse of a person described in subparagraphs b.-d.;

266 f. A person who cohabitates with the individual; or

267 g. An employee or attorney employed by the same firm as the  
 268 attorney at the time the will is executed.

269 3. An attorney or a person related to the attorney is  
 270 deemed to have been nominated in the will when the will  
 271 nominates the attorney or the person related to the attorney as  
 272 personal representative, co-personal representative, successor,  
 273 or alternate personal representative in the event another person  
 274 nominated is unable to or unwilling to serve, or provides the  
 275 attorney or any person related to the attorney with the power to  
 276 nominate the personal representative and the attorney or person  
 277 related to attorney was nominated using that power.

278 (d) Other than compensation payable to the personal  
 279 representative, this subsection does not limit any rights or  
 280 remedies that any interested person may have at law or in  
 281 equity.

282 (e) The failure to obtain an acknowledgment from the  
 283 testator under this subsection does not disqualify a personal  
 284 representative from serving and does not affect the validity of  
 285 a will.

286 (f) This subsection applies to all nominations made  
 287 pursuant to a will:

- 288 1. Executed by a resident of this state on or after October  
 289 1, 2019; or
- 290 2. Republished by a resident of this state on or after

31-00330C-19 20191154\_\_

291 October 1, 2019, if the republished will nominates the attorney  
 292 who prepared or supervised the execution of the instrument that  
 293 republished the will, or a person related to such attorney, as  
 294 personal representative.

295 Section 7. Subsection (4) is added to section 736.0708,  
 296 Florida Statutes, to read:

297 736.0708 Compensation of trustee.—

298 (4) (a) An attorney serving as a trustee or a person related  
 299 to such attorney is not entitled to compensation for serving as  
 300 trustee if the attorney prepared or supervised the execution of  
 301 the trust instrument that appointed the attorney or person  
 302 related to the attorney as trustee, unless the attorney or  
 303 person appointed is related to the settlor or the attorney makes  
 304 the following disclosures to the settlor before the trust  
 305 instrument is executed:

306 1. Unless specifically disqualified by the terms of the  
 307 trust instrument, any person, regardless of state of residence  
 308 and including a family member, friend, or corporate fiduciary,  
 309 is eligible to serve as a trustee;

310 2. Any person, including an attorney, who serves as a  
 311 trustee is entitled to receive reasonable compensation for  
 312 servng as trustee; and

313 3. Compensation payable to the trustee is in addition to  
 314 any attorney fees payable to the attorney or the attorney's firm  
 315 for legal services rendered to the trustee.

316 (b)1. The settlor must execute a written statement  
 317 acknowledging that the disclosures required under paragraph (a)  
 318 were made prior to the execution of the trust instrument. The  
 319 written statement must be in a separate writing from the trust

31-00330C-19 20191154\_\_

320 instrument but may be annexed to the trust instrument. The  
 321 written statement may be executed before or after the execution  
 322 of the trust in which the attorney or related person is  
 323 appointed as the trustee.

324 2. The written statement must be in substantially the  
 325 following form:

326  
 327 I, ... (Name) ..., declare that:

328  
 329 I have designated my attorney, an attorney employed in the  
 330 same law firm as my attorney, or a person related to my attorney  
 331 as a trustee in my trust instrument dated ... (insert date) ...

332  
 333 Before executing the trust, I was informed that:

334 1. Unless specifically disqualified by the terms of the  
 335 trust instrument, any person, regardless of state of residence  
 336 and including family members, friends, and corporate  
 337 fiduciaries, is eligible to serve as a trustee.

338 2. Any person, including an attorney, who serves as a  
 339 trustee is entitled to receive reasonable compensation for  
 340 servng as trustee.

341 3. Compensation payable to the trustee is in addition to  
 342 any attorney fees payable to the attorney or the attorney's firm  
 343 for legal services rendered to the trustee.

344  
 345 ... (Signature) ...

346 ... (Settlor) ...

347 ... (Insert Date) ...

348

31-00330C-19

20191154\_\_

349 (c) For purposes of this subsection:  
 350 1. An attorney is deemed to have prepared, or supervised  
 351 the execution of, a trust instrument if the preparation, or  
 352 supervision of the execution, of the trust instrument was  
 353 performed by an employee or attorney employed by the same firm  
 354 as the attorney at the time the trust instrument was executed.  
 355 2. A person is "related" to an individual if, at the time  
 356 the attorney prepared or supervised the execution of the trust  
 357 instrument, the person is:  
 358 a. A spouse of the individual;  
 359 b. A lineal ascendant or descendant of the individual;  
 360 c. A sibling of the individual;  
 361 d. A relative of the individual or of the individual's  
 362 spouse with whom the attorney maintains a close, familial  
 363 relationship;  
 364 e. A spouse of a person described in subparagraphs b.-d.;  
 365 f. A person who cohabitates with the individual; or  
 366 g. An employee or attorney employed by the same firm as the  
 367 attorney at the time the trust instrument is executed.  
 368 3. An attorney or a person related to the attorney is  
 369 deemed appointed in the trust instrument when the trust  
 370 instrument appoints the attorney or the person related to the  
 371 attorney as trustee, co-trustee, successor, or alternate trustee  
 372 in the event another person nominated is unable to or unwilling  
 373 to serve, or provides the attorney or any person related to the  
 374 attorney with the power to appoint the trustee and the attorney  
 375 or person related to attorney was appointed using that power.  
 376 (d) Other than compensation payable to the trustee, this  
 377 subsection does not limit any rights or remedies that any

Page 13 of 14

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31-00330C-19

20191154\_\_

378 interested person may have at law or equity.  
 379 (e) The failure to obtain an acknowledgment from the  
 380 settlor under this subsection does not disqualify a trustee from  
 381 serving and does not affect the validity of a trust instrument.  
 382 (f) This subsection applies to all appointments made  
 383 pursuant to a trust agreement:  
 384 1. Executed by a resident of this state on or after October  
 385 1, 2019; or  
 386 2. Amended by a resident of this state on or after October  
 387 1, 2019, if the trust agreement nominates the attorney who  
 388 prepared or supervised the execution of the amendment or a  
 389 person related to such attorney as trustee.  
 390 Section 8. Except as otherwise expressly provided in this  
 391 act and except for this section, which shall take effect upon  
 392 this act becoming a law, this act shall take effect October 1,  
 393 2019.

Page 14 of 14

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: CS/SB 1174

INTRODUCER: Judiciary Committee and Senator Bean

SUBJECT: Custody of Minor Children by Extended Family

DATE: March 29, 2019

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

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Stallard</u> | <u>Cibula</u>  | <u>JU</u> | <u>Fav/CS</u>      |
| 2. | <u>Preston</u>  | <u>Hendon</u>  | <u>CF</u> | <u>Pre-meeting</u> |
| 3. | _____           | _____          | <u>RC</u> | _____              |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1174 grants courts more authority and flexibility in establishing and terminating orders granting “temporary” or “concurrent” custody of a child to an extended family member. As under current law, custody of a child by his or her relative for an indefinite period is referred to in the statutes as “temporary” if it excludes the parents, and as “concurrent” if shared with the parents.

The bill requires a relative to include his or her petition for concurrent custody “[a]ny other request related to the protection of the welfare of the child, including provisions for transitioning custody or a plan for visitation.” And in an order granting concurrent custody, the bill authorizes a court to include conditions agreed to by the parties, including conditions that eliminate or diminish a parent’s custody rights if the parent agrees to the conditions.

Later, when a parent makes a motion to terminate concurrent custody, the court may decline the parent’s request to terminate the order if the parent has failed to meet the conditions and does not demonstrate that the failure does not endanger the welfare of the child.

Regarding an order for *temporary* custody, if it is based on the unfitness or absence of the parents, the court may establish conditions that the parents must meet before the court deems them fit and thus able to retake custody of their child.

Additionally, the bill requires courts to establish any conditions for the transition of the child to the parents' custody which are in the child's best interest if the child was in the temporary custody of a relative for at least six months. In determining these conditions, the court must consider:

- The length of time the child lived with the extended family member;
- The child's developmental stage and psychological needs;
- The need for a gradual transition from one setting to another; and
- Visitation with the extended family member.

The bill is not expected to have a fiscal impact and has an effective date of July 1, 2019.

## II. Present Situation:

### The Concept of Temporary or Concurrent Custody of a Child

Under ch. 751, F.S., a child's extended family member may obtain a court order granting him or her custody of the child for an indefinite period of time. This custody may be exclusive of, or concurrent with, the parent's custody. Custody that is exclusive of the parent's custody is referred to in the statutes as "temporary," and custody that is shared by the relative and the parent is "concurrent." Nonetheless, both are indefinite and tend to be temporary.

This system differs from "dependency," set forth in ch. 39, F.S., in that it pertains to *non-dependent* children.

### Petition for Temporary or Concurrent Custody

To obtain a court order granting temporary or custody of a child, an extended family member of the child must file a petition for temporary or concurrent custody.<sup>1</sup> In either type of petition, the petitioner must state several things to the court, to the best of his or her knowledge, including the places where the child has lived during the past 5 years, information about other custody proceedings involving the child, the petitioner's relationship to the child, and that it is in the child's best interest for petitioner to have custody.<sup>2</sup>

In a petition for concurrent custody, the petitioner must also state:

- The time periods during the last 12 months that the child resided with the petitioner;
- The type of document, if any, provided by the parent or parents to enable the petitioner to act on behalf of the child;
- The services or actions that the petitioner is unable to obtain or undertake without an order of custody; and
- Whether each parent has consented in writing to the entry of an order of concurrent custody.<sup>3</sup>

---

<sup>1</sup> See s. 751.03, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 751.03(8), F.S.

In a petition for temporary custody, the petitioner must also state that the parents consent or the petitioner must state “the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child” as defined in the dependency statutes.<sup>4</sup>

### **Hearing on the Petition for Temporary or Concurrent Custody**

The court will then hold a hearing on the petition. At the hearing, the court must hear the evidence concerning the child’s need for care by the petitioner, as well as the objection and other testimony of either parent, if present.<sup>5</sup>

The court must grant the petition if it is in the best interests of the child and the parents do not object.<sup>6</sup> However, if at least one parent objects the court must proceed in different ways depending on the type of petition.

If at least one parent objects to a petition for concurrent custody, the court must deny the petition and give the petitioner the option of converting the petition to one for temporary custody.<sup>7</sup> If the petitioner exercises this option, the converted petition will be heard at a later date.<sup>8</sup>

If at least one of the child’s parents objects to a petition for temporary custody, the court must grant the petition only if it finds, based on clear and convincing evidence, that the parents are unfit to provide for the care and control of the child.<sup>9</sup> “In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child,” as defined in the dependency statutes.<sup>10</sup>

### **Order Granting Temporary or Concurrent Custody**

#### ***Order Granting Temporary Custody***

In an order granting temporary custody, the statutes authorize a court to grant visitation rights to a child’s parent or parents, if it is in the best interest of the child.<sup>11</sup> The statutes do not expressly authorize the court to state what parents who have been found unfit must do later to prove their fitness, and thus regain the custody of their child.

#### ***Order Granting Concurrent Custody***

The order granting concurrent custody may not eliminate or diminish the custodial rights of the child’s parent or parents.<sup>12</sup> In fact, the order must expressly state that the grant of custody does

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<sup>4</sup> Section 751.03(9), F.S.

<sup>5</sup> Section 751.05(1), F.S.

<sup>6</sup> Section 751.05(2), F.S.

<sup>7</sup> Section 751.05(3)(a), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 751.05(3)(b), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 751.05(2), F.S.

<sup>12</sup> Section 751.05(4)(a), F.S.

not affect the ability of the child's parent or parents to obtain physical custody of the child at any time.<sup>13, 14</sup>

### **Terminating Temporary or Concurrent Custody**

#### ***Terminating Temporary Custody***

After the entry of the order granting temporary custody, either parent may petition the court to modify or terminate the order.<sup>15</sup> The court must grant the order upon a finding that the petitioning parent is fit, or upon consent of the relative that took custody of the child.<sup>16</sup>

If a court terminates temporary custody, the child might immediately return to his or her parent's custody, and nothing in statute precludes a parent from restricting contact between the child and the relative, regardless of how long the temporary custody lasted.

#### ***Terminating Concurrent Custody***

The petitioner or either parent may make a motion to terminate concurrent custody at any time.<sup>17</sup> The court must terminate concurrent custody on a parent's request.<sup>18</sup>

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

The bill grants courts more authority and flexibility in establishing and terminating orders granting temporary or concurrent custody of a child to an extended family member. If an order for temporary custody is based on the unfitness or absence of the parents, the court may establish conditions that the parents must meet before the court deems them fit, and thus able to retake custody of their child.

The bill requires a relative to include his or her petition for concurrent custody "[a]ny other request related to the protection of the welfare of the child, including provisions for transitioning custody or a plan for visitation." And in an order granting concurrent custody, the bill authorizes a court to include conditions agreed to by the parties, including conditions that eliminate or diminish a parent's custody rights if the parent agrees to the conditions.

Later, when a parent makes a motion to terminate concurrent custody, the court may decline the parent's request to terminate the order if the parent has failed to meet the conditions and does not demonstrate that the failure does not endanger the welfare of the child.

Regarding an order for *temporary* custody, if it is based on the unfitness or absence of the parents, the court may establish conditions that the parents must meet before the court deems them fit and thus able to retake custody of their child.

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<sup>13</sup> *Id.*

<sup>14</sup> An order granting temporary or concurrent custody may require a parent to pay child support to the relative if the parent was served with process, the petition requests the court to child support, and there is evidence of the parent's ability to pay. However, the court may order the redirection of all or part of an existing child support payment to be paid to the relative who is being granted temporary or concurrent custody. Section 751.05(5), F.S.

<sup>15</sup> Section 751.05(6), F.S.

<sup>16</sup> Section 751.05(6), F.S.

<sup>17</sup> Section 751.05(7), F.S.

<sup>18</sup> *Id.*



Additionally, the bill requires courts to establish any conditions for the transition of the child to the parents' custody which are in the child's best interest if the child was in the temporary custody of a relative for at least six months. In determining these conditions, the court must consider:

- The length of time the child lived with the extended family member;
- The child's developmental stage and psychological needs;
- The need for a gradual transition from one setting to another; and
- Visitation with the extended family member.

The bill takes effect July 1, 2019.

#### **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:

The ability of an extended family member to obtain custody of a child in proceedings under ch. 751, F.S., are contingent on a parent's consent or lack of objection or a finding that a parent is unfit. If the bill can be construed to allow an extended family member to retain visitation rights or custody during a transitional period over the objection of a fit parent, the bill may implicate the parent's privacy rights.

In court opinions addressing the right of a nonparent or grandparent to have custody of or visitation with a child, courts have held that a nonparent may have custody of or visitation with a child in very limited circumstances:

Florida's constitutional right to privacy recognizes the zone of autonomy around a nuclear family into which a judge, legislator, or official, no matter how well intentioned, simply cannot go. This zone protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *D.M.T. v. T.M.H.*, 129 So.3d 320, 336 (Fla. 2013) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct.

1208, 31 L.Ed.2d 551 (1972)). The only exception occurs if one of the members of the family is at risk of significant harm. In this regard, the Florida Supreme Court has held that “[n]either the legislature nor the courts may properly intervene in parental decision making absent significant harm to the child threatened by or resulting from those decisions.” *Von Eiff*, 720 So.2d at 514. Under these principles, it is violation of a parent’s right to privacy for the legislature to confer on non-parents, even biological relatives such as grandparents, the right to visit minor children against the parents will. *See Beagle v. Beagle*, 678 So.2d 1271, 1277 (Fla. 1996) (holding that the State cannot impose grandparent visitation upon a minor child “without first demonstrating a harm to the child”).<sup>19</sup>

Moreover, the courts have held that the removal of a beneficial relationship with a grandparent or other person who acted like a parent is not the type of harm necessary to grant custody to or visitation with a nonparent.<sup>20</sup>

Because child custody awards under ch. 751, F.S., often involve the consent of or lack of objection to custody by a parent at the outset of the proceedings, the provisions of the bill may be distinguishable from the court opinions in which a parent objected to child custody at the outset of legal proceedings. Whether these differences are sufficient to survive a challenge based on the privacy rights of a fit parent is not clear.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

None.

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<sup>19</sup> *De Los Milagros Castellat v. Pereira*, 225 So. 3d 368, 370-371 (Fla. 3d DCA 2017).

<sup>20</sup> *Id.* at 372. The *Pereira* court explained that the removal of a beneficial relationship does not constitute sufficient harm to interfere with a parent’s authority over a child as follows:

As our Supreme Court has held, “[t]here may be many beneficial relationships for a child, but it is not for the government to decide with whom the child builds these relationships. This concept implicates the very core of our constitutional freedoms and embodies the essence of Florida’s constitutional right to privacy.” *Von Eiff*, 720 So.2d at 516. The child’s life may well be enhanced by the additional financial, social, spiritual, and emotional support the former partner might provide. But whether the benefits of such support, from a former partner who is neither the biological or legal parent, outweigh possible detriments lies in the hands of the birth mother: the State of Florida cannot wrest that choice from her.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 751.01, 751.03, and 751.05.

**IX. Additional Information:**

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

**CS by Judiciary on March 18, 2019:**

The committee substitute authorizes a court to enforce conditions in a concurrent custody order that diminish a parent's custody rights if the parent agrees to the conditions.

Additionally, the committee substitute allows a court to require transition conditions for a child that has been in the temporary custody of a relative only if the child was in the relative's custody for at least six months.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Bean

590-03206-19

20191174c1

1 A bill to be entitled  
 2 An act relating to custody of minor children by  
 3 extended family; amending s. 751.01, F.S.; revising  
 4 the purposes of ch. 751, F.S.; amending s. 751.03,  
 5 F.S.; providing that a petition for concurrent custody  
 6 may include certain requests; amending s. 751.05,  
 7 F.S.; providing requirements for orders granting  
 8 concurrent or temporary custody; requiring the court  
 9 to establish any conditions for the transition of  
 10 custody of the child to the parent which are in the  
 11 child's best interest under certain circumstances;  
 12 requiring the court to consider specified factors;  
 13 authorizing the court to require parties to comply  
 14 with conditions agreed to be the parties in the order  
 15 granting concurrent custody or demonstrate that  
 16 failure to comply does not endanger the welfare of the  
 17 child; providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21 Section 1. Subsection (4) is added to section 751.01,  
 22 Florida Statutes, to read:  
 23 751.01 Purpose of act.—The purposes of this chapter are to:  
 24 (4) Protect the welfare of minor children by providing for  
 25 transitions of custody that consider each child's developmental  
 26 stage and psychological needs.

27 Section 2. Subsection (8) of section 751.03, Florida  
 28 Statutes, is amended to read:  
 29 751.03 Petition for temporary or concurrent custody;

Page 1 of 4

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

590-03206-19

20191174c1

30 contents.—Each petition for temporary or concurrent custody of a  
 31 minor child must be verified by the petitioner, who must be an  
 32 extended family member, and must contain statements, to the best  
 33 of the petitioner's knowledge and belief, providing:

34 (8) If concurrent custody is being requested:

35 (a) The ~~time~~ periods during the last 12 months that the  
 36 child resided with the petitioner;

37 (b) The type of document, if any, provided by the parent or  
 38 parents to enable the petitioner to act on behalf of the child;

39 (c) The services or actions that the petitioner is unable  
 40 to obtain or undertake without an order of custody; ~~and~~

41 (d) Whether each parent has consented in writing to the  
 42 entry of an order of concurrent custody; and

43 (e) Any other request related to the protection of the  
 44 welfare of the child, including provisions for transitioning  
 45 custody or a plan for visitation.

46  
 47 A copy of the written consent and any documents provided by the  
 48 parent to assist the petitioner in obtaining services must be  
 49 attached to the petition.

50 Section 3. Subsections (4), (6), and (7) of section 751.05,  
 51 Florida Statutes, are amended to read:

52 751.05 Order granting temporary or concurrent custody.—

53 (4) The order granting:

54 (a) Concurrent custody of the minor child may not eliminate  
 55 or diminish the custodial rights of the child's parent or  
 56 parents, except that the court may approve and enforce any  
 57 conditions agreed to by the parties as part of the court order.

58 The order must expressly state that the grant of custody does

Page 2 of 4

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590-03206-19

20191174c1

59 not affect the ability of the child's parent or parents to  
60 obtain physical custody of the child at any time, unless the  
61 parent or parents agreed to such a condition and it was included  
62 in the order.

63 (b) Temporary custody of the minor child to the petitioner  
64 may establish conditions to demonstrate the parent's fitness  
65 before the child may be returned to the physical custody of the  
66 parent and may also grant visitation rights to the child's  
67 parent or parents, if it is in the best interest of the child.

68 (6) At any time, either or both of the child's parents may  
69 petition the court to modify or terminate the order granting  
70 temporary custody.

71 (a) The court shall terminate the order upon a finding that  
72 the parent is a fit parent, or by consent of the parties. If the  
73 child has been in the temporary custody of an extended family  
74 member for 6 months or longer, the court shall establish any  
75 conditions for the transition of the child to the parents'  
76 custody which are in the best interest of the child, considering  
77 the length of time the child lived with the extended family  
78 member, the child's developmental stage and psychological needs,  
79 the need for a gradual transition from one setting to another,  
80 and visitation with the extended family member.

81 (b) The court may modify an order granting temporary  
82 custody if the parties consent or if modification is in the best  
83 interest of the child.

84 (7) At any time, the petitioner or either or both of the  
85 child's parents may move the court to terminate the order  
86 granting concurrent custody.

87 (a) The court shall terminate the order upon a finding that

Page 3 of 4

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590-03206-19

20191174c1

88 either or both of the child's parents object to the order,  
89 except that if the order granting concurrent custody contains  
90 conditions agreed to by the parties, the court may require the  
91 parties to comply with such conditions or demonstrate that the  
92 failure to comply does not endanger the welfare of the child  
93 before allowing the parents to regain physical custody.

94 (b) The fact that an order for concurrent custody has been  
95 terminated does not preclude any person who is otherwise  
96 eligible to petition for temporary custody from filing such  
97 petition.

98 Section 4. This act shall take effect July 1, 2019.

Page 4 of 4

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1338

INTRODUCER: Senator Rodriguez

SUBJECT: Guardianship

DATE: March 29, 2019

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

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE | ACTION           |
|----|-----------------------------|-----------------------------|-----------|------------------|
| 1. | <u>Tulloch</u>              | <u>Cibula</u>               | <u>JU</u> | <b>Favorable</b> |
| 2. | <u>Delia</u>                | <u>Hendon</u>               | <u>CF</u> |                  |
| 3. | <u>                    </u> | <u>                    </u> | <u>RC</u> |                  |

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**I. Summary:**

SB 1338 amends three provisions of the Florida Guardianship Law. The bill makes minor or technical changes to the venue provision in s. 744.3701(1)-(4), F.S., clarifying that venue for purposes of appointing a guardian applies to minors as well as incapacitated persons. Additionally, the bill makes technical changes to s. 744.3701(1), F.S., to clarify that only the enumerated list of persons or agency representatives may inspect a confidential guardianship report or settlement agreement unless a court order based on good cause or another statutory provision permits others to inspect these documents.

Most significantly, the bill changes the standard and procedures for the mandatory dismissal of a petition to determine incapacity by a court under s. 744.331(4), F.S. Under existing law, a court *must* dismiss a petition if at least two of the three members of an examining committee conclude that the alleged incapacitated person is not incapacitated in any respect. Under the bill, a court must dismiss the petition only if the committee unanimously concludes the incapacitated person is not incapacitated in any way. However, the bill provides interested parties an opportunity to object to the dismissal by filing a timely verified motion making a reasonable showing, by evidence in the record or proffered, that the hearing is necessary. However, a party that files the motion in bad faith is subject to sanctions.

The bill may have a fiscal impact on the state court system. The bill provides that it is effective upon becoming a law and applies retroactively to pending cases under the Florida Guardianship Law.

## II. Present Situation:

### Guardianship

Guardianships are trust relationships designed to protect vulnerable members of society who do not have the ability to protect themselves, such as minor children and incapacitated adults. Under a guardianship, a “guardian” is appointed to act on behalf of the vulnerable person, also called a “ward.”<sup>1</sup> There are two main forms of guardianship: (1) guardianship over the person and (2) guardianship over the property, which may be limited or plenary.<sup>2</sup> A guardian is given the legal duty and authority to care for the ward and his or her property during the ward’s infancy, disability, or incapacity.<sup>3</sup>

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.<sup>4</sup> Once an adult is adjudicated incompetent, then a guardian may be appointed.<sup>5</sup>

For minors, i.e., an unmarried person under the age of 18,<sup>6</sup> no petition to determine incapacity need be filed<sup>7</sup> because minors are presumptively lacking in capacity by operation of law. Minors are treated differently “based upon the particular vulnerability of children, their inability to make critical decisions in an informed, mature manner, and the importance of the parental role in child rearing.”<sup>8</sup> For instance, minors are deemed not to have legal capacity to initiate legal proceedings<sup>9</sup> or enter contracts.<sup>10</sup>

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court.

### Procedures to Determine Incapacity and Appoint a Guardian

“Guardianships are governed by a comprehensive statutory code and set of procedural rules.”<sup>11</sup> “The guardianship statutes and rules complement one another. The guardianship statutes set out the substantive law in this area and the Florida Probate Rules set out ‘the procedure in all probate

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

<sup>2</sup> Section 744.102(9), F.S.

<sup>3</sup> BLACK’S LAW DICTIONARY, 10th edition, 2014.

<sup>4</sup> See generally, s. 744.102(12), F.S.

<sup>5</sup> *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh’g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018) (quoting *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 505 (Fla. 2006))(internal quotation marks omitted).

<sup>6</sup> Section 744.102(13), F.S.

<sup>7</sup> Fla. Prob. R. 5.555(a)-(b).

<sup>8</sup> 25 Fla. Jur 2d Family Law § 252

<sup>9</sup> *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh’g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018).

<sup>10</sup> 25 Fla. Jur 2d Family Law § 495.

<sup>11</sup> *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 506 (Fla. 2006) (quoting Fla. Prob. R. 5.010).

and guardianship proceedings.”<sup>12</sup> Because guardianship proceedings seek to protect the ward,<sup>13</sup> unlike most other types of litigation, guardianship proceedings are not adversarial.<sup>14</sup>

### ***Appropriate Court Venue***

Venue is “[t]he proper or a possible place for a lawsuit to proceed, usually because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant.”<sup>15</sup> Venue for alleged incapacitated adults is determined under s. 744.1097, F.S.<sup>16</sup> The statute treats proceedings to declare a person incapacitated and proceedings to appoint a guardian as two separate proceedings for purposes of venue.

For proceedings to declare a person incapacitated, the venue is the court where either (1) the incapacitated adult resides or (2) the incapacitated adult is found.<sup>17</sup>

For proceedings to appoint a guardian, the venue depends on whether the incapacitated person is a state resident or non-state resident:

- If a state resident, then venue is the county where the incapacitated person resides.<sup>18</sup>
- If the person is not a state resident, however, then venue is any county where the incapacitated person’s property is located.<sup>19</sup>
- If the person is not a state resident and owns no property, then venue is in the county where any debtor of the incapacitated person resides.<sup>20</sup>

Although the venue statute does not currently include minors, the committee note to Florida Probate Rule 5.555 indicates that venue for purposes of appointing a guardian to a minor is determined under ch. 744 in the same manner.<sup>21</sup>

### ***Petition to Determine Incapacity and Appoint a Guardian***

A petition to determine incapacity may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the

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<sup>12</sup> *Id.*

<sup>13</sup> Section 744.1012, F.S.

<sup>14</sup> *Hayes* at 505.

<sup>15</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>16</sup> The venue provision does not apply to veterans. *See* s. 744.1097(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 744.1097(2)(a), F.S.

<sup>19</sup> Section 744.1097(2)(b), F.S.

<sup>20</sup> Section 744.1097(2)(c), F.S.

<sup>21</sup> Fla. Prob. R. 5.555 (“COMMITTEE NOTES: The provisions of chapter 744, Florida Statutes, and the guardianship rules enacted in 1989 leave some uncertainty with respect to the procedural requirements in guardianships for minors who are not incapacitated persons. This rule is intended to address only certain procedures with respect to the establishment and administration of guardianships over minors. The committee believes that certain provisions of the guardianship law and rules apply to both guardianships of minors as well as guardianships of incapacitated persons and no change has been suggested with respect to such rules. Because no adjudication of a minor is required by statute, it is contemplated that appointment of a guardian for a minor may be accomplished without a hearing. Initial and annual guardianship reports for minors have been simplified where all assets are on deposit with a designated financial institution under applicable Florida law.”).



attorney for the alleged incapacitated person and served on all next of kin identified in the petition.<sup>22</sup>

Within five days after the petition has been filed, the court must appoint an examining committee to examine the alleged incapacitated person and file a written report with the court. The examining committee consists of three members:

One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition.<sup>23</sup>

Depending on the recommendations of the committee, the petition may either be dismissed or proceed to an adjudicatory hearing.

#### ***Dismissal of Petitions to Determine Incapacity***

If a majority of the examining committee members, two of three, conclude the alleged incapacitated person is not incapacitated in any respect, section 744.331(4), F.S. states that the "court shall dismiss the petition." This provision was strictly construed in *Rothman v. Rothman*,<sup>24</sup> which held that a court had no discretion to hold a hearing and had to dismiss the petition in that case, notwithstanding extrinsic evidence by the alleged incapacitated person's grandson that tended to call into doubt the reports received by the examining committee.<sup>25</sup>

#### ***Adjudicatory Hearing***

The adjudicatory hearing must be conducted no more than 30 days after the filing of the last examining committee member's report.<sup>26</sup> In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.<sup>27</sup> The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.<sup>28</sup> When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.<sup>29</sup>

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<sup>22</sup> Section 744.331(1), F.S.

<sup>23</sup> Section 744.331(3), F.S.

<sup>24</sup> 93 So 3d 1052 (4<sup>th</sup> DCA 2012).

<sup>25</sup> *Id.* at 1053.

<sup>26</sup> Section 744.331(5)(a), F.S.

<sup>27</sup> Section 744.331(5)(c), F.S.

<sup>28</sup> Section 744.331(6), F.S.

<sup>29</sup> Section 744.331(6)(b), F.S.

An order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.<sup>30</sup> If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.<sup>31</sup>

### ***Minors***

For minors, only a petition to appoint a guardian is filed. A petition to determine incapacity is not necessary.<sup>32</sup>

### **Guardians**

Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.<sup>33</sup> Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.<sup>34</sup> A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.<sup>35</sup> The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.<sup>36</sup> In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." In the event of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.<sup>37</sup>

### ***Confidentiality of Guardianship Reports***

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. For instance, a guardian must file with the court an initial guardianship report,<sup>38</sup> an annual guardianship report,<sup>39</sup> and an annual accounting of the ward's

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<sup>30</sup> Section 744.344(3), F.S.

<sup>31</sup> Section 744.344(4), F.S.

<sup>32</sup> Fla. Prob. R. 5.555 (a)-(b), F.S..

<sup>33</sup> Section 744.102(9), F.S.

<sup>34</sup> *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

<sup>35</sup> *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

<sup>36</sup> *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

<sup>37</sup> Section 744.446(4), F.S.

<sup>38</sup> Section 744.362, F.S.

<sup>39</sup> Section 744.367, F.S.

property.<sup>40</sup> The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.<sup>41</sup>

The guardianship reports as well as settlement agreements are deemed confidential information under s. 744.3701, F.S., and may only be shared with specific, enumerated individuals or agency representatives, or when authorized by a court order.<sup>42</sup>

### **Continuing Court Jurisdiction**

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.<sup>43</sup> At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.<sup>44</sup>

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.<sup>45</sup> Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.<sup>46</sup>

A ward has the right to be restored to capacity at the earliest possible time.<sup>47</sup> The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed.<sup>48</sup>

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

SB 1338 amends three provisions of Florida's Guardianship Law. The changes in Sections 1 and 3 appear to be more minor or technical in nature, while the change in Section 2 substantively changes the standard and procedures for the dismissal of a petition to determine incapacity.

**Section 1** makes technical changes to s. 744.1097, F.S., concerning how venue is determined in two types of proceedings: (1) proceeding for declaration of incapacity, and (2) proceeding for the appointment of a guardian. For the second type of proceeding, appointment of a guardian, the bill adds the word "minor" to clarify that the venue determination applies to minors as well as incapacitated persons. This appears to bring the statutory language in line with current practice.

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<sup>40</sup> Section 744.3678, F.S.

<sup>41</sup> Section 744.368, F.S.

<sup>42</sup> *See also* Fla. R. Jud. Admin. 2.420 (d)(1)(xv)(requiring clerks of court to maintain confidentiality of "[g]uardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.").

<sup>43</sup> Section 744.372, F.S.

<sup>44</sup> Section 744.3715, F.S.

<sup>45</sup> Section 744.108(1), F.S.

<sup>46</sup> Section 744.108(8), F.S.

<sup>47</sup> Section 744.3215(1)(c), F.S.

<sup>48</sup> Section 744.464(2)(b), F.S.

Additionally, the bill adds the word minor to clarify that the provisions requiring a change of venue (either by virtue of a petition from the guardian or by virtue of the ward being “found” in a different county than the county of residence) applies to minors as well as incapacitated persons.

**Section 2** makes technical changes to s. 744.3701(1), F.S.:

- Removing a comma in the first sentence to clarify that the court’s order to permit inspection of confidential guardianship reports and settlement agreements must be based on a showing of good cause.
- Adding language directly after the comma to clarify that confidential guardianship reports and settlement agreements may also be inspected if “otherwise provided by this chapter.”
- Reformatting and creating a list of the existing enumerated persons and agency representatives who may inspect confidential guardianship reports and settlement agreements without a court order based on good cause or some other statutory authorization.

**Section 3** of the bill substantively amends the standard and procedures for dismissal of petitions to determine capacity in s. 744.331(4), F.S. Currently, a court is *required* to dismiss a petition if a *majority* (2 out of 3) of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect. This provision has been construed in *Rothman v. Rothman* as an absolute, non-discretionary requirement by a court, notwithstanding any other extrinsic evidence.

The bill amends the standard for dismissal of petitions to require to court to dismiss a petition if the examining committee *unanimously* (3 out of 3) concludes the alleged incapacitated person is not incapacitated in any respect.

However, the bill also provides an *exception*, permitting an interested person to challenge the unanimous determination and essentially object to dismissal of the petition. The procedures governing this exception provide that the court must dismiss a petition *unless* a verified motion challenging the examining committee’s unanimous conclusion is

- Filed within 10 days after service of the last examining committee report; and
- Makes a reasonable showing that a hearing on the petition is *necessary* based on evidence already in the record or proffered evidence.

When a verified motion is filed, the court must rule on it as soon as practicable. There is also an inference that the verified motion must be filed in good faith based on the bill’s provision that the court may imposed sanction under s. 744.331(7)(c)2, F.S if it finds the verified motion was filed in bad faith.

**Section 4** provides that the bill applies retroactively to all pending proceedings under the Florida Guardianship Law.

**Section 5** provides the bill is effective upon becoming law.

**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:

The bill, particularly the new standard and procedure for dismissal of a petition, may increase costs associated with court proceedings. Many of these costs will be borne by the alleged incapacitated person. However, it may also protect more incapacitated, vulnerable individuals and their assets from those seeking to take advantage of the incapacity by ensuring the courts still have discretion and are not bound by potentially improper reports given to the examining committee. Additionally, the bill provides for the threat of sanctions for any verified motions challenging the examining committee's conclusions filed in bad faith.

## C. Government Sector Impact:

The additional hearing authorized by the bill may have a fiscal impact on the state court system by increasing judicial workloads.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 744.1097, 744.331, and 744.3701, 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.

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

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By Senator Rodriguez

37-01934A-19

20191338\_\_

A bill to be entitled

An act relating to guardianship; amending s. 744.1097, F.S.; applying provisions relating to the determination of venue in proceedings for the appointment of a guardian to minors; amending s. 744.331, F.S.; requiring that a court dismiss a petition for determination of incapacity if all members of the examining committee conclude that the person is not incapacitated, unless a certain motion is filed within a specified period; providing requirements for such motion; requiring the court to rule on the motion as soon as practicable; authorizing the court to impose sanctions under certain circumstances; amending s. 744.3701, F.S.; making technical revisions; providing for retroactive application; providing an effective date.

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

Section 1. Section 744.1097, Florida Statutes, is amended to read:

744.1097 Venue.—

(1) The venue in proceedings for declaration of incapacity shall be where the alleged incapacitated person resides or is found. ~~The provisions of~~ This section does de not apply to veterans.

(2) The venue in proceedings for the appointment of a guardian is shall be:

(a) If the incapacitated person or minor is a resident of

Page 1 of 4

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

37-01934A-19

20191338\_\_

this state, in the county where the incapacitated person or minor resides.

(b) If the incapacitated person or minor is not a resident of this state, in any county in this state where property of the incapacitated person or minor is located.

(c) If the incapacitated person or minor is not a resident of this state and owns no property in this state, in the county where any debtor of the incapacitated person or minor resides.

(3) When the residence of an incapacitated person or minor is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098.

(4) If an incapacitated person or minor is a resident of this state and is found in a county other than the county of residence, the venue for declaration of incapacity and for the appointment of a guardian may be the county where the incapacitated person or minor is found. Upon transfer of the incapacitated person or minor to the county of residence, the guardian may have the venue of the guardianship changed to the county of residence and a successor guardian may be appointed.

Section 2. Subsection (4) of section 744.331, Florida Statutes is amended to read:

744.331 Procedures to determine incapacity.—

(4) DISMISSAL OF PETITION.—If all three members of the examining committee conclude that the alleged incapacitated person is not incapacitated in any respect, the court must dismiss the petition unless a verified motion that challenges the examining committee's conclusion is filed no later than 10 days after service of the last examining committee report. The

Page 2 of 4

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

37-01934A-19

20191338\_\_

59 verified motion must make a reasonable showing, by evidence in  
 60 the record or proffered, that a hearing on the petition is  
 61 necessary. The court shall rule on the verified motion as soon  
 62 as is practicable. If the court finds that the verified motion  
 63 is filed in bad faith, the court may impose sanctions under  
 64 subparagraph (7) (c)2. If a majority of the examining committee  
 65 ~~members conclude that the alleged incapacitated person is not~~  
 66 ~~incapacitated in any respect, the court shall dismiss the~~  
 67 ~~petition.~~

68 Section 3. Subsection (1) of section 744.3701, Florida  
 69 Statutes, is amended to read:

70 744.3701 Confidentiality.—

71 (1) Unless otherwise ordered by the court, upon a showing  
 72 of good cause, or unless otherwise provided by this chapter, an  
 73 initial, annual, or final guardianship report or amendment  
 74 thereto, or a court record relating to the settlement of a  
 75 claim, is subject to inspection only by any of the following:

76 (a) The court.

77 (b) The clerk or the clerk's representative.

78 (c) The guardian and the guardian's attorney.

79 (d) The guardian ad litem with regard to the settlement of  
 80 the claim.

81 (e) The ward if he or she is at least 14 years of age and  
 82 has not been determined to be totally incapacitated.

83 (f) The ward's attorney.

84 (g) The minor if he or she is at least 14 years of age.

85 (h) The attorney representing the minor with regard to the  
 86 minor's claim, or as otherwise provided by this chapter.

87 Section 4. This act applies retroactively to all

37-01934A-19

20191338\_\_

88 proceedings pending before the effective date of this act and to  
 89 all proceedings commenced on or after the effective date of this  
 90 act.

91 Section 5. This act shall take effect upon becoming a law.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 1418

INTRODUCER: Senator Powell

SUBJECT: Admission to Mental Health Facilities

DATE: March 29, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Delia   | Hendon         | CF        | <b>Pre-meeting</b> |
| 2. |         |                | GO        |                    |
| 3. |         |                | RC        |                    |

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**I. Summary:**

SB 1418 requires courts to appoint a public defender to represent minors being admitted to a receiving facility, a mental health treatment facility, or a hospital under the Baker Act within one court working day of an involuntary placement petition being filed. The bill requires the minor’s attorney have access to all records relevant for representation of the minor in a judicial hearing and requires the attorney to represent the patient’s interests throughout the course of the proceedings regardless of the course of payment to the attorney.

The bill also requires the administrators of Baker Act receiving facilities to file a petition for a circuit court hearing within 24 hours of a minor patient applying for voluntary admission to the facility. The bill mandates a court hearing within 5 days of receiving the completed application to determine whether the patient has voluntarily consented to be admitted to the facility.

The bill will have a fiscal impact and has an effective date of July 1, 2019

**II. Present Situation:**

**Baker Act**

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others. The Baker Act also establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings.

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.<sup>1</sup> 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:<sup>2</sup>

- 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
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal 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 a 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.

### *Involuntary Admissions*

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.<sup>3</sup>

Within the 72-hour examination period, or if the 72 hours end on a weekend or holiday, no later than the next business day, one of the following must occur:

- 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;
- The patient, unless charged with a crime, must give express and informed consent to a placement as a voluntary and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.<sup>4</sup>

Receiving facilities must give prompt notice<sup>5</sup> of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,<sup>6</sup> guardian advocate,<sup>7</sup> health care surrogate or proxy, attorney, and representative.<sup>8</sup> If the patient is a minor, the receiving facility must give prompt notice to the minor's parent, guardian, caregiver, or guardian advocate. Notice for an adult may be provided within 24 hours of arrival; however, notice for a minor must be provided immediately after the minor's arrival at the facility. The facility may delay the

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<sup>1</sup> SS. 394.4625 and 394.463, F.S.

<sup>2</sup> S. 394.463(1), F.S.

<sup>3</sup> S. 394.455(39), F.S. This term does not include a county jail.

<sup>4</sup> S. 394.463(2)(g), F.S.

<sup>5</sup> Notice may be provided in person or by telephone; however, in the case of a minor, notice may also be provided by other electronic means. S. 394.455(2), F.S.

<sup>6</sup> "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated. Section 394.455(17), F.S.

<sup>7</sup> "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. Section 394.455(18), F.S.

<sup>8</sup> S. 394.4599(2)(b), F.S.

notification for a minor for up to 24 hours if it has submitted a report to the central abuse hotline. The receiving facility must attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until it receives confirmation that the notice has been received. Attempts must be repeated at least once every hour during the first 12 hours after the minor's arrival and then once every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.<sup>9</sup>

### ***Voluntary Admissions and Transfer to Voluntary Status***

Baker Act receiving facilities also admit any person 18 years of age or older making application by express and informed consent for admission or any person age 17 or under for whom such application is made by his or her guardian.<sup>10</sup> If found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility.<sup>11</sup> Any person age 17 or under may be admitted only after a hearing to verify the voluntariness of their consent.<sup>12</sup> However, In 1997 a joint legislative committee determined that the "voluntariness hearing" described in the Baker Act Florida Administrative Rules at that time didn't conform to a "hearing" as intended in this section of the law because each other time that term was used in the law, it applied to a judicial hearing.<sup>13</sup> As a result, all reference to "voluntary hearings" were deleted from the rules. DCF stated that only a judicial hearing would suffice to meet this legal requirement and that it had to be conducted prior to the minor's voluntary admission, despite the consent of the parents or assent of the child to the admission.<sup>14</sup> Most patients age 17 or under are admitted under involuntary status and either discharged or later transferred to voluntary status, and it is unlikely that pre-admission court hearings for voluntary admission of minors are being conducted anywhere in the state.<sup>15</sup>

A patient admitted on an involuntary basis who applies to be transferred to voluntary status must be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467, F.S., and continues to meet the criteria for involuntary placement.<sup>16</sup>

### ***Time Limits***

A critical 72-hour period applies under Baker Act. The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.<sup>17</sup> Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;

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<sup>9</sup> S. 394.4599(c), F.S.

<sup>10</sup> S. 394.4625

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

<sup>12</sup> *Id.*

<sup>13</sup> Department of Children and Families; Frequently Asked Questions, <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/Minors.pdf> (last visited March 26, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Supra* at note 10.

<sup>17</sup> Section 394.463(2)(f), F.S.

- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.<sup>18</sup>

The court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.<sup>19</sup> The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.<sup>20</sup>

### **Crisis Stabilization Units**

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding to provide services to individuals showing acute mental health disorders. CSUs screen, assess, and admit for stabilization individuals who voluntarily present themselves to the unit, as well as individuals who are brought to the unit on an involuntary basis.<sup>21</sup> CSUs provide patients with 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services.<sup>22</sup> The purpose of a CSU is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs.<sup>23</sup> Individuals often enter the public mental health system through CSUs. For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by the Legislature in the 1970s to ensure continuity of care for individuals.<sup>24</sup>

Section 394.467, F.S., defines “residential treatment center for children and adolescents” as a 24-hour residential program, including a therapeutic group home, which provides mental health services to emotionally disturbed children or adolescents and which is a private for-profit or not-for-profit corporation licensed by the agency which offers a variety of treatment modalities in a more restrictive setting. Residential treatment centers provide longer-term treatment services. The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services to children and adolescents who are experiencing an

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<sup>18</sup> Section 394.463(2)(i)4., F.S.

<sup>19</sup> Sections 394.4655(6) and 394.467(6), F.S.

<sup>20</sup> Section 394.467(1), F.S.

<sup>21</sup> S. 394.875(1)(a), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Florida Senate, Budget Subcommittee on Health and Human Services Appropriations, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf> (last visited March 26, 2019).

acute mental or emotional crisis, have a serious emotional disturbance or mental illness, or have an emotional disturbance. The treatment center must provide the least restrictive available treatment that is appropriate to the individual needs of the child or adolescent.<sup>25</sup>

### ***Integrated Children's Crisis Stabilization Unit/Juvenile Addictions Receiving Facility Services***

In 2001, the Legislature authorized DCF and the Agency for Health Care Administration (AHCA) to establish children's behavioral crisis unit (CBCU) demonstration models in Collier, Lee, and Sarasota Counties.<sup>26</sup> CBCUs integrate children's mental health crisis stabilization units with substance abuse juvenile addictions receiving facility services to provide emergency mental health and substance abuse services that are integrated within facilities licensed and designated by AHCA for eligible children under 18 years of age.<sup>27</sup> Like standard crisis stabilization units, patients are admitted on both a voluntary and involuntary basis, and patients admitted on an involuntary can apply for a transfer to voluntary status.

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

**Section 1** amends s. 394.4599, F.S., to require that within one court working day after a Baker Act petition for involuntary services for a minor is filed, the court appoint a public defender to represent the individual if they have not retained private counsel. The bill requires the clerk of the court to immediately notify the public defender of the appointment, and the public defender is required to provide representation until case dismissal, patient discharge, or expiration of the court order. The attorney who represents the patient must be provided access to the patient, witnesses, and relevant records, and the attorney must represent the interests of the patient, regardless of the course of payment to the attorney.

**Section 2** amends s. 394.4785, F.S., to require the appointment of a public defender as described in Section 1 of the bill in Baker Act cases involving a child or adolescent. The bill requires the court to appoint a public defender occur one court working day of the Baker Act placement petition filing and provides the public defender or private counsel, as applicable, with the same rights of access to the patient, witnesses, and relevant information as described in Section 1. The bill also requires the attorney to represent the interests of the patient, regardless of the course of payment to the attorney.

**Section 3** amends s. 394.4625, F.S., to require that in cases where a minor patient has either been admitted to a Baker Act receiving facility on a voluntary basis or has been involuntarily admitted and subsequently applied for a transfer to voluntary status, the administrator of a Baker Act receiving facility must petition the court where the patient is located for voluntary placement. The bill requires that the facility file the petition within 24 hours of admitting the patient or receiving the transfer request. The petition must include the application for voluntary admission/voluntary transfer status, documentation of express and informed consent to treatment by the patient or their legal guardian, certification that statutorily required disclosures regarding

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<sup>25</sup> S. 394.4785(2), F.S.

<sup>26</sup> S. 394.499(1), F.S.

<sup>27</sup> *Id.* The integrated model of mental health crisis stabilization units and substance abuse addictions receiving facilities also exists for adult patients.

consent were made to the patient and their guardian, and pertinent demographic information about the patient and their guardian.

The bill requires the court, upon the filing of such petition, to provide copies to DCF, the patient, and their guardian. The court may not charge a fee for providing these copies. The bill also requires that within 5 working days after a minor patient is admitted, the court must hold a hearing to determine whether the consent to admission is voluntary. The court must similarly hold a hearing on the voluntariness of consent within 5 days of receiving a petition for transfer to voluntary status.

**Section 4** amends s. 394.499, F.S., by imposing the same requirements of Section 3 of the bill to minor patients admitted to a CBCU on a voluntary basis. As such, a CBCU administrator must file a petition with the court upon application for voluntary admission and the court must hold a hearing within five days of the patient being admitted to determine the voluntariness of the patient's consent.

**Section 5** provides an effective date of July 1, 2019.

#### **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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The state court system will experience an indeterminate negative fiscal impact associated with the additional duty assigned to the public defenders to represent children under the age of 18 within 1 court working day after the filing of an involuntary services petition. Presently, if a person is admitted for evaluation and assessment meets the criteria, within 72 hours a petition for involuntary inpatient treatment must be filed with the court. At the hearing on the petition, a public defender is appointed to represent the person being held if they cannot afford to hire their own attorney.

The bill also requires courts to schedule voluntariness hearings within 5 days, which may require hiring additional staff to handle the increased workload. Courts will also be required to provide copies of the petitions filed by receiving facilities without reimbursement. The impact of these changes is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 394.4599, 394.4785, 394.4625, and 394.499 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.



178120

LEGISLATIVE ACTION

Senate

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. .  
. .  
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House

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The Committee on Children, Families, and Elder Affairs (Powell) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (4) through (11) of section 394.4615, Florida Statutes, are redesignated as subsections (5) through (12), respectively, a new subsection (4) is added to that section, and subsection (3) of that section is amended, to read:

394.4615 Clinical records; confidentiality.-





11 (3) Information from the clinical record must ~~may~~ be  
12 released ~~in the following circumstances:~~

13 ~~(a)~~ when a patient has communicated to a service provider a  
14 specific threat to cause serious bodily injury or death to an  
15 identified or a readily available person, if the service  
16 provider reasonably believes, or should reasonably believe  
17 according to the standards of his or her profession, that the  
18 patient has the apparent intent and ability to imminently or  
19 immediately carry out such threat ~~declared an intention to harm~~  
20 ~~other persons.~~ When such communication ~~declaration~~ has been  
21 made, the administrator must ~~may~~ authorize the release of  
22 sufficient information to provide adequate warning to the person  
23 threatened with harm by the patient and communicate the threat  
24 to law enforcement.

25 (4) (a) ~~(b)~~ Information from the clinical record may be  
26 released when the administrator of the facility or secretary of  
27 the department deems release to a qualified researcher as  
28 defined in administrative rule, an aftercare treatment provider,  
29 or an employee or agent of the department is necessary for  
30 treatment of the patient, maintenance of adequate records,  
31 compilation of treatment data, aftercare planning, or evaluation  
32 of programs.

33 (b) For the purpose of determining whether a person meets  
34 the criteria for involuntary outpatient placement or for  
35 preparing the proposed treatment plan pursuant to s. 394.4655,  
36 the clinical record may be released to the state attorney, the  
37 public defender or the patient's private legal counsel, the  
38 court, and to the appropriate mental health professionals,  
39 including the service provider identified in s.



40 394.4655(7)(b)2., in accordance with state and federal law.

41 Section 2. Paragraph (a) of subsection (2) of section  
42 394.463, Florida Statutes, is amended to read:

43 394.463 Involuntary examination.—

44 (2) INVOLUNTARY EXAMINATION.—

45 (a) An involuntary examination may be initiated by any one  
46 of the following means:

47 1. A circuit or county court may enter an ex parte order  
48 stating that a person appears to meet the criteria for  
49 involuntary examination and specifying the findings on which  
50 that conclusion is based. The ex parte order for involuntary  
51 examination must be based on written or oral sworn testimony  
52 that includes specific facts that support the findings. If other  
53 less restrictive means are not available, such as voluntary  
54 appearance for outpatient evaluation, a law enforcement officer,  
55 or other designated agent of the court, shall take the person  
56 into custody and deliver him or her to an appropriate, or the  
57 nearest, facility within the designated receiving system  
58 pursuant to s. 394.462 for involuntary examination. The order of  
59 the court shall be made a part of the patient's clinical record.  
60 A fee may not be charged for the filing of an order under this  
61 subsection. A facility accepting the patient based on this order  
62 must send a copy of the order to the department within 5 ~~the~~  
63 ~~next~~ working days ~~day~~. The order may be submitted electronically  
64 through existing data systems, if available. The order shall be  
65 valid only until the person is delivered to the facility or for  
66 the period specified in the order itself, whichever comes first.  
67 If no time limit is specified in the order, the order shall be  
68 valid for 7 days after the date that the order was signed.



178120

69           2. A law enforcement officer shall take a person who  
70 appears to meet the criteria for involuntary examination into  
71 custody and deliver the person or have him or her delivered to  
72 an appropriate, or the nearest, facility within the designated  
73 receiving system pursuant to s. 394.462 for examination. The  
74 officer shall execute a written report detailing the  
75 circumstances under which the person was taken into custody,  
76 which must be made a part of the patient's clinical record. Any  
77 facility accepting the patient based on this report must send a  
78 copy of the report to the department within 5 ~~the next~~ working  
79 days ~~day~~.

80           3. A physician, clinical psychologist, psychiatric nurse,  
81 mental health counselor, marriage and family therapist, or  
82 clinical social worker may execute a certificate stating that he  
83 or she has examined a person within the preceding 48 hours and  
84 finds that the person appears to meet the criteria for  
85 involuntary examination and stating the observations upon which  
86 that conclusion is based. If other less restrictive means, such  
87 as voluntary appearance for outpatient evaluation, are not  
88 available, a law enforcement officer shall take into custody the  
89 person named in the certificate and deliver him or her to the  
90 appropriate, or nearest, facility within the designated  
91 receiving system pursuant to s. 394.462 for involuntary  
92 examination. The law enforcement officer shall execute a written  
93 report detailing the circumstances under which the person was  
94 taken into custody. The report and certificate shall be made a  
95 part of the patient's clinical record. Any facility accepting  
96 the patient based on this certificate must send a copy of the  
97 certificate to the department within 5 ~~the next~~ working days



178120

98 ~~day~~. The document may be submitted electronically through  
99 existing data systems, if applicable.

100 Section 3. Section 456.059, Florida Statutes, is amended to  
101 read:

102 456.059 Communications confidential; exceptions.—

103 Communications between a patient and a psychiatrist, as defined  
104 in s. 394.455, shall be held confidential and may ~~shall~~ not be  
105 disclosed except upon the request of the patient or the  
106 patient's legal representative. Provision of psychiatric records  
107 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding  
108 any other provision of this section or s. 90.503, when ~~where~~:

109 (1) A patient is engaged in a treatment relationship with a  
110 psychiatrist;

111 (2) Such patient has communicated to the psychiatrist a  
112 specific threat to cause serious bodily injury or death to an  
113 identified or a readily available person ~~made an actual threat~~  
114 ~~to physically harm an identifiable victim or victims;~~ and

115 (3) The treating psychiatrist makes a clinical judgment  
116 that the patient has the apparent intent and ability to  
117 imminently or immediately carry out such threat ~~capability to~~  
118 ~~commit such an act and that it is more likely than not that in~~  
119 ~~the near future the patient will carry out that threat,~~

120  
121 the psychiatrist shall ~~may~~ disclose patient communications to  
122 the extent necessary to warn any potential victim or to  
123 communicate the threat to a law enforcement agency. A  
124 psychiatrist's disclosure of confidential communications when  
125 communicating a threat pursuant to this section may not be the  
126 basis of any legal action or criminal or civil liability against



127 ~~the psychiatrist No civil or criminal action shall be~~  
128 ~~instituted, and there shall be no liability on account of~~  
129 ~~disclosure of otherwise confidential communications by a~~  
130 ~~psychiatrist in disclosing a threat pursuant to this section.~~

131 Section 4. Section 490.0147, Florida Statutes, is amended  
132 to read:

133 490.0147 Confidentiality and privileged communications.—

134 (1) Any communication between a psychologist any person  
135 ~~licensed under this chapter~~ and her or his patient or client is  
136 ~~shall be~~ confidential. This privilege may be waived under the  
137 following conditions:

138 (a)(1) When the psychologist person licensed under this  
139 ~~chapter~~ is a party defendant to a civil, criminal, or  
140 disciplinary action arising from a complaint filed by the  
141 patient or client, in which case the waiver shall be limited to  
142 that action; or—

143 (b)(2) When the patient or client agrees to the waiver, in  
144 writing, or when more than one person in a family is receiving  
145 therapy, when each family member agrees to the waiver, in  
146 writing.

147 (2) Such privilege must be waived, and the psychologist  
148 shall disclose patient and client communications to the extent  
149 necessary to warn any potential victim and to communicate the  
150 threat to a law enforcement agency, if a patient or client has  
151 communicated to the psychologist a specific threat to cause  
152 serious bodily injury or death to an identified or readily  
153 available person, and the psychologist makes a clinical judgment  
154 that the patient or client has the apparent intent and ability  
155 to imminently or immediately carry out such threat. A



178120

156 psychologist's disclosure of confidential communications when  
157 communicating a threat pursuant to this subsection may not be  
158 the basis of any legal action or criminal or civil liability  
159 against the psychologist

160 ~~(3) When there is a clear and immediate probability of~~  
161 ~~physical harm to the patient or client, to other individuals, or~~  
162 ~~to society and the person licensed under this chapter~~  
163 ~~communicates the information only to the potential victim,~~  
164 ~~appropriate family member, or law enforcement or other~~  
165 ~~appropriate authorities.~~

166 Section 5. Section 491.0147, Florida Statutes, is amended  
167 to read:

168 491.0147 Confidentiality and privileged communications.—Any  
169 communication between any person licensed or certified under  
170 this chapter and her or his patient or client is ~~shall be~~  
171 confidential.

172 (1) This privilege ~~secrecy~~ may be waived under the  
173 following conditions:

174 (a) ~~(1)~~ When the person licensed or certified under this  
175 chapter is a party defendant to a civil, criminal, or  
176 disciplinary action arising from a complaint filed by the  
177 patient or client, in which case the waiver shall be limited to  
178 that action.

179 (b) ~~(2)~~ When the patient or client agrees to the waiver, in  
180 writing, or, when more than one person in a family is receiving  
181 therapy, when each family member agrees to the waiver, in  
182 writing.

183 (2) This privilege must be waived, and the person licensed  
184 or certified under this chapter shall disclose patient and



178120

185 client communications to the extent necessary to warn any  
186 potential victim and to communicate the threat to a law  
187 enforcement agency, if a patient or client has communicated to  
188 such person a specific threat to cause serious bodily injury or  
189 death to an identified or readily available person, and the  
190 person licensed or certified under this chapter makes a clinical  
191 judgment that the patient or client has the apparent intent and  
192 ability to imminently or immediately carry out such threat. A  
193 disclosure of confidential communications by a person licensed  
194 or certified under this chapter when communicating a threat  
195 pursuant to this subsection may not be the basis of any legal  
196 action or criminal or civil liability against such person

197 ~~(3) When, in the clinical judgment of the person licensed~~  
198 ~~or certified under this chapter, there is a clear and immediate~~  
199 ~~probability of physical harm to the patient or client, to other~~  
200 ~~individuals, or to society and the person licensed or certified~~  
201 ~~under this chapter communicates the information only to the~~  
202 ~~potential victim, appropriate family member, or law enforcement~~  
203 ~~or other appropriate authorities. There shall be no liability on~~  
204 ~~the part of, and no cause of action of any nature shall arise~~  
205 ~~against, a person licensed or certified under this chapter for~~  
206 ~~the disclosure of otherwise confidential communications under~~  
207 ~~this subsection.~~

208 Section 6. Section 1012.583, Florida Statutes, is amended  
209 to read:

210 1012.583 Continuing education and inservice training for  
211 youth suicide awareness and prevention.—

212 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~  
213 ~~year,~~ the Department of Education, in consultation with the



178120

214 Statewide Office for Suicide Prevention and suicide prevention  
215 experts, shall develop a list of approved youth suicide  
216 awareness and prevention training materials and suicide  
217 screening instruments that may be used for training in youth  
218 suicide awareness, suicide ~~and~~ prevention, and suicide screening  
219 for instructional personnel in elementary school, middle school,  
220 and high school. The approved list of materials:

221 (a) Must identify available standardized suicide screening  
222 instruments appropriate for use with a school-age population and  
223 which have validity and reliability and include information  
224 about obtaining instruction in the administration and use of  
225 such instruments.

226 (b) ~~(a)~~ Must include training on how to identify appropriate  
227 mental health services and how to refer youth and their families  
228 to those services.

229 (c) ~~(b)~~ May include materials currently being used by a  
230 school district if such materials meet any criteria established  
231 by the department.

232 (d) ~~(e)~~ May include programs that instructional personnel  
233 can complete through a self-review of approved youth suicide  
234 awareness and prevention materials.

235 (2) A school ~~that chooses to incorporate 2 hours of~~  
236 ~~training offered pursuant to this section~~ shall be considered a  
237 "Suicide Prevention Certified School-" if it:

238 (a) Incorporates 2 hours of training offered pursuant to  
239 this section. The training must be included in the existing  
240 continuing education or inservice training requirements for  
241 instructional personnel and may not add to the total hours  
242 currently required by the department. A school that chooses to





178120

243 participate in the training must require all instructional  
244 personnel to participate.

245 (b) Has at least two school-based staff members certified  
246 or otherwise deemed competent in the use of a suicide screening  
247 instrument approved under subsection (1) and has a policy to use  
248 such suicide risk screening instrument to evaluate a student's  
249 suicide risk before requesting the initiation of, or initiating,  
250 an involuntary examination due to concerns about that student's  
251 suicide risk.

252 (3) A school that meets the criteria in subsection (2)  
253 ~~participates in the suicide awareness and prevention training~~  
254 ~~pursuant to this section~~ must report its compliance  
255 ~~participation~~ to the department. The department shall keep an  
256 updated record of all Suicide Prevention Certified Schools and  
257 shall post the list of these schools on the department's  
258 website. Each school shall also post on its own website whether  
259 it is a Suicide Prevention Certified School, and each school  
260 district shall post on its district website a list of the  
261 Suicide Prevention Certified Schools in that district.

262 (4) A person has no cause of action for any loss or damage  
263 caused by an act or omission resulting from the implementation  
264 of this section or resulting from any training required by this  
265 section unless the loss or damage was caused by willful or  
266 wanton misconduct. This section does not create any new duty of  
267 care or basis of liability.

268 (5) The State Board of Education may adopt rules to  
269 implement this section.

270 Section 7. For the purpose of incorporating the amendment  
271 made by this act to section 490.0147, Florida Statutes, in a



178120

272 reference thereto, paragraph (u) of subsection (1) of section  
273 490.009, Florida Statutes, is reenacted to read:

274 490.009 Discipline.—

275 (1) The following acts constitute grounds for denial of a  
276 license or disciplinary action, as specified in s. 456.072(2):

277 (u) Failing to maintain in confidence a communication made  
278 by a patient or client in the context of such services, except  
279 as provided in s. 490.0147.

280 Section 8. For the purpose of incorporating the amendment  
281 made by this act to section 491.0147, Florida Statutes, in a  
282 reference thereto, paragraph (u) of subsection (1) of section  
283 491.009, Florida Statutes, is reenacted to read:

284 491.009 Discipline.—

285 (1) The following acts constitute grounds for denial of a  
286 license or disciplinary action, as specified in s. 456.072(2):

287 (u) Failure of the licensee, registered intern, or  
288 certificateholder to maintain in confidence a communication made  
289 by a patient or client in the context of such services, except  
290 as provided in s. 491.0147.

291 Section 9. This act shall take effect upon becoming a law.

292  
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete everything before the enacting clause  
296 and insert:

297 A bill to be entitled  
298 An act relating to mental health; amending s.  
299 394.4615, F.S.; requiring service providers to  
300 disclose information from a clinical record under



178120

301 certain circumstances relating to threats to cause  
302 seriously bodily injury or death; amending s. 394.463,  
303 F.S.; revising deadlines for submission of  
304 documentation regarding involuntary examinations;  
305 amending s. 456.059, F.S.; requiring, rather than  
306 authorizing, psychiatrists to disclose certain patient  
307 communications for purposes of notifying potential  
308 victims and law enforcement agencies of certain  
309 threats; amending s. 490.0147, F.S.; requiring, rather  
310 than authorizing, psychologists to disclose certain  
311 patient and client communications for purposes of  
312 notifying potential victims and law enforcement  
313 agencies of certain threats; providing psychologists  
314 with immunity from specified liability and actions  
315 under certain circumstances; amending s. 491.0147,  
316 F.S.; requiring, rather than authorizing, certain  
317 license holders and certificate holders to disclose  
318 certain patient and client communications for purposes  
319 of notifying potential victims and law enforcement  
320 agencies of certain threats; providing such persons  
321 with immunity from specified liability and actions;  
322 amending s. 1012.583, F.S.; revising responsibilities  
323 of the Department of Education and the Statewide  
324 Office for Suicide Prevention; revising criteria for  
325 designation as a Suicide Prevention Certified School;  
326 requiring that the department, schools, and school  
327 districts post certain information regarding such  
328 schools be posted on their respective websites;  
329 reenacting s. 490.009, F.S., relating to discipline of



330 psychiatrists; reenacting s. 491.009, F.S., relating  
331 to discipline of psychologists; providing an effective  
332 date.

By Senator Powell

30-01948A-19

20191418\_\_

1 A bill to be entitled  
 2 An act relating to admission to mental health  
 3 facilities; amending ss. 394.4599 and 394.4785, F.S.;  
 4 requiring a court to appoint a public guardian for a  
 5 person who is subject to a petition for involuntary  
 6 services under certain circumstances; requiring the  
 7 clerk of the court to immediately notify the public  
 8 guardian of the appointment; providing requirements  
 9 for such public guardian; granting access to certain  
 10 persons and records for an attorney representing a  
 11 patient subject to a petition for involuntary  
 12 services; requiring such attorney to represent the  
 13 best interests of the patient; amending s. 394.4625,  
 14 F.S.; requiring the administrator of a receiving  
 15 facility to file a petition for voluntary placement  
 16 within a specified timeframe after a person younger  
 17 than a specified age is admitted for services or  
 18 transferred to voluntary status except when specified  
 19 parties agree in writing that treatment is in the  
 20 person's best interest; providing requirements for  
 21 such petitions; requiring the court to hold a hearing  
 22 within a specified timeframe to verify consent under  
 23 certain circumstances; amending s. 394.499, F.S.;  
 24 requiring the administrator of a children's crisis  
 25 stabilization unit or a juvenile addictions receiving  
 26 facility to file a petition for voluntary placement  
 27 within a specified timeframe after a person under a  
 28 specified age is admitted for services except when  
 29 specified parties agree in writing that treatment is

Page 1 of 8

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30-01948A-19

20191418\_\_

30 in the person's best interest; requiring the court to  
 31 hold a hearing within a specified timeframe to verify  
 32 consent under certain circumstances; providing an  
 33 effective date.  
 34  
 35 Be It Enacted by the Legislature of the State of Florida:  
 36  
 37 Section 1. Paragraph (c) of subsection (2) of section  
 38 394.4599, Florida Statutes, is amended to read:  
 39 394.4599 Notice.—  
 40 (2) INVOLUNTARY ADMISSION.—  
 41 (c)1.a. A receiving facility shall give notice of the  
 42 whereabouts of a minor who is being involuntarily held for  
 43 examination pursuant to s. 394.463 to the minor's parent,  
 44 guardian, caregiver, or guardian advocate, in person or by  
 45 telephone or other form of electronic communication, immediately  
 46 after the minor's arrival at the facility. The facility may  
 47 delay notification for no more than 24 hours after the minor's  
 48 arrival if the facility has submitted a report to the central  
 49 abuse hotline, pursuant to s. 39.201, based upon knowledge or  
 50 suspicion of abuse, abandonment, or neglect and if the facility  
 51 deems a delay in notification to be in the minor's best  
 52 interest.  
 53 b. Within 1 court working day after a petition for  
 54 involuntary services has been filed, the court shall appoint a  
 55 public defender to represent the person who is the subject of  
 56 the petition, unless the person is otherwise represented by  
 57 counsel. The clerk of the court must immediately notify the  
 58 public defender of the appointment. The public defender shall

Page 2 of 8

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30-01948A-19

20191418\_\_

59 represent the person until the petition is dismissed, the court  
 60 order expires, or the patient is discharged from involuntary  
 61 services. The attorney who represents the patient must be  
 62 provided access to the patient, witnesses, and records relevant  
 63 to the presentation of the patient's case and shall represent  
 64 the interests of the patient, regardless of the course of  
 65 payment to the attorney.

66 2. The receiving facility shall attempt to notify the  
 67 minor's parent, guardian, caregiver, or guardian advocate until  
 68 the receiving facility receives confirmation from the parent,  
 69 guardian, caregiver, or guardian advocate, verbally, by  
 70 telephone or other form of electronic communication, or by  
 71 recorded message, that notification has been received. Attempts  
 72 to notify the parent, guardian, caregiver, or guardian advocate  
 73 must be repeated at least once every hour during the first 12  
 74 hours after the minor's arrival and once every 24 hours  
 75 thereafter and must continue until such confirmation is  
 76 received, unless the minor is released at the end of the 72-hour  
 77 examination period, or until a petition for involuntary services  
 78 is filed with the court pursuant to s. 394.463(2)(g). The  
 79 receiving facility may seek assistance from a law enforcement  
 80 agency to notify the minor's parent, guardian, caregiver, or  
 81 guardian advocate if the facility has not received within the  
 82 first 24 hours after the minor's arrival a confirmation by the  
 83 parent, guardian, caregiver, or guardian advocate that  
 84 notification has been received. The receiving facility must  
 85 document notification attempts in the minor's clinical record.

86 Section 2. Section 394.4785, Florida Statutes, is amended  
 87 to read:

Page 3 of 8

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30-01948A-19

20191418\_\_

88 394.4785 Children and Adolescents; admission and placement  
 89 in mental health facilities.-

90 (1) A child or adolescent as defined in s. 394.492 may not  
 91 be admitted to a state-owned or state-operated mental health  
 92 treatment facility. A child may be admitted pursuant to s.  
 93 394.4625 or s. 394.467 to a crisis stabilization unit or a  
 94 residential treatment center licensed under this chapter or a  
 95 hospital licensed under chapter 395. The treatment center, unit,  
 96 or hospital must provide the least restrictive available  
 97 treatment that is appropriate to the individual needs of the  
 98 child or adolescent and must adhere to the guiding principles,  
 99 system of care, and service planning provisions contained in  
 100 part III of this chapter.

101 (2) A person under the age of 14 who is admitted to any  
 102 hospital licensed pursuant to chapter 395 may not be admitted to  
 103 a bed in a room or ward with an adult patient in a mental health  
 104 unit or share common areas with an adult patient in a mental  
 105 health unit. However, a person 14 years of age or older may be  
 106 admitted to a bed in a room or ward in the mental health unit  
 107 with an adult if the admitting physician documents in the case  
 108 record that such placement is medically indicated or for reasons  
 109 of safety. Such placement shall be reviewed by the attending  
 110 physician or a designee or on-call physician each day and  
 111 documented in the case record.

112 (3) Within 1 court working day after a petition for  
 113 involuntary services has been filed, the court shall appoint a  
 114 public defender to represent the person who is the subject of  
 115 the petition, unless the person is otherwise represented by  
 116 counsel. The clerk of the court must immediately notify the

Page 4 of 8

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30-01948A-19

20191418\_\_

117 public defender of the appointment. The public defender shall  
 118 represent the person until the petition is dismissed, the court  
 119 order expires, or the patient is discharged from involuntary  
 120 services. The attorney who represents the patient must be  
 121 provided access to the patient, witnesses, and records relevant  
 122 to the presentation of the patient's case and shall represent  
 123 the interests of the patient, regardless of the course of  
 124 payment to the attorney.

125 Section 3. Paragraph (a) of subsection (1) and subsection  
 126 (4) of section 394.4625, Florida Statutes, are amended to read:  
 127 394.4625 Voluntary admissions.—

128 (1) AUTHORITY TO RECEIVE PATIENTS.—

129 (a) A facility may receive for observation, diagnosis, or  
 130 treatment any person 18 years of age or older making application  
 131 to the facility by express and informed consent for admission or  
 132 any person age 17 or under for whom such application is made by  
 133 his or her parent or legal guardian. If found to show evidence  
 134 of mental illness, to be competent to provide express and  
 135 informed consent, and to be suitable for treatment, such person  
 136 18 years of age or older may be admitted to the facility.

137 1. Within 24 hours after a person age 17 or under is  
 138 admitted for observation, diagnosis, or treatment or transferred  
 139 to voluntary status pursuant to subsection (4), except when the  
 140 minor, the parent or legal guardian of the minor, and the  
 141 psychiatrist or physician observing, diagnosing, or treating the  
 142 minor all agree in writing that treatment is in the best  
 143 interest of the minor, the administrator of the facility shall  
 144 file with the court in the county where such person is located a  
 145 petition for voluntary placement. Such petition shall include

Page 5 of 8

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30-01948A-19

20191418\_\_

146 all forms and information as required by the department,  
 147 including, but not limited to, the application for voluntary  
 148 admission or application to transfer to voluntary status; the  
 149 express and informed consent of the person age 17 or under and  
 150 his or her parent or legal guardian to admission for treatment;  
 151 certification that the disclosures required under s. 394.459 to  
 152 obtain such express and informed consent were communicated to  
 153 the person and his or her parent or legal guardian; and  
 154 pertinent demographic information about the person and his or  
 155 her parent or legal guardian, including whether a parenting plan  
 156 in a final judgment of dissolution of marriage or a final  
 157 judgment of paternity has been entered, whether the parent or  
 158 legal guardian is authorized to make health care decisions on  
 159 behalf of the person, and certification that a copy of the final  
 160 judgment or other document that establishes the authority of the  
 161 parent or legal guardian has been or will be provided to the  
 162 court. Upon filing, the clerk of the court shall provide copies  
 163 to the department, to the person age 17 or under, and to his or  
 164 her parent or legal guardian. A fee may not be charged for the  
 165 filing of a petition under this subparagraph.

166 2. Unless a continuance is granted, a court shall hold a  
 167 hearing within 5 court working days after a person age 17 or  
 168 under ~~is may be~~ admitted ~~only after a hearing~~ to verify that the  
 169 ~~voluntariness of~~ the consent to admission is voluntary.

170 (4) TRANSFER TO VOLUNTARY STATUS.—An involuntary patient  
 171 who is 18 years of age or older and who applies to be  
 172 transferred to voluntary status, or an involuntary patient who  
 173 is age 17 or under and whose parent or legal guardian has made  
 174 application on his or her behalf to transfer to voluntary

Page 6 of 8

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30-01948A-19

20191418\_\_

175 status, shall be transferred to voluntary status immediately,  
 176 unless the patient has been charged with a crime, or has been  
 177 involuntarily placed for treatment by a court pursuant to s.  
 178 394.467 and continues to meet the criteria for involuntary  
 179 placement. Within 24 hours after transfer to voluntary status of  
 180 a person age 17 or under, except when the minor, the parent or  
 181 legal guardian of the minor, and the psychiatrist or physician  
 182 observing, diagnosing, or treating the minor all agree in  
 183 writing that treatment is in the best interest of the minor, the  
 184 administrator of the facility shall file a petition in  
 185 accordance with subparagraph (1)(a)1. A court shall hold a  
 186 hearing within 5 court working days after receiving a petition  
 187 for voluntary placement for a patient age 17 or under to verify  
 188 that the consent to remain in the facility is voluntary. When  
 189 transfer to voluntary status occurs, notice shall be given as  
 190 provided in s. 394.4599.

191 Section 4. Paragraph (a) of subsection (2) of section  
 192 394.499, Florida Statutes, is amended to read:

193 394.499 Integrated children's crisis stabilization  
 194 unit/juvenile addictions receiving facility services.-

195 (2) Children eligible to receive integrated children's  
 196 crisis stabilization unit/juvenile addictions receiving facility  
 197 services include:

198 (a) A person under 18 years of age for whom voluntary  
 199 application is made by his or her parent or legal guardian, if  
 200 such person is found to show evidence of mental illness and to  
 201 be suitable for treatment pursuant to s. 394.4625. The  
 202 administrator of the facility shall file a petition for  
 203 voluntary placement, pursuant to s. 394.4625, within 24 hours

Page 7 of 8

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30-01948A-19

20191418\_\_

204 after a person under 18 years of age is admitted for integrated  
 205 facility services. Unless a continuance is granted, a court  
 206 shall hold a hearing within 5 court working days after a person  
 207 under 18 years of age is ~~may be~~ admitted ~~for integrated facility~~  
 208 ~~services only after a hearing~~ to verify that the consent to  
 209 admission is voluntary.

210 Section 5. This act shall take effect July 1, 2019.

Page 8 of 8

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 1622

INTRODUCER: Senator Montford

SUBJECT: Public Records/Foster Parent and Foster Parent Applicant Names

DATE: March 29, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Preston | Hendon         | CF        | <b>Pre-meeting</b> |
| 2. |         |                | GO        |                    |
| 3. |         |                | RC        |                    |

---

**I. Summary:**

SB 1622 expands the public record exemption for a foster parent applicant, licensed foster parent, and the spouse, minor children, and other adult household members of the applicant or licensee to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the Florida Constitution. Currently, the following information held by the Department of Children and Families regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt:

- The home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- The floor plan of the home; and
- Photographs of those individuals.

The bill also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

The bill subjects the exemption to review and repeal on October 2, 2024, unless it is reenacted, pursuant to s. 119.15, F.S., the Open Government Sunset Review Act. The bill also includes a public necessity statement as required by the Florida Constitution.

The bill requires a two-thirds vote from each chamber for passage. The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2019.

## II. Present Situation:

### Family Foster Homes and Foster Parents

The Florida Statutes do not have a definition for the term “foster parent,” but foster parents are included in the definition of the term “other person responsible for a child’s welfare.” Under the definition are specified individuals who are legally responsible for the child’s welfare in a residential setting, as well as an adult sitter or relative entrusted with a child’s care.<sup>1</sup> A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care.<sup>2</sup> Foster homes are classified by levels of licensure and inspected regularly.<sup>3</sup>

To qualify as a potential foster parent, applicants must complete a 20 to 30 hour training program, undergo a criminal and child abuse background check, participate in a home inspection and participate in a home study.<sup>4</sup> Foster parents are expected to:

- Provide parenting that consists of a loving commitment to the child and the child’s safety and wellbeing;
- Provide opportunities to develop the child’s interests and skills;
- Care for the child in light of the child’s culture, religion, ethnicity, special physical or psychological needs and unique situations;
- Assist the biological parents in improving their ability to care for and protect their children and to provide continuity for the child;
- Assist the child in visitation and other forms of communication with his or her biological family;
- Obtain and maintain records that are important to the child’s wellbeing, such as medical records and records of achievements;
- Advocate for children in their care with the child welfare system, the court, and community agencies, such as schools, child care, and health providers;
- Participate fully in the child’s medical, psychological, and dental care as they would for their biological child; and
- Support the child’s school success by participating in school activities and meetings.<sup>5</sup>

Foster parents receive a monthly stipend to help cover costs associated with fostering a child, however, this funding will typically not cover everything a foster child needs. As of January 1, 2019, foster parents receive the following monthly room and board rates per child:<sup>6</sup>

- \$466.65 for children ages zero to five;

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<sup>1</sup> Section 39.01(54), F.S.

<sup>2</sup> Section 409.175, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Florida Department of Children and Families, *How Do I Become a Foster Parent?*, Available at: <http://www.dcf.state.fl.us/service-programs/foster-care/how-do-i.shtml> (Last visited March 27, 2019).

<sup>5</sup> Section 409.145, F.S. Also see Florida Department of Children and Families, *Partnership Plan for Children in Out-of-Home Care*, Available at: <http://centerforchildwelfare.fmhi.usf.edu/kb/OOHPublications/PartnershipPlan.pdf> (Last visited March 27, 2019).

<sup>6</sup> Florida Department of Children and Families, 2019 Foster Parent Cost of Living Allowance Increase, (January 14, 2019), available at [http://www.centerforchildwelfare.org/kb/policymemos/2019-FP\\_CostOfLivingAllowance.pdf](http://www.centerforchildwelfare.org/kb/policymemos/2019-FP_CostOfLivingAllowance.pdf) (Last visited March 28, 2019).

- \$478.60 for children ages six to twelve; and
- \$560.19 for children ages thirteen to twenty-one.

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>7</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.<sup>8</sup>

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>9</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>10</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>11</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>12</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>13</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>14</sup>

The Legislature may create an exemption to public records requirements.<sup>15</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>16</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>17</sup> A statutory

<sup>7</sup> FLA. CONST., art. I, s. 24(a).

<sup>8</sup> *Id.*

<sup>9</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>10</sup> Public records laws are found throughout the Florida Statutes.

<sup>11</sup> Section 119.01(1), F.S.

<sup>12</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs,

films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>13</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>14</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>15</sup> FLA. CONST., art. I, s. 24(c).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>18</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>19</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>20</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>21</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>22</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>23</sup> An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>24</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>25</sup> or
- It protects trade or business secrets.<sup>26</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>27</sup> In

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<sup>18</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>19</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>20</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>21</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>22</sup> Section 119.15(3), F.S.

<sup>23</sup> Section 119.15(6)(b), F.S.

<sup>24</sup> Section 119.15(6)(b)1., F.S.

<sup>25</sup> Section 119.15(6)(b)2., F.S.

<sup>26</sup> Section 119.15(6)(b)3., F.S.

<sup>27</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?

examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>28</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.<sup>29</sup>

### **Foster Parent Public Record Exemption**

Legislation creating the original public records exemption for foster parents was enacted in 1998 and applied only to certain information contained in the licensing file for licensed foster parents.<sup>30</sup> The public necessity statement expressed concern that foster parents and their families may be threatened, harassed, or harmed if personal information were released.<sup>31</sup> The bill analysis stated that according to the department, foster families report that they are occasionally contacted inappropriately by persons who pose a threat to their safety as a result of the release of information in the licensure file. The department also reported that public access to identifying any personal information about foster parents discourages potential foster parents from applying for licensure.<sup>32</sup>

During the Open Government Sunset Review in 2003, the legislature expanded the exemption to include families who were pending licensure or had been denied, thus protecting their information as well, and to include medical records.<sup>33</sup> The Legislature also removed the requirement that the information be in the licensing file to be protected and instead protected the information as long as it was held by the department.<sup>34</sup> The public necessity statement cited the private and confidential nature of personal health matters and the potential negative effect on recruitment.<sup>35</sup> The expansion of the public records exemption was reviewed in 2008 and resulted in the legislature saving the exemption from repeal with only minor amendments.<sup>36</sup>

Current law addresses multiple issues related to the licensure of family foster homes, including requirements and protections for foster parents and applicants. The following information held

- 
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
  5. Is the record or meeting protected by another exemption?
  6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>28</sup> FLA. CONST. art. I, s. 24(c).

<sup>29</sup> Section 119.15(7), F.S.

<sup>30</sup> Ch. 98-29, Laws of Fla. Available at: <http://laws.flrules.org/1998/29> (Last visited March 29, 2019).

<sup>31</sup> *Id.*

<sup>32</sup> Florida House of Representatives, Final Bill Analysis and Economic Impact Statement, CS/CS/HB 1849, May 11, 1998. Available at: <http://archive.flsenate.gov/data/session/1998/House/bills/analysis/pdf/HB1849S2Z.CFE.pdf> (Last visited March 28, 2019).

<sup>33</sup> Ch. 03-83, Laws of Fla.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Ch. 08-169, Laws of Fla.

by the department relating to a foster parent applicant and the applicant's spouse, minor child, and other adult household members is exempt from public records.<sup>37</sup>

- Home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- Floor plans of the home; and
- Photographs of such persons.

If a foster parent applicant does not receive a license, this information becomes public five years after the date of application. However, medical records remain exempt regardless of licensure.<sup>38</sup>

For a licensed foster parent and the foster parent's spouse, minor child, and other adult household member, the same information is exempt.<sup>39</sup> If a foster parent's license is no longer active, this information becomes public five years after the license's expiration date, subject to two exceptions: medical records remain exempt regardless of the license's status and all of this information remains exempt if a licensed foster parent becomes an adoptive parent.<sup>40</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies and public records exemption, to expand the current public record exemption for a foster parent applicant, licensed foster parent, and the spouse, minor children, and other adult household members of the applicant or licensee to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the Florida Constitution.

Currently, the following information held by the Department of Children and Families regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- The home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- The floor plan of the home; and
- Photographs of those individuals.

**Section 2** provides a statement of public necessity.

**Section 3** provides an effective date.

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<sup>37</sup> Section 409.175(16)(a), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section. 409.175(16)(b), F.S.

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

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

**Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

**Public Necessity Statement**

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

**Breadth of Exemption**

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure of the names of foster parents, foster parent applicants, and their families held by the department to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**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:**

Proponents of the bill have echoed the concerns reflected in the public necessity statement in the bill. Exempting the names of foster parents and foster parent applicants will afford greater protection to those individuals and would make recruitment of foster parents more successful. An incident in August 2018 appears to support the possibility of harm to a foster parent. A biological mother shot a 77-year-old foster parent in Florida during an armed burglary of the foster parent's home where the biological mother's two children had been placed. When the foster parent refused to let the biological mother leave with her two children, a struggle ensued, and the biological mother shot the foster mother twice. The biological mother was charged with attempted first-degree murder with a deadly weapon, two counts of conspiracy to kidnap, and armed burglary.<sup>41</sup> The department released a statement that no personal information about the 77-year-old foster parent was released through a public records request.

Opponents of the bill have stated that exempting the names of foster parents and applicants would hinder the ability of the public to oversee the department and hold it accountable for its actions or inactions. "This legislation is contrary to the public interest," said Barbara Petersen, who heads Florida's First Amendment Foundation. "Foster parents are licensed — and paid — by the state to care for the most vulnerable members of our society, our children. As we know all too well, we can't count on DCF, the agency that licenses those foster parents, to police itself. There is a slew of protections for foster families currently in law; providing anonymity goes too far."<sup>42</sup>

**VIII. Statutes Affected:**

This bill substantially amends s. 409.175, F.S. of the Florida Statutes.

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

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

None.

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<sup>41</sup> CBS Miami, *Foster Parent Shot, Mother Kidnaps Children*, (August 31, 2018). Available at:

<https://miami.cbslocal.com/2018/08/31/mother-kidnapped-children-shot-foster-parent/> (Last visited March 27, 2019).

<sup>42</sup> Miami Herald, *Florida's latest assault on transparency: sealing names of foster parents*, (March 26, 2019) Available at:

<https://www.miamiherald.com/opinion/article228425124.html> (Last visited March 26, 2019). Also see Tampa Bay Times,

*Editorial: Florida should not make secret the names of foster parents*, Available at:

<https://www.tampabay.com/opinion/editorials/editorial-florida-should-not-make-secret-the-names-of-foster-parents-20190318/> (Last visited March 18, 2019).



B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate

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House

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The Committee on Children, Families, and Elder Affairs  
(Montford) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (16) of section 409.175, Florida  
Statutes, is amended to read:

409.175 Licensure of family foster homes, residential  
child-caring agencies, and child-placing agencies; public  
records exemption.—

(16) (a) 1. The following information held by the Department



714972

11 of Children and Families regarding a foster parent applicant and  
12 such applicant's spouse, minor child, and other adult household  
13 member is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
14 State Constitution:

15 a. Names;

16 b. The home, business, work, child care, or school  
17 addresses and telephone numbers;

18 ~~c. Birth dates~~;

19 ~~d. Medical records~~;

20 ~~e. The floor plan of the home~~; and

21 ~~f. Photographs of such persons~~.

22 2. If a foster parent applicant does not receive a foster  
23 parent license, the information made exempt pursuant to this  
24 paragraph shall become public 5 years after the date of  
25 application, except that medical records shall remain exempt  
26 from s. 119.07(1) and s. 24(a), Art. I of the State  
27 Constitution.

28 3. This exemption applies to information made exempt by  
29 this paragraph before, on, or after the effective date of the  
30 exemption.

31 (b)1. The following information held by the Department of  
32 Children and Families regarding a licensed foster parent and the  
33 foster parent's spouse, minor child, and other adult household  
34 member is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
35 State Constitution:

36 a. Names;

37 b. The home, business, work, child care, or school  
38 addresses and telephone numbers;

39 ~~c. Birth dates~~;



714972

40 ~~d.e.~~ Medical records;

41 ~~e.d.~~ The floor plan of the home; and

42 ~~f.e.~~ Photographs of such persons.

43 2. If a foster parent's license is no longer active, the  
44 information made exempt pursuant to this paragraph shall become  
45 public 5 years after the expiration date of such foster parent's  
46 foster care license except that:

47 a. Medical records shall remain exempt from s. 119.07(1)  
48 and s. 24(a), Art. I of the State Constitution.

49 b. Exempt information regarding a licensed foster parent  
50 who has become an adoptive parent and exempt information  
51 regarding such foster parent's spouse, minor child, or other  
52 adult household member shall remain exempt from s. 119.07(1) and  
53 s. 24(a), Art. I of the State Constitution.

54 3. If a licensed foster parent or the foster parent's  
55 spouse, minor child, or other adult household member is charged  
56 with committing a crime against a foster child who is in the  
57 care of the licensed foster parent and the Department of  
58 Children and Families suspends or revokes the foster parent's  
59 license as a result, the information in sub-subparagraph 1.a.  
60 regarding the charged individual is not exempt from s. 119.07(1)  
61 and s. 24(a), Art. I of the State Constitution, except as  
62 otherwise expressly made confidential or exempt by law.

63 4. This exemption applies to information made exempt by  
64 this paragraph before, on, or after the effective date of the  
65 exemption.

66 (c) The name, address, and telephone number of persons  
67 providing character or neighbor references regarding foster  
68 parent applicants or licensed foster parents held by the



714972

69 Department of Children and Families are exempt from s. 119.07(1)  
70 and s. 24(a), Art. I of the State Constitution.

71 (d) Sub-subparagraphs (a)1.a. and (b)1.a. and subparagraph  
72 (b)3. are subject to the Open Government Sunset Review Act in  
73 accordance with s. 119.15 and shall stand repealed on October 2,  
74 2024, unless reviewed and saved from repeal through reenactment  
75 by the Legislature.

76 Section 2. (1) The Legislature finds it is a public  
77 necessity that the following identifying information be exempt  
78 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
79 the State Constitution:

80 (a) The name of a foster parent applicant;

81 (b) The names of spouses, minor children, and other adult  
82 household members of such foster parent applicant;

83 (c) The name of a licensed foster parent; and

84 (d) The names of spouses, minor children, and other adult  
85 household members of such licensed foster parent.

86 (2) The Legislature is committed to ensuring the safety of  
87 all children. Among the state's most valued partners are foster  
88 parents who make the choice to bring a child into their home.  
89 There are instances where foster parents, by the nature of the  
90 service they provide, find themselves and their families in  
91 life-threatening situations, as was the case when a foster  
92 mother was harmed by the foster children's biological parents in  
93 August 2018. Consequently, the Legislature finds that the  
94 release of the names of a foster parent applicant, a foster  
95 parent, their minor children, or adult household members could  
96 lead to unwanted contact and harassment from disgruntled parents  
97 who react inappropriately due to their children being taken from



714972

98 them and placed in out-of-home care. Additionally, exempting  
99 these names helps to maintain the confidentiality of the foster  
100 children placed in the home. For example, if a foster parent has  
101 an unusual name, any person acquiring a list of the names of the  
102 foster parents and other members of the household could uncover  
103 information about the foster children living in the home.

104 (3) Foster parents provide a valuable service to the child  
105 welfare system by providing a safe and nurturing environment for  
106 children who have been removed from their homes due to a  
107 parent's abandonment, abuse, or neglect. Following a public  
108 records request in 2018 for a list of names for all licensed  
109 foster parents and corresponding counties, the Department of  
110 Children and Families received numerous letters from current  
111 foster parents. In these letters, the foster parents expressed  
112 their concerns with having their names released to the public.  
113 Several expressed that if their names be released, they would no  
114 longer wish to serve as foster parents. Therefore, the  
115 Legislature finds that by exempting the names of foster parent  
116 applicants, foster parents, their minor children, or adult  
117 household members, the Department of Children and Families is  
118 assisted in its priority to recruit and retain foster parents.  
119 This in turn helps ensure that there are enough out-of-home  
120 placements for children within the child welfare system.

121 (4) The Legislature further finds that it is necessary to  
122 maintain government accountability by balancing the public's  
123 right to know with the Legislature's interest in protecting and  
124 recruiting foster parents. Therefore, an exception is created  
125 stating that if a licensed foster parent or his or her spouse,  
126 minor child, or adult household member is charged with



714972

127 committing a crime against a foster child who is in the care of  
128 the licensed foster parent which results in the suspension or  
129 revocation of that foster parent's license, the name of the  
130 charged individual is not exempt unless it is otherwise  
131 expressly made confidential or exempt by law.

132 Section 3. This act shall take effect July 1, 2019.

133  
134 ===== T I T L E A M E N D M E N T =====

135 And the title is amended as follows:

136 Delete everything before the enacting clause  
137 and insert:

138 A bill to be entitled  
139 An act relating to public records; amending s.  
140 409.175, F.S.; providing an exemption from public  
141 records requirements for the names of foster parent  
142 applicants and licensed foster parents, and the names  
143 of the spouses, minor children, and adult household  
144 members of such applicants and foster parents, which  
145 are held by the Department of Children and Families;  
146 providing an exception, under specified circumstances,  
147 for certain individuals charged with certain crimes;  
148 providing for future legislative review and repeal of  
149 the exemption; providing a statement of public  
150 necessity; providing an effective date.

By Senator Montford

3-01283-19

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A bill to be entitled

An act relating to public records; amending s. 409.175, F.S.; expanding exemptions from public records requirements to include the names of foster parent applicants and foster parents, and their spouses, minor children, and other adult household members, held by the Department of Children and Families; providing for retroactive application of the expanded exemptions; providing for future legislative review and repeal of the expanded exemptions; providing for reversion of specified language if the exemptions are not saved from repeal; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (16) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(16) (a)1. The following information held by the Department of Children and Families regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Names;

~~b.a.~~ The home, business, work, child care, or school

Page 1 of 5

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

3-01283-19

20191622\_\_

addresses and telephone numbers;

~~c.b.~~ Birth dates;

~~d.e.~~ Medical records;

~~e.d.~~ The floor plan of the home; and

~~f.e.~~ Photographs of such persons.

2. If a foster parent applicant does not receive a foster parent license, the information made exempt pursuant to this paragraph shall become public 5 years after the date of application, except that medical records shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. The ~~This~~ exemption applies to information made exempt by this paragraph before, on, or after July 1, 2019 ~~the effective date of the exemption~~. The expansion of the public records exemption under this paragraph to include the names of foster parent applicants and their spouses, minor children, and other adult household members 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 paragraph shall revert to that in existence on June 30, 2019, except that any amendments to such text other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this paragraph.

(b)1. The following information held by the Department of Children and Families regarding a licensed foster parent and the foster parent's spouse, minor child, and other adult household

Page 2 of 5

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



3-01283-19 20191622\_\_

59 member is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
60 State Constitution:

61 a. Names;

62 ~~b.a-~~ The home, business, work, child care, or school  
63 addresses and telephone numbers;

64 ~~c.b-~~ Birth dates;

65 ~~d.e-~~ Medical records;

66 ~~e.d-~~ The floor plan of the home; and

67 ~~f.e-~~ Photographs of such persons.

68 2. If a foster parent's license is no longer active, the  
69 information made exempt pursuant to this paragraph shall become  
70 public 5 years after the expiration date of such foster parent's  
71 foster care license except that:

72 a. Medical records shall remain exempt from s. 119.07(1)  
73 and s. 24(a), Art. I of the State Constitution.

74 b. Exempt information regarding a licensed foster parent  
75 who has become an adoptive parent and exempt information  
76 regarding such foster parent's spouse, minor child, or other  
77 adult household member shall remain exempt from s. 119.07(1) and  
78 s. 24(a), Art. I of the State Constitution.

79 3. ~~The This~~ exemption applies to information made exempt by  
80 this paragraph before, on, or after July 1, 2019 ~~the effective~~  
81 ~~date of the exemption.~~ The expansion of the public records  
82 exemption under this paragraph to include the names of foster  
83 parents and their spouses, minor children, and other adult  
84 household members is subject to the Open Government Sunset  
85 Review Act in accordance with s. 119.15 and shall stand repealed  
86 on October 2, 2024, unless reviewed and saved from repeal  
87 through reenactment by the Legislature. If the expansion of the

3-01283-19 20191622\_\_

88 exemption is not saved from repeal, this paragraph shall revert  
89 to that in existence on June 30, 2019, except that any  
90 amendments to such text other than by this act shall be  
91 preserved and continue to operate to the extent that such  
92 amendments are not dependent upon the portions of text which  
93 expire pursuant to this paragraph.

94 Section 2. The Legislature finds that it is a public  
95 necessity that the names of foster parent applicants and foster  
96 parents, and their spouses, minor children, and other adult  
97 household members, held by the Department of Children and  
98 Families pursuant to s. 409.175, Florida Statutes, be made  
99 confidential and exempt from disclosure under s. 119.07(1),  
100 Florida Statutes, and s. 24(a), Article I of the State  
101 Constitution. Safeguarding the names of foster parent applicants  
102 and foster parents, and their spouses, minor children, and other  
103 adult household members, from disclosure will ensure that the  
104 names of foster children will remain confidential. If a foster  
105 parent applicant or foster parent, or his or her spouse, minor  
106 child, or other adult household member, has an unusual name, any  
107 person who acquires a list of the names of foster parent  
108 applicants or foster parents, or their spouses, minor children,  
109 and other adult household members, could potentially uncover  
110 personally identifying information about the foster children  
111 living in the home which could lead to unwanted contact by the  
112 press or the children's relatives who are seeking to obtain  
113 private and sensitive information regarding the children,  
114 including, but not limited to, their location. Furthermore, the  
115 disclosure of the names of the foster parent applicants and  
116 foster parents, and their spouses, minor children, and other

3-01283-19

20191622\_\_

117 adult household members, would compromise the privacy of the  
118 family and stifle the efforts by the Department of Children and  
119 Families to recruit and retain foster parent applicants and  
120 foster parents.

121 Section 3. This act shall take effect July 1, 2019.

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Barbara Jo Palmer  
Director, Agency for Persons with Disabilities

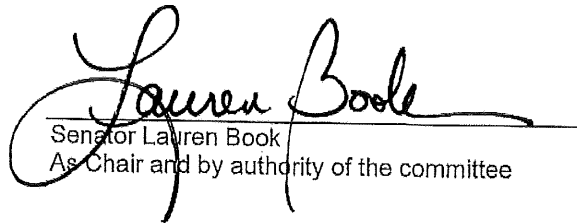
**NOTICE OF HEARING**

TO: Ms. Barbara Jo Palmer

YOU ARE HEREBY NOTIFIED that the Committee on Children, Families, and Elder Affairs of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 25, 2019, in 301 Senate Building, commencing at 4:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 19th day of March, 2019

Committee on Children, Families, and Elder  
Affairs

  
\_\_\_\_\_  
Senator Lauren Book  
As Chair and by authority of the committee

cc: Members, Committee on Children, Families, and Elder Affairs  
Office of the Sergeant at Arms

565

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

I, Laurel M. Lee, Secretary of State,  
do hereby certify that

***Barbara Jo Palmer***

is duly appointed

**Director,**

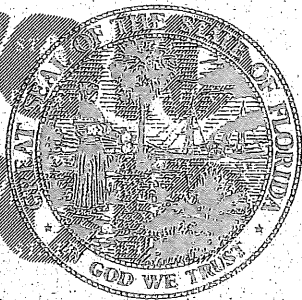
**Agency for Persons with Disabilities**

for a term beginning on the Eleventh day of January, A.D., 2019,  
to serve at the pleasure of the Governor and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Eighth day of February, A.D., 2019.*

*Laurel M. Lee*

Secretary of State



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

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



**RON DESANTIS**  
GOVERNOR

RECEIVED

2019 JAN 11 PM 3:33

FLORIDA GOVERNOR'S  
OFFICE

January 11, 2019

Secretary Michael Ertel  
Department of State  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Dear Secretary Ertel,

Please be advised I have made the following reappointment under the provisions of Section 20.197, Florida Statutes:

Ms. Barbara Palmer  
1229 South Magnolia Drive  
Tallahassee, FL 32301

as Director of the Agency for Persons with Disabilities, subject to confirmation by the Senate. This appointment is effective January 11, 2019, for a term ending at the pleasure of the Governor.

Sincerely,

Ron DeSantis  
Governor

RD/mm

HAND DELIVERED

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

2019 JAN 25 PM 4:54

County of Lynn

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

Executive Director of the Agency for Persons with Disabilities  
(Title of Office)

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

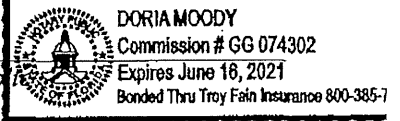
[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Barbara Jo Palmer  
Signature

Sworn to and subscribed before me this 24 day of January, 2019

Doria Moody  
Signature of Officer Administering Oath of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

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

Mailing Address:  Home  Office

4030 Esplanade Way  
Street or Post Office Box Suite 380

Tallahassee, FL 32399-  
City, State, Zip Code 0950

Barbara Jo Palmer  
Print Name

Barbara Jo Palmer  
Signature

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Richard Prudom  
Secretary of Elderly Affairs

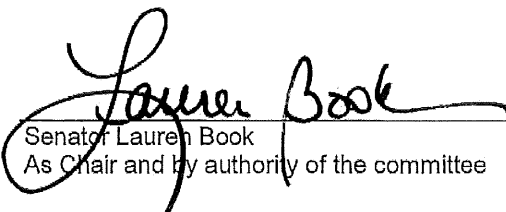
**NOTICE OF HEARING**

TO: Secretary Richard Prudom

YOU ARE HEREBY NOTIFIED that the Committee on Children, Families, and Elder Affairs of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 25, 2019, in 301 Senate Building, commencing at 4:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 19th day of March, 2019

Committee on Children, Families, and Elder  
Affairs

  
\_\_\_\_\_  
Senator Lauren Book  
As Chair and by authority of the committee

cc: Members, Committee on Children, Families, and Elder Affairs  
Office of the Sergeant at Arms

*Amended*  
*6/10*

STATE OF FLORIDA  
DEPARTMENT OF STATE

Division of Elections

I, Laurel M. Lee, Secretary of State,  
do hereby certify that

*Richard Prudom*

is duly appointed

Secretary,

Department of Elderly Affairs

for a term beginning on the Eleventh day of January, A.D., 2019,  
to serve at the pleasure of the Governor and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Fifth day of March, A.D., 2019*

*Laurel M. Lee*

Secretary of State



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

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





**RON DESANTIS**  
GOVERNOR

RECEIVED

2019 JAN 11 PM 3:32

REGISTRATION DIVISION

January 11, 2019

Secretary Michael Ertel  
Department of State  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Dear Secretary Ertel:

Please be advised I have made the following appointment under the provision of Section 20.41, Florida Statutes:

Mr. Richard Prudom  
6350 Verdura Way  
Tallahassee, FL 32311

as the Secretary of the Department of Elder Affairs, subject to confirmation by the Senate. This appointment is effective for a term beginning January 11, 2019, and ending at the pleasure of the Governor.

Sincerely,

Ron DeSantis  
Governor

RD/mm

FILED

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

2019 FEB -1 PM 2:23

County of LEON

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

SECRETARY, FLORIDA DEPARTMENT OF ELDER AFFAIRS  
(Title of Office)

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

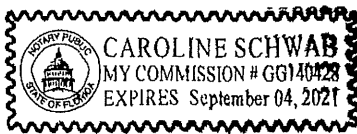
[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

*[Handwritten Signature]*

Signature

Sworn to and subscribed before me this 31 day of January, 2019

*[Handwritten Signature]*  
Signature of Officer Administering Oath or of Notary Public



Caroline Schwab  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

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

Mailing Address:  Home  Office

6350 VERDURA WAY  
Street or Post Office Box

RICHARD PRUDOM  
Print Name

TALLAHASSEE FL 32311  
City, State, Zip Code

*[Handwritten Signature]*  
Signature

# Youth Suicide



Florida Senate

April 1, 2019

## Scope of the Problem

- Suicide is the leading cause of death for 15-24 year-olds
- For every death by suicide, there are 100-200 attempts
- One in five teenagers seriously considers suicide annually
- Between 2011 and 2015 emergency department visits by young people ages six to 24 for psychiatric issues rose 28%
  - Teens accounted for 54% of those visits, children of color were particularly affected
  - Suicide related visits rose more than twofold during the same period
  - Only one in six received mental health care

## A Rising Problem

- From 2007 to 2014 rates doubled for those ages 10-14, exceeding deaths by motor vehicle accidents and homicide
  - Ages 10-14: 2.1 deaths per 100,000
  - Ages 15-19 10.2 deaths per 100,000
  - Ages 20-24 16.11 deaths per 100,000
- Girls are more likely to attempt suicide, boys are more likely to die by suicide

## ► Suicide Is Complex: Social, psychological, and environmental factors affect risk

- Family history of suicide
- Mental illness
- Low self-esteem
- Feeling depressed
- Peer pressure
- Feeling isolated or alienated from family and friends
- Feeling overwhelmed and unable to cope
- Traumatic experience(s)
- Loss
- Being bullied and being a bully
- Substance use/addiction
- Feeling like a failure
- The suicide death of someone they care about or look up to
- Prior attempts

# Suicide Is Preventable

- Social-emotional learning programs (prevention)
  - Improve social competence
  - Emotional regulation
  - Problem-solving skills
  - Conflict management skills
  - These skills reduce suicidal ideation and attempts
- The Centers for Disease Control has a suicide prevention guide
  - <https://www.cdc.gov/violenceprevention/pdf/suicideTechnicalPackage.pdf>
- Recommended strategies include
  - Prevention (social emotional learning)
  - Promoting a sense of belonging and relationships
  - Reducing access to lethal means
    - Identification and support for people at risk
    - Adequate access to treatment
    - Postvention after a suicide
      - Re-entry planning and information sharing
  - Safe reporting and messaging about suicide



# Prevention Strategies

- Required education about mental health and prevention
- Start early – every grade every year, teachers and students
- This is a public health issue – it calls for a statewide suicide prevention strategy
- Screening for suicide risk, using a stratified method that allows for early identification and stratification of risk
- Schools and community mental health providers need to work collaboratively to identify and effectively intervene for children identified as at risk
  - Requires access in and out of school so children do not fall through cracks when school is out
- The statewide strategy needs to include the resources to implement proven practices and approaches to prevention sufficient to meet the need



# Resources

- Columbia screening tool - <http://zerosuicide.sprc.org/resources/columbia-suicide-severity-rating-scale-c-ssrs>
- Mental Health First Aid - can help address stigma and provide an opening to understanding the illnesses that can lead to suicide
- Jason Flatt Foundation – numerous free school resources and training modules [www.mentalhealthscreening.org](http://www.mentalhealthscreening.org)
  - “Riding the Wave” - suicide prevention for 5th graders FRPA has emergency disclosure breach of confidentiality provision.
  - “Signs of Suicide Program” training video and short screening instrument.
- Re-entry guidelines – “What to do for school when Suicide happens” – American Foundation for Suicide Prevention: Postvention Toolkit revised April 2018 (<https://afsp.org/our-work/education/after-a-suicide-a-toolkit-for-schools/>)
- “Handle with Care” Drug Endangered Children – [http://www.drugfreemanatee.org/wp-content/uploads/2018/07/Handle-with-Care\\_Flyer.pdf](http://www.drugfreemanatee.org/wp-content/uploads/2018/07/Handle-with-Care_Flyer.pdf)



# Questions?

Follow-up contact

Dr. Maggie Labarta

Meridian Behavioral Healthcare, Inc

[Maggie\\_Labarta@mbhci.org](mailto:Maggie_Labarta@mbhci.org) or (352)374-5600, ext 8220