

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

**CHILDREN, FAMILIES, AND ELDER AFFAIRS**  
**Senator Book, Chair**  
**Senator Mayfield, Vice Chair**

**MEETING DATE:** Tuesday, December 10, 2019  
**TIME:** 2:00—4:00 p.m.  
**PLACE:** 301 Senate Building

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

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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1	Selected Child Welfare Case Reviews by the Department of Children and Families		
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**A proposed committee substitute** for the following bill is expected to be considered:

2	<b>SB 122</b> Rouson (Identical H 43)	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 Law Enforcement to provide to law enforcement officers certain information relating to specified individuals; requiring certain entities to provide training to certain parties on the recognition of and responses to head trauma and brain injury in specified children; authorizing the department and certain lead agencies to create and implement a program to more effectively provide case management services for specified children, etc.	CF     12/10/2019 AHS AP
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3	<b>CS/SB 344</b> Judiciary / Bradley (Similar CS/H 211)	Courts; Specifying that certain exemptions from court-related fees and charges apply to certain entities; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; providing that certain examinations may be performed and reports prepared by a physician assistant or an advanced practice registered nurse under certain circumstances, etc.	JU     11/05/2019 Fav/CS CF     12/10/2019 RC
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**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Tuesday, December 10, 2019, 2:00—4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 358</b> Judiciary / Berman (Similar H 231, H 505)	Decedents' Property; Specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; specifying that certain attorneys and persons are not entitled to compensation for serving as a personal representative unless the attorney or person is related to the testator or unless certain disclosures are made before a will is executed; specifying that certain attorneys and persons are not entitled to compensation for serving as a trustee unless the attorney or person is related to the settlor or unless certain disclosures are made before the trust instrument is executed, etc.	JU 11/05/2019 Fav/CS CF 12/10/2019 RC
5	<b>SB 668</b> Book (Similar H 83)	Government-sponsored Recreation Programs; Revising the definition of the term "child care facility" to exclude government-sponsored recreation programs; defining the term "government-sponsored recreation program"; providing an exemption for government-sponsored recreation programs from specified child care facility requirements, etc.	CF 12/10/2019 GO RC
6	<b>SB 828</b> Benacquisto	Florida ABLE Program; Abrogating the future repeal of provisions relating to the Florida ABLE program, etc.	CF 12/10/2019 RC

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Other Related Meeting Documents

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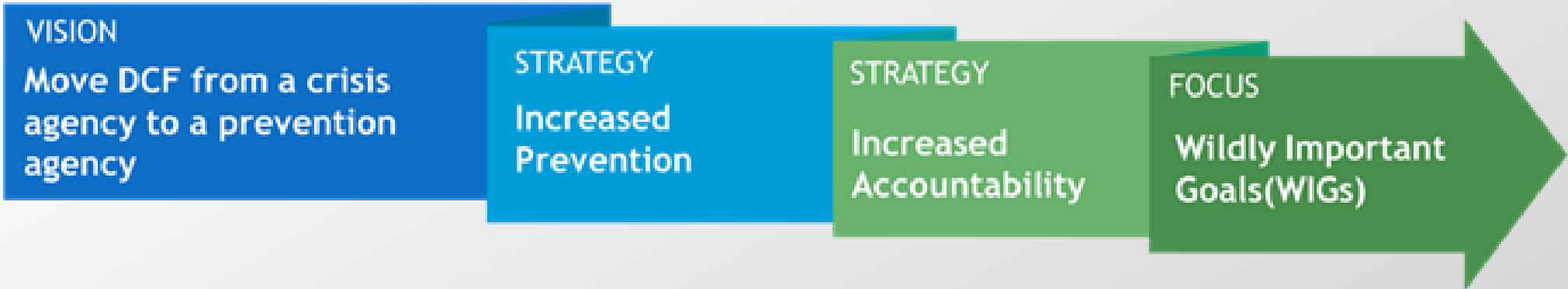
# **J. Belliveau and G. Myers**

## **Case Reviews**

**Senate Committee on Children, Families and Elder Affairs**

Patricia Babcock, Ph.D., LCSW  
Deputy Secretary  
December 10, 2019

# Department Goals

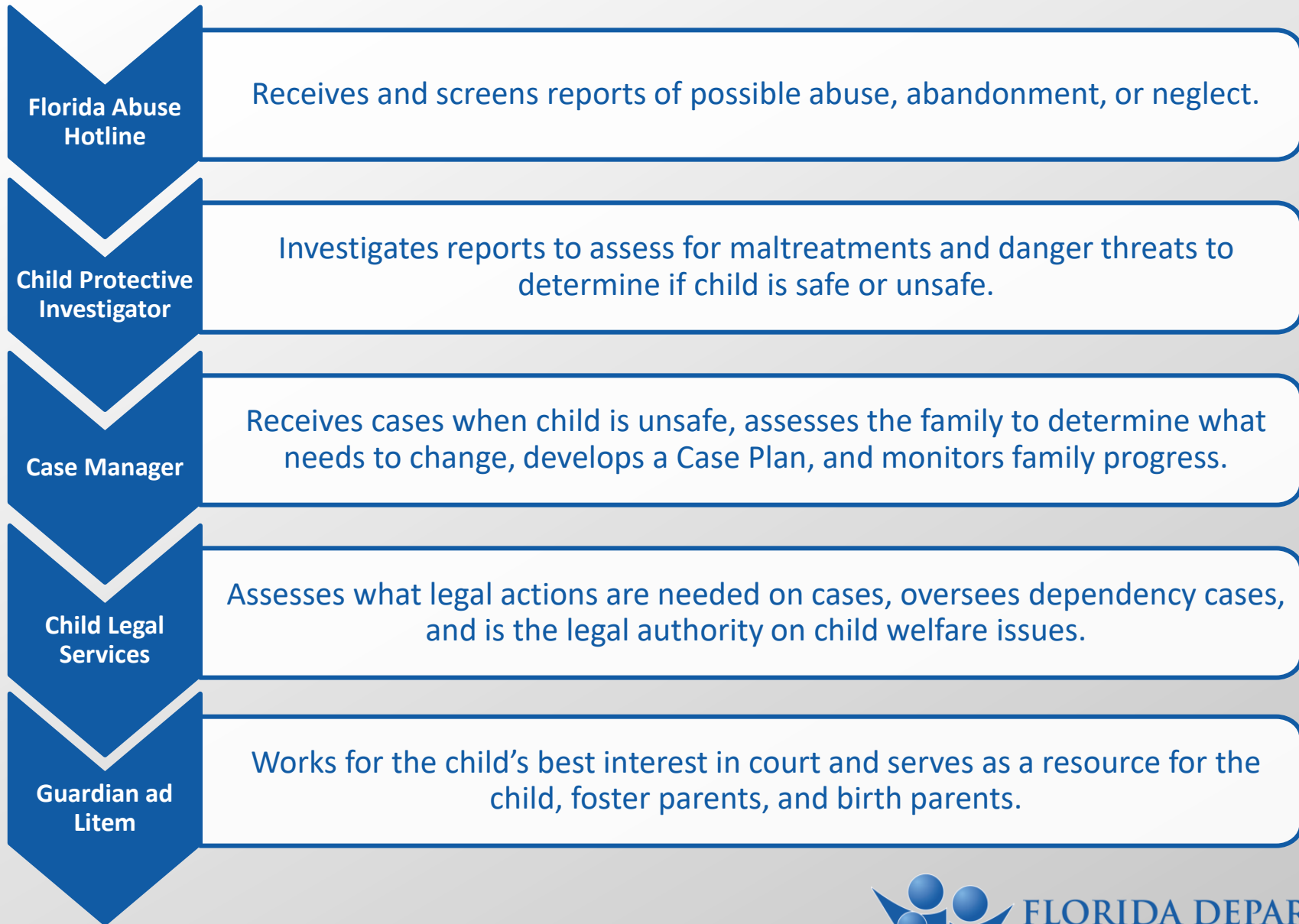


# Objectives

- **Overview of Jordan Belliveau and Gabriel Myers Cases**
- **Common Findings**
- **Timeline of Events**
- **Lessons Learned**
- **System Improvements**



# Case Flow Process



# Case Overview



**Jordan Belliveau**  
(07/29/2016 - 09/04/2018)



# Case Overview

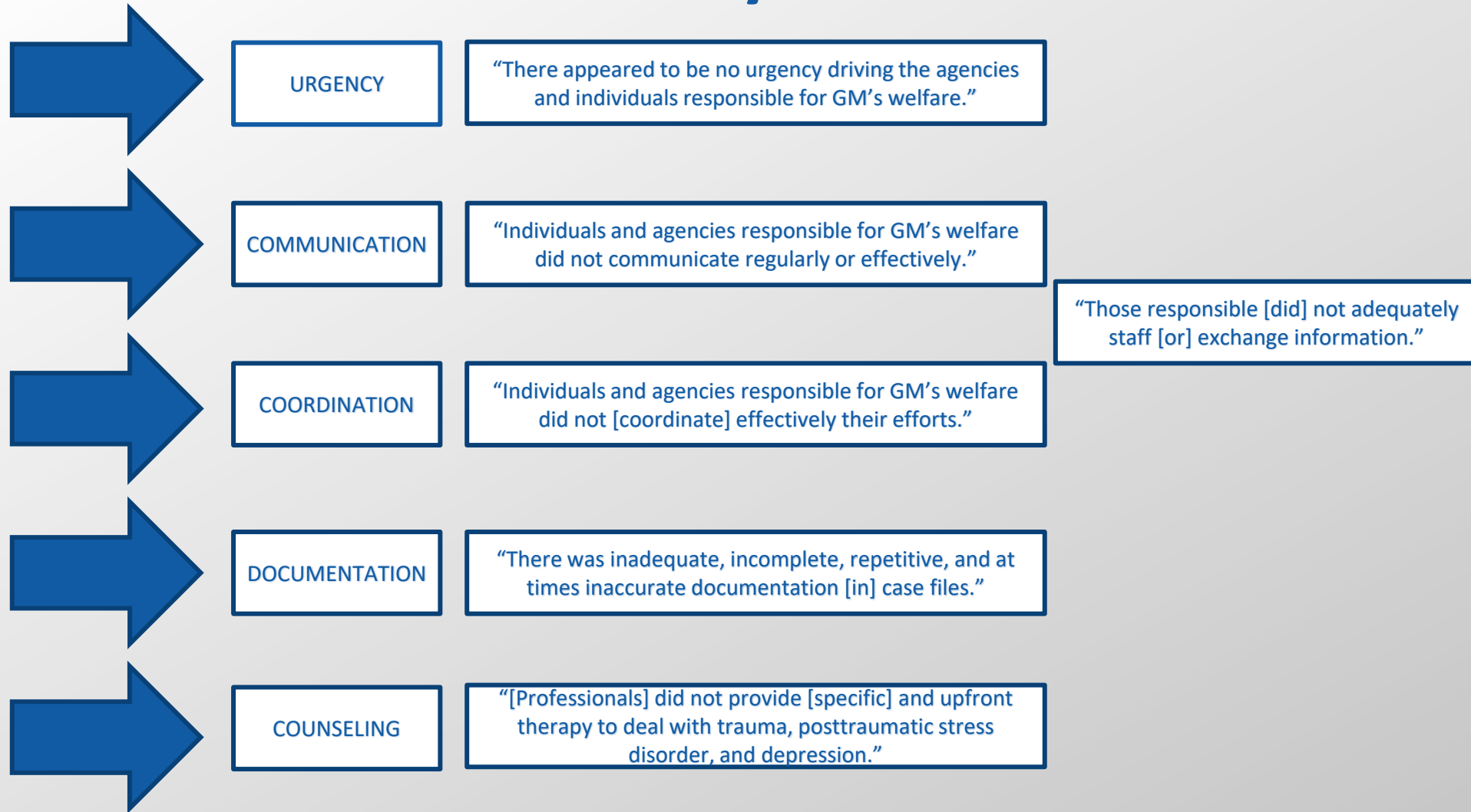


**Gabriel Myers**  
(01/30/02 - 04/16/09)



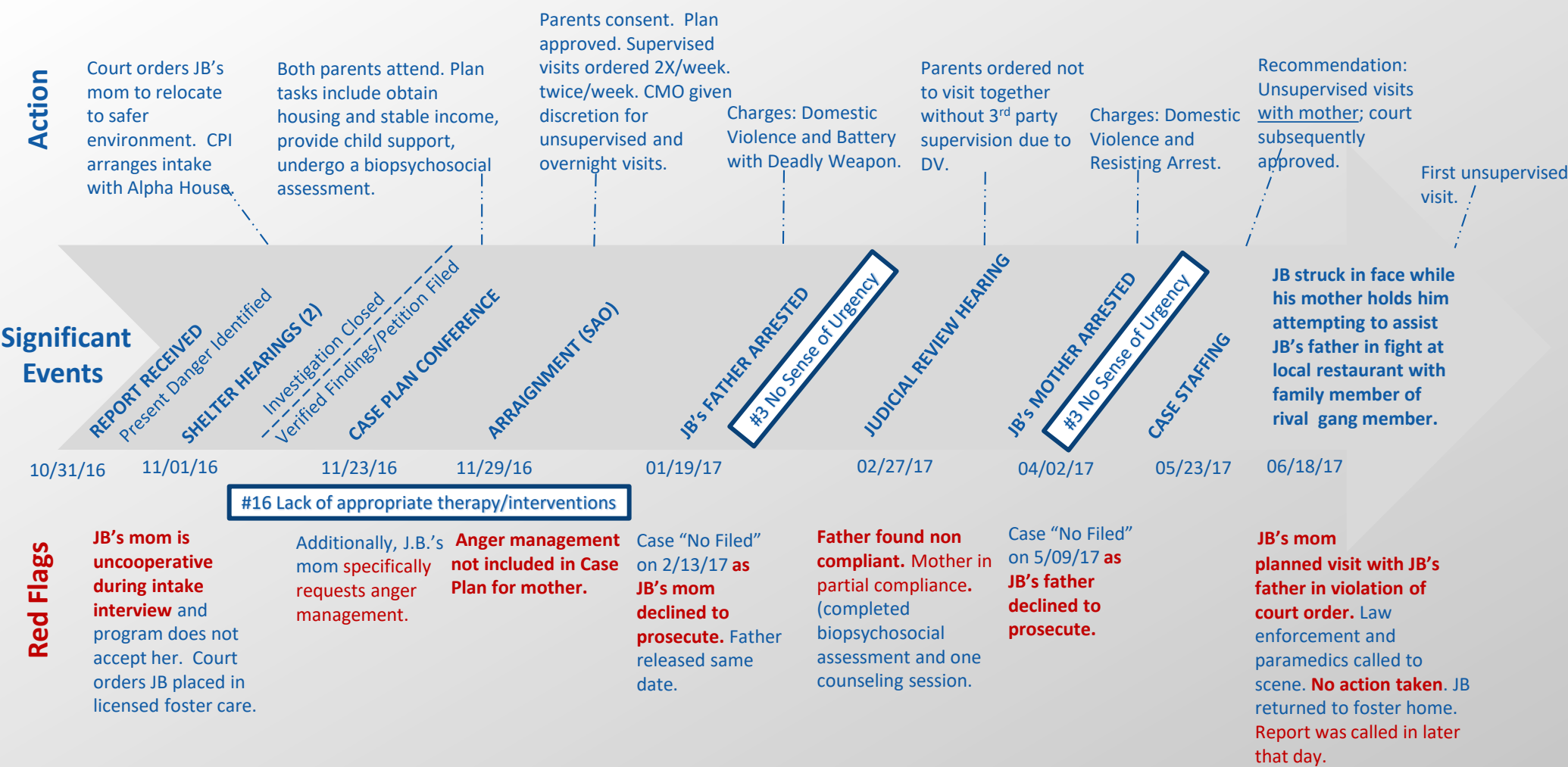


# Common Findings Between Belliveau and Myers Cases



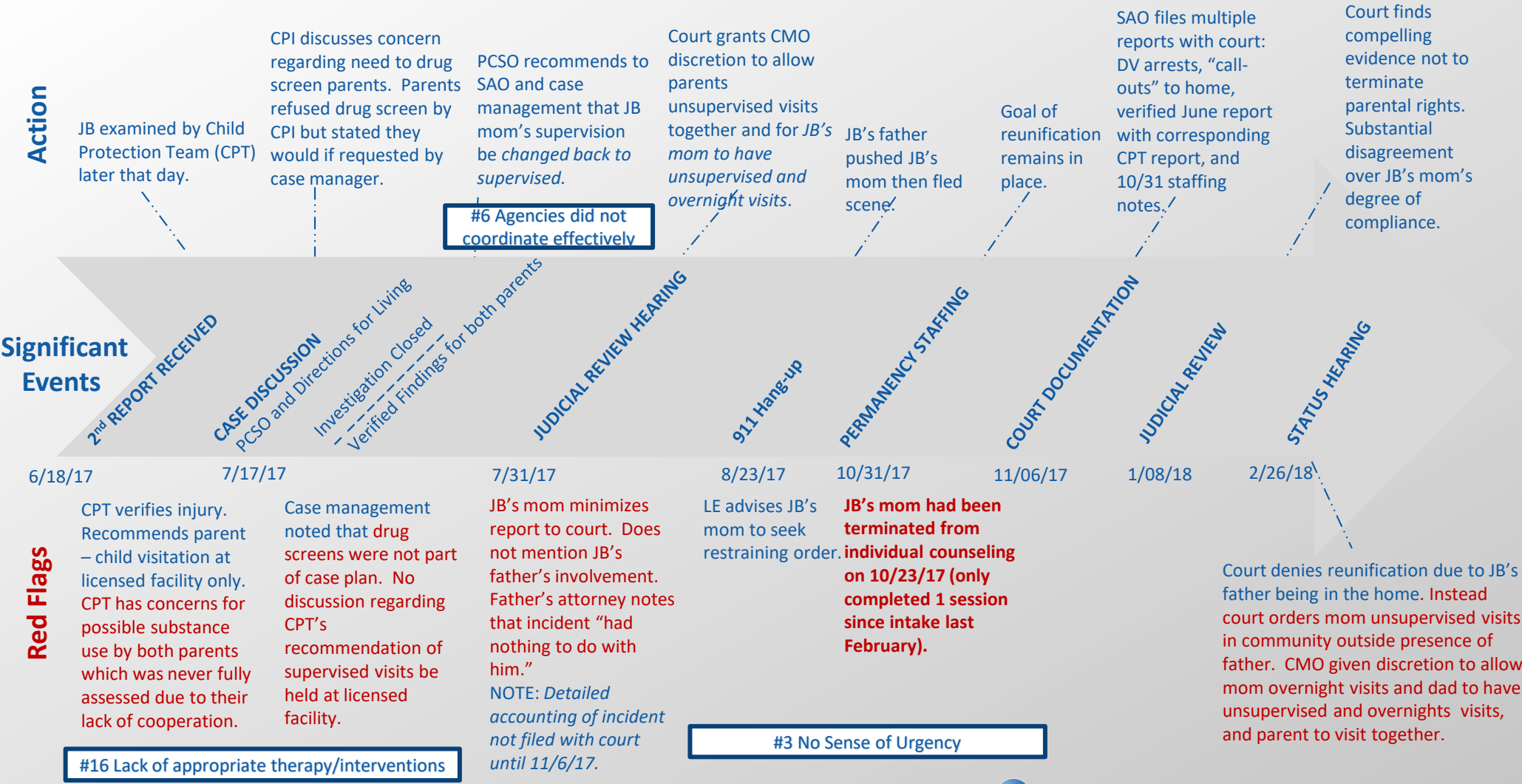
# Alleged Maltreatment: Environmental Hazards

**Narrative:** JB and his mother are residing in a relative's home where drugs and firearms are accessible in addition to noted gang activity involving several household members including JB's father.



# Alleged Maltreatment: Physical Injury and Inadequate Supervision

**Narrative:** As JB's father and another female were fighting, JB's mother jumped in and attempted to strike the other female while holding JB in her arms. The other female attempted to strike JB's mom back however hit JB in the face instead resulting in a lacerated lip.



**#6 Agencies did not coordinate effectively**

**#3 No Sense of Urgency**

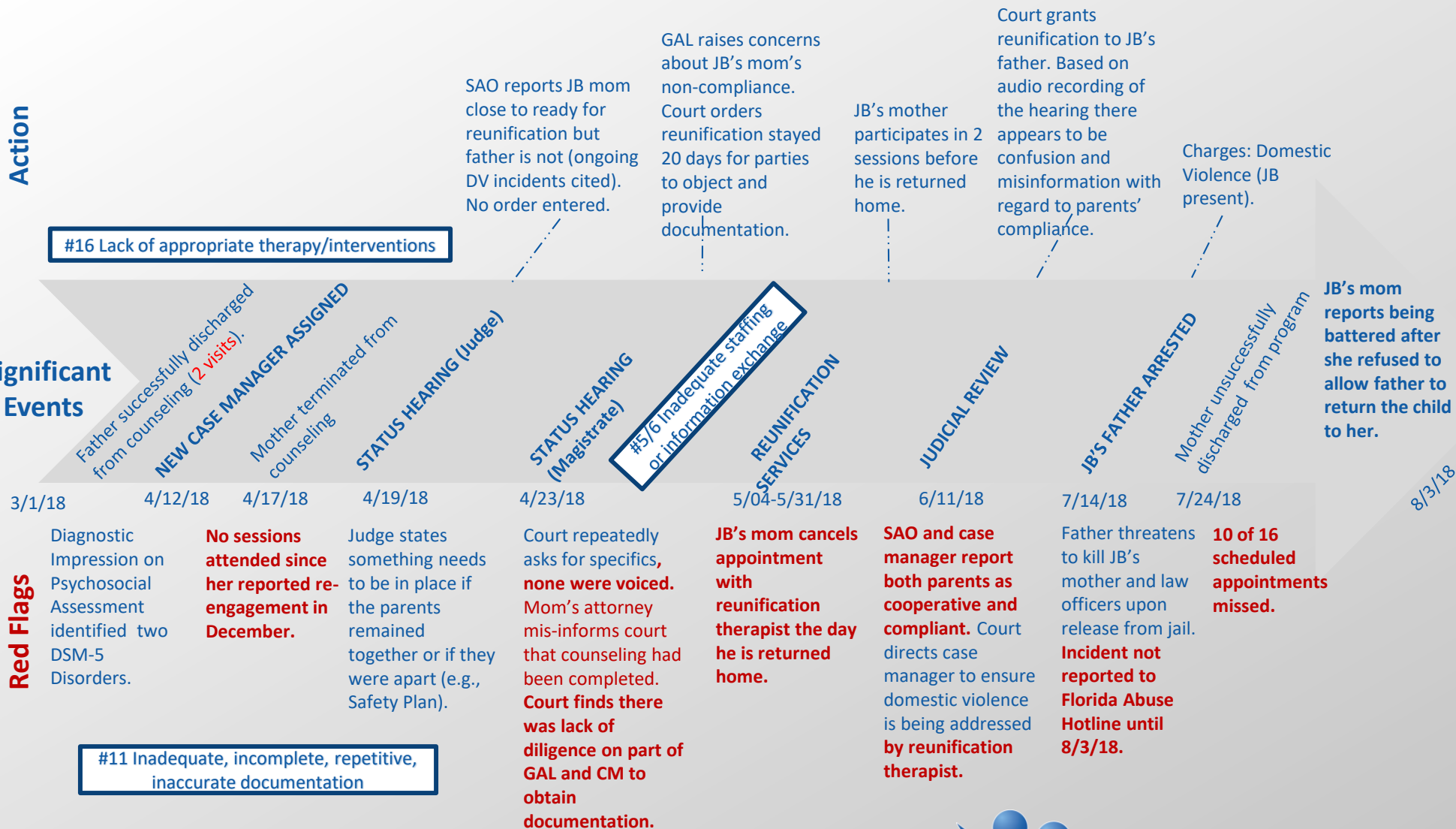


# CRITICAL ACTIONS RELATED TO CASE PLAN TASKS AND ACTIVITIES – J. Belliveau

Action

Significant Events

Red Flags



#16 Lack of appropriate therapy/interventions

#5/6 Inadequate staffing or information exchange

#11 Inadequate, incomplete, repetitive, inaccurate documentation



# Alleged Maltreatment: Household Violence Threatens Child

**Narrative:** On August 3, 2018 the father was arrested by law enforcement as the mother alleged he battered her. Child just reunited with parents three months ago. Father went to home to return child to the mother but she refused to take him leading to an argument.

Action

CPI commences investigation at mother's home.

Case manager discusses Domestic Violence concerns with both parents and paternal grandmother.

SAO files updated case plan tasks with court to address DV issue. Father to attend Batterer's Intervention Program (BIP) and mother to attend Victim's program.

CPI emails case manager, "Just wanted to touch base with you about the status of the investigation. Have you addressed the issue with the mother? I did not identify present danger on this one. How often are you vising with her?"

CPI sends another email to case manager asking if the safety plan has been amended to address the household violence and if an 'Open Case Staffing' was needed on this case.

After multiple unsuccessful attempts to make contact via phone with both parents, case manager makes contact at JB's mother's residence.

#3 No Sense of Urgency

#5 Agencies did not communicate effectively

#5/6 Inadequate staffing or information exchange

AMBER ALERT ISSUED

Significant Events

3<sup>rd</sup> REPORT RECEIVED

HOME VISIT  
Safety Plan updated

CASE PLAN REVISIONS

CASE CONSULTATION

CASE CONSULTATION

HOME VISIT

TEXT MESSAGE

8/3/18

8/8/18

8/17/18

8/24/18

8/31/18

8/31/18

8/31/18

9/2/18

Red Flags

**Mother refuses to open door resulting in a nearly two-hour stand-off. Involving six law officers.**

Mother was afraid JB would be removed. Also, JB's father told her not to open the door. **JB allowed to remain in home.**

**It should be noted that aside from the commencement of the investigation this was the first time the CPI attempted contact with the case manager.**

LE advises JB's mom to seek restraining order.

Case manager discusses families lack of cooperation with GAL, informed father of BIP tasks, and emphasized family's need to participate in services.

Following case manager visit the mother sends a text message to GAL apologizing for her lack of compliance and promises to do better. She reportedly concludes with, "Please don't take my son."



FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

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# Lessons Learned

- Role of Standardized Training
- Role of Supervision/Consultation and Staffings
- Care Coordination/System of Care
- Child Welfare vs Clinical Behavioral Health/Domestic Violence Expertise
- Critical Incident Rapid Response Team Findings and Dissemination
- Integration Across Programs



# System Improvements

## Turnover



**Current Solution:** Merit Pay with Existing Resources  
Promotion in Class

**Proposed Solution:** Standardized Training

- Contributes to missed information
- Poor Communication
- Lack of coordination

## High Caseloads



**Current Solution:** Tiger Teams  
Efficiencies Workgroups

**Proposed Solution:** Differential Response

- Lack of ownership
- Lack of urgency and action
- Poor decision making

## Decision Making



**Current Solution:** Rapid Safety Feedback  
live case reviews

**Proposed Solution:** Quality Office  
Multidisciplinary Teams

- Made in silos
- Inadequate supervisory oversight
- Poor decision making



# Questions



FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES

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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: PCS/SB 122 (309750)

INTRODUCER: Committee on Children, Families, and Elder Affairs

SUBJECT: Child Welfare

DATE: December 9, 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:**

The PCS/SB 122 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 in Pinellas County.

The PCS requires specified child welfare professionals, guardians ad litem, and law enforcement officers to receive training developed by the Department of Health on the recognition of and response to head trauma and brain injury in children under six years old.

The PCS also:

- Removes all training for the child welfare workforce from the community-based care lead agencies (CBCs) and standardizes it statewide by requiring the Department of Children and Families (DCF or department) to return to the professional development center model that worked successfully for 25 years.
- Requires the department in conjunction with the Florida Institute for Child Welfare (institute) to develop and implement a comprehensive uniform child welfare workforce framework based on a nationally recognized model and specifies issues to be addressed.
- Consolidates and eliminates requirements related to education and training which would be encompassed into or become unnecessary as a result of development of a new framework.
- Eliminates the requirements for child welfare staff related to third party credentialing entities.
- Revises the mission of the Florida Institute for Child Welfare to one focused on education, training, and well-being and other support for the child welfare workforce.

The PCS is not expected to have a significant fiscal impact due to existing resources that will be able to be redirected to the revised training and education requirements and takes effect July 1, 2020.

## II. Present Situation:

### Jordan Belliveau

Jordan Belliveau, Jr., was killed 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 ongoing 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 the DCF, and lack of evidence provided by Directions for Living, the contracted case management organization for Eckerd Connects, the community-based care lead agency, regarding the parent's case plan compliance, ongoing 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 by law enforcement four days after his death. 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 in their home.

### 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 services provided during the 17 months he remained removed from the home 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 the 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 were offered 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 compliance, Jordan was eventually reunified with his mother and father. After reunification and

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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 November 15, 2019).

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 his 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 ongoing 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 was reunited with his father. 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. Jordan's mother admitted to killing him 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 wellbeing 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 assessment by the Pinellas County Sheriff's child protective investigator (CPI) was based solely on the fact that the incident wasn't reported to the 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, Guardians ad Litem, 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 Brain Injury Training Requirements***

Currently, all case managers, Guardian ad Litem staff and volunteers, dependency court judges, child protective investigators and supervisors, 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 under age six.<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.

## **Education and Training Requirements for Child Welfare Staff**

### ***Training and Certification***

In 1986, the Legislature required the Department of Health and Rehabilitative Services (HRS) to establish, maintain and oversee the operation of child welfare training academies in the state for the expressed purpose of enabling the state to provide a systematic approach to staff development and training for dependency program staff. The legislature further intended that this approach to training would aid in the reduction of poor staff morale and of staff turnover, positively impact the quality of decisions made regarding child and families and afford a better quality of care for children placed in out-of-home care.<sup>6</sup> The HRS established a number of training academies statewide that were widely recognized as a national model for child welfare workforce training.

In 2000, the Legislature authorized the department to create certification programs for its employees and service providers to ensure that only qualified employees and service providers provide client services. The department was authorized to develop rules that included qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and decertification procedures to be used to determine when an individual no longer meets the qualifications for certification and to implement the decertification of an employee or agent.<sup>7</sup> The department subsequently developed 11 types of certification designations for child protection professionals.

In 2011, at the urging of the CBCs, the Legislature eliminated the department's child welfare training program and removed the department's ability to create certification programs.<sup>8</sup>

### ***Education***

The college degrees most tailored to and associated with child welfare are the bachelor's and master's degrees in social work. During the first half of the 20th century, the federal government, in cooperation with universities and local agencies, established a child welfare system staffed by individuals with professional social work educations. Child welfare came to be viewed as a prestigious specialty within the social work profession.

In the 1990's, an increased recognition of child abuse led to enactment of state child abuse and neglect reporting laws and toll-free numbers to report abuse. This resulted in a large increase of child abuse reports, and resources for the preparation and support of additional staff needed to respond to the reports became inadequate. States moved quickly to hire additional employees to investigate abuse. One way to expand the workforce was to reduce staff qualifications. In response to having a varied workforce without similar expertise and training, agencies began to structure child welfare work to reduce its complexity and make it possible for people with fewer qualifications to adequately perform required tasks.

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<sup>6</sup> Chapter 86-220, L.O.F. The first training academy was required to be operational by June 30, 1987 and be located at Tallahassee Community College.

<sup>7</sup> HB 2125, Chapter 2000-139, L.O.F.

<sup>8</sup> HB 279, Chapter 2011-163, L.O.F.

Several studies have found evidence that social work education, at either the bachelors of social work (BSW) or masters of social work (MSW) level, positively correlates with performance. A study conducted in Maryland public child welfare agencies found an MSW to be the best predictor of overall performance as measured by supervisory ratings and employee reports of work related competencies. A national study that measured competencies related to 32 job-related duties found that both MSW and BSW staff were better prepared for child welfare work than their colleagues without social work education.<sup>9</sup>

Research conducted with staff in Kentucky’s public child welfare agency also revealed that staff with social work degrees scored significantly better on state merit examinations, received somewhat higher ratings from their supervisors, and had higher levels of work commitment than other staff. A Nevada study showed that caseworkers who had a social work degree were significantly more likely to create a permanent plan for children in their caseloads within three years than their colleagues without social work education.<sup>10</sup>

In 2014, the Legislature required the department to set a goal of having at least half of all child protective investigators and supervisor’s with a bachelor’s degree or a master’s degree in social work from a college or university social work program accredited by the Council on Social Work Education. Despite numerous studies and reports supporting the value of a formal social work education in child welfare, Florida has made little if any progress towards re-professionalizing the workforce. In fact, the state has seen a decline since 2016.

Percentage of Child Protective Investigative Positions With Social Work Degree			
	BSW	MSW	Either
<b>2014</b>			9.5%
<b>2016</b>	12%	3%	
<b>2019</b>	11%	2%	

**Reciprocal Peer Support and Other Supports for Child Welfare Staff Well-Being**

Finding ways to support staff, outside of traditional supervisory channels, is now common in many fields. In recognition of the power of collegial relationships and trust, child welfare agencies have been exploring opportunities for doing this in recent years. The National Center for Trauma-Informed Care defines peer support as “a flexible approach to building healing relationships among equals, based on a core set of values & principles.” The practices are rooted in the research that shows people who share common experiences are best able to empathize with one another as well as offer each other the benefit of their own learning.<sup>11</sup>

Several New England states have been developing models for peer support, with New Jersey’s comprehensive Worker2Worker model being the most widely known. The model is grounded in

<sup>9</sup> The Florida Senate, Bill Analysis and Fiscal Impact Statement, SB 1666, March 12, 2014, available at: <http://www.flsenate.gov/Session/Bill/2014/1666/Analyses/2014s1666.cf.PDF> (Last visited November 30, 2019).

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

<sup>11</sup> The New England Association of Child Welfare Commissioners and Directors and Casey Family Programs, Trauma-Informed Resilient Child Welfare Agencies: A New England Learning Community Summary of the Work, April 2017, available at: [https://jbcc.harvard.edu/sites/default/files/ne\\_tircw\\_convenings.report.4.7.17\\_final.pdf](https://jbcc.harvard.edu/sites/default/files/ne_tircw_convenings.report.4.7.17_final.pdf) (Last visited November 8, 2019).

the assumptions that staff are routinely exposed to stressful situations and that they constantly deal with trauma and stress both on and off the job. Worker2Worker is a confidential peer-counseling support helpline for Division of Child Protection and Permanency employees to help manage the unique stresses of their jobs. Worker2Worker is a 7-day-a-week helpline coordinated by Rutgers University Behavioral Health Care and staffed by former DCP&P supervisors and caseworkers. The helpline features a nationally recognized best practice model of peer support entitled “Reciprocal Peer Support,” clinical care telephone assessments, resilience-building events, a network of referral/treatment services, and psychological first aid with crisis response services after traumatic events.<sup>12</sup>

New Jersey credits a uniform multi-faceted approach to workforce well-being including peer support, manageable caseload sizes, supervisory ratios, and enhanced training as being vital to greater job satisfaction and retention. The state enjoys a staff vacancy rate of 2.22%, a staff turnover rate of 8.91% and high staff tenure. Approximately half (47%) of the workforce have been employed by the state for more than ten years and more than two-thirds (69%) have been employed by the state for 6 or more years.<sup>13</sup>

Florida’s child welfare system has no formalized system to support child protective investigation staff.

### **The Florida Institute for Child Welfare**

In 2014, the Legislature established the Florida Institute for Child Welfare (FICW) at the Florida State University College of Social Work. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development.<sup>14</sup> The institute is required to:

- Maintain a program of research which contributes to scientific knowledge and informs both policy and practice;
- Advise the department and other organizations participating in the child protection and child welfare system regarding scientific evidence;
- Provide advice regarding management practices and administrative processes used by DCF and other organizations participating in the child protection and child welfare system and recommend improvements; and
- Assess the performance of child protection and child welfare services based on specific outcome measures.
- Evaluate the scope and effectiveness of preservice and inservice training for child protection and child welfare employees and advise and assist the department in efforts to improve such training.
- Assess the readiness of social work graduates to assume job responsibilities in the child protection and child welfare system and identify gaps in education which can be addressed through the modification of curricula or the establishment of industry certifications.

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<sup>12</sup> Id.

<sup>13</sup> New Jersey Department of Children and Families WORKFORCE REPORT 2016-2017 Updates, available at: <https://www.nj.gov/dcf/childdata/exitplan/NJ.DCF.Workforce.Report-FY17.pdf> (Last visited November 6, 2019).

<sup>14</sup> Section 1004.615, F.S.

- Develop and maintain a program of professional support including training courses and consulting services that assist both individuals and organizations in implementing adaptive and resilient responses to workplace stress.
- Participate in the department’s critical incident response team, assist in the preparation of reports about such incidents, and support the committee review of reports and development of recommendations.
- Identify effective policies and promising practices, including, but not limited to, innovations in coordination between entities participating in the child protection and child welfare system, data analytics, working with the local community, and management of human service organizations, and communicate these findings to the department and other organizations participating in the child protection and child welfare system.
- Develop a definition of a child or family at high risk of abuse or neglect. Such a definition must consider characteristics associated with a greater probability of abuse and neglect.<sup>15</sup>

### III. Effect of Proposed Changes:

**Section 1** provides a short title. The bill is titled “Jordan’s Law” after Jordan Belliveau, a two-year old child in Florida’s child welfare dependency system, who was killed by his mother in September 2018.

**Section 2** amends s. 39.303, F.S., relating to Child Protection Teams, to require the Child Protection Teams to add information on the recognition of and response to head trauma and brain injury in children under six years old to currently mandated trainings developed for program and other employees of the department, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

**Section 3** 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 recognition of and responses to head trauma and brain injury in children under six years old that is developed by the Child Protection Team program.

**Section 4** amends s. 402.40, F.S., relating to child welfare training and certification, to:

- Remove all training for the child welfare workforce from the community-based care lead agencies and standardizes it statewide by requiring the department to return to the professional development center model that worked successfully for 25 years.
- Require the department in conjunction with the institute to develop and implement a comprehensive uniform child welfare workforce framework based on a nationally recognized model and specifies issues to be addressed.
- Consolidate and eliminate requirements related to education and training which would be encompassed into or become unnecessary as a result of development of a new framework.
- Eliminate the requirements related to third party credentialing entities.

**Section 5** amends s. 409.988, F.S., relating to duties of community-based care lead agency duties, to require that training for all individuals providing care for dependent children include

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



information on the recognition of and responses to head trauma and brain injury in children under six years old that is developed by the Child Protection Team program.

**Section 6** creates s. 943.17298, F.S., relating to law enforcement training, to require that training for law enforcement officers include information on the recognition of and responses to head trauma and brain injury in children under six years old that is developed by the Child Protection Team program. Such training may either be a part of basic recruit training or continuing education or training.

**Section 7** amends s. 1004.615, F.S., relating to the Florida Institute for Child Welfare, to revise the mission of the institute to one focused on education, training, and well-being and other support for the child welfare workforce and eliminate outdated reports.

**Section 8** repeals s. 402.402, F.S., relating to child protection and child welfare personnel and attorneys employed by the department, to consolidate and eliminate requirements related to education and training which would be encompassed into or become unnecessary as a result of development of a new framework.

**Section 9** amends s. 402.731, F.S., relating to third-party credentialing for child welfare personnel, to conform to changes made by the PCS.

**Section 10** amends s. 409.996, F.S., relating to duties of the department, to conform to changes made by the PCS.

**Section 11** amends s. 1009.25, F.S. relating to postsecondary fee exemptions, to conform to changes made by the PCS.

**Section 12** provides an effective date of July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill would revise training and education functions of the Department of Health, the Department of Children and Families, and the Florida Institute for Child Welfare. The Department of Health currently develops training for the Child Protection Teams that investigate child abuse cases. Additional training on brain injuries in children would need to be developed. The cost of such training is unknown, but is not expected to be significant.

The bill requires the Department of Children and Families to contract for creation and operation of regional professional development centers in the state's universities and colleges. Currently federal Title IV-E funds are appropriated to the department and the community based lead agencies to train child welfare staff. These funds would be able to be redirected to pay for the regional professional development centers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends ss. 39.303, 39.8296, 402.40, 409.988, 1004.615, 402.731, 409.996 and 1009.25 of the Florida Statutes.

This bill creates 943.17298 of the Florida Statutes.

This bill repeals 402.402 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.

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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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Proposed Committee Substitute by the Committee on Children,  
Families, and Elder Affairs

1                                   A bill to be entitled  
2           An act relating to child welfare; providing a short  
3           title; amending s. 39.303, F.S.; requiring Child  
4           Protection Teams to be capable of providing certain  
5           training relating to head trauma and brain injuries in  
6           children younger than a specified age; amending s.  
7           39.8296, F.S.; revising the membership of the  
8           curriculum committee established to develop a  
9           specified training program; requiring the training  
10          program to include certain training relating to head  
11          trauma and brain injuries in children younger than a  
12          specified age; amending s. 402.40, F.S.; revising  
13          legislative findings and providing legislative intent;  
14          requiring the Department of Children and Families to  
15          develop and implement a specified child welfare  
16          workforce development framework in collaboration with  
17          other specified entities; providing requirements for  
18          the department relating to workforce education  
19          requirements; requiring the department to submit an  
20          annual report to the Governor and the Legislature by a  
21          specified date; requiring community-based care lead  
22          agencies to submit a plan and timeline to the  
23          department relating to certain child welfare staff by  
24          a specified date; providing requirements for the  
25          department related to workforce training; providing  
26          legislative findings; requiring the department to  
27          establish an Office of Well-Being and Support;



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28 requiring the department to contract with certain  
29 university-based centers to develop and coordinate the  
30 implementation of a specified helpline; requiring the  
31 department to submit a report on the implementation of  
32 such helpline to the Governor and the Legislature on a  
33 specified date; requiring certain attorneys employed  
34 by the department to complete certain training by a  
35 specified date; deleting definitions; deleting  
36 provisions relating to core competencies and  
37 specializations; amending s. 409.988, F.S.; requiring  
38 a lead agency to ensure that certain individuals  
39 receive specified training relating to head trauma and  
40 brain injuries in children younger than a specified  
41 age; revising the types of services a lead agency is  
42 required to provide; creating s. 943.17298, F.S.;  
43 requiring law enforcement officers to complete  
44 training relating to head trauma and brain injuries in  
45 children younger than a specified age as part of  
46 either basic recruit training or continuing training  
47 or education by a specified date; amending s.  
48 1004.615, F.S.; revising the purpose of the Florida  
49 Institute for Child Welfare; revising requirements for  
50 the institute; revising the contents of the annual  
51 report that the institute must provide to the Governor  
52 and the Legislature; deleting obsolete provisions;  
53 repealing s. 402.402, F.S., relating to child  
54 protection and child welfare personnel and attorneys  
55 employed by the department; amending ss. 402.731,  
56 409.996, and 1009.25, F.S.; conforming provisions to



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57 changes made by the act; providing an effective date.

58  
59 Be It Enacted by the Legislature of the State of Florida:

60  
61 Section 1. This act may be cited as "Jordan's Law."

62 Section 2. Paragraph (h) of subsection (3) of section  
63 39.303, Florida Statutes, is amended to read:

64 39.303 Child Protection Teams and sexual abuse treatment  
65 programs; services; eligible cases.—

66 (3) The Department of Health shall use and convene the  
67 Child Protection Teams to supplement the assessment and  
68 protective supervision activities of the family safety and  
69 preservation program of the Department of Children and Families.  
70 This section does not remove or reduce the duty and  
71 responsibility of any person to report pursuant to this chapter  
72 all suspected or actual cases of child abuse, abandonment, or  
73 neglect or sexual abuse of a child. The role of the Child  
74 Protection Teams is to support activities of the program and to  
75 provide services deemed by the Child Protection Teams to be  
76 necessary and appropriate to abused, abandoned, and neglected  
77 children upon referral. The specialized diagnostic assessment,  
78 evaluation, coordination, consultation, and other supportive  
79 services that a Child Protection Team must be capable of  
80 providing include, but are not limited to, the following:

81 (h) Such training services for program and other employees  
82 of the Department of Children and Families, employees of the  
83 Department of Health, and other medical professionals as is  
84 deemed appropriate to enable them to develop and maintain their  
85 professional skills and abilities in handling child abuse,



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86 abandonment, and neglect cases. The training services must  
87 include training in the recognition of and appropriate responses  
88 to head trauma and brain injury in a child under 6 years of age  
89 as required under ss. 39.8296, 402.40, and 943.17298.

90

91 A Child Protection Team that is evaluating a report of medical  
92 neglect and assessing the health care needs of a medically  
93 complex child shall consult with a physician who has experience  
94 in treating children with the same condition.

95 Section 3. Paragraph (b) of subsection (2) of section  
96 39.8296, Florida Statutes, is amended to read:

97 39.8296 Statewide Guardian Ad Litem Office; legislative  
98 findings and intent; creation; appointment of executive  
99 director; duties of office.—

100 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a  
101 Statewide Guardian Ad Litem Office within the Justice  
102 Administrative Commission. The Justice Administrative Commission  
103 shall provide administrative support and service to the office  
104 to the extent requested by the executive director within the  
105 available resources of the commission. The Statewide Guardian Ad  
106 Litem Office shall not be subject to control, supervision, or  
107 direction by the Justice Administrative Commission in the  
108 performance of its duties, but the employees of the office shall  
109 be governed by the classification plan and salary and benefits  
110 plan approved by the Justice Administrative Commission.

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



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115           1. The office shall identify the resources required to  
116 implement methods of collecting, reporting, and tracking  
117 reliable and consistent case data.

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

120           3. The office, in consultation with local guardian ad litem  
121 offices, shall develop statewide performance measures and  
122 standards.

123           4. ~~The office shall develop a guardian ad litem training~~  
124 ~~program.~~ The office shall establish a curriculum committee to  
125 develop a guardian ad litem ~~the~~ training program ~~specified in~~  
126 ~~this subparagraph.~~ The curriculum committee shall include, but  
127 not be limited to, dependency judges, directors of circuit  
128 guardian ad litem programs, active certified guardians ad litem,  
129 a mental health professional who specializes in the treatment of  
130 children, a member of a child advocacy group, a representative  
131 of the Florida Coalition Against Domestic Violence, an  
132 individual with a degree in social work, and a social worker  
133 experienced in working with victims and perpetrators of child  
134 abuse. The training program must include training in the  
135 recognition of and appropriate responses to head trauma and  
136 brain injury in a child under 6 years of age developed by the  
137 Child Protection Team Program within the Department of Health.

138           5. The office shall review the various methods of funding  
139 guardian ad litem programs, shall maximize the use of those  
140 funding sources to the extent possible, and shall review the  
141 kinds of services being provided by circuit guardian ad litem  
142 programs.

143           6. The office shall determine the feasibility or





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144 desirability of new concepts of organization, administration,  
145 financing, or service delivery designed to preserve the civil  
146 and constitutional rights and fulfill other needs of dependent  
147 children.

148 7. In an effort to promote normalcy and establish trust  
149 between a court-appointed volunteer guardian ad litem and a  
150 child alleged to be abused, abandoned, or neglected under this  
151 chapter, a guardian ad litem may transport a child. However, a  
152 guardian ad litem volunteer may not be required or directed by  
153 the program or a court to transport a child.

154 8. The office shall submit to the Governor, the President  
155 of the Senate, the Speaker of the House of Representatives, and  
156 the Chief Justice of the Supreme Court an interim report  
157 describing the progress of the office in meeting the goals as  
158 described in this section. The office shall submit to the  
159 Governor, the President of the Senate, the Speaker of the House  
160 of Representatives, and the Chief Justice of the Supreme Court a  
161 proposed plan including alternatives for meeting the state's  
162 guardian ad litem and attorney ad litem needs. This plan may  
163 include recommendations for less than the entire state, may  
164 include a phase-in system, and shall include estimates of the  
165 cost of each of the alternatives. Each year the office shall  
166 provide a status report and provide further recommendations to  
167 address the need for guardian ad litem services and related  
168 issues.

169 Section 4. Section 402.40, Florida Statutes, is amended to  
170 read:

171 (Substantial rewording of section. See  
172 s. 402.40, F.S., for present text.)



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173           402.40 Child welfare workforce; development; training;  
174 well-being.-

175           (1) LEGISLATIVE FINDINGS AND INTENT.-

176           (a) The Legislature finds that positive outcomes for  
177 children and families involved with the child welfare system  
178 often are attributable to the strong commitment of a well-  
179 trained, highly skilled, well-resourced, and dedicated child  
180 welfare workforce and that the child welfare system is only as  
181 good as the individuals who conduct investigations, provide  
182 services to children and families, and manage service delivery.

183           (b) The Legislature also finds that child welfare agencies  
184 experience barriers to establishing and maintaining a stable,  
185 effective, and diverse workforce because of issues relating to  
186 recruitment, education and training, inadequate supervision,  
187 retention and staff turnover, and lack of support for frontline  
188 individuals.

189           (c) The Legislature further finds that, although numerous  
190 initiatives have been developed to address these challenges,  
191 isolated interventions often fail to yield positive results,  
192 whereas implementing an integrated framework across multiple  
193 domains can help child welfare agencies achieve effective  
194 outcomes.

195           (d) It is the intent of the Legislature to ensure a  
196 systematic approach to child welfare workforce staff development  
197 and the well-being of individuals providing child welfare  
198 services by establishing a uniform statewide program.

199           (2) CHILD WELFARE WORKFORCE DEVELOPMENT FRAMEWORK.-In order  
200 to promote competency-based, outcome-focused, and data-driven  
201 approaches to workforce development, the department, in



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202 collaboration with the Florida Institute for Child Welfare,  
203 shall develop and implement a comprehensive child welfare  
204 development workforce framework using a nationally recognized  
205 model for workforce development. The framework must address, at  
206 a minimum, all of the following components:

- 207 (a) Recruitment and hiring.
- 208 (b) Education and professional preparation.
- 209 (c) Professional training and development.
- 210 (d) Supervision.
- 211 (e) Retention.
- 212 (f) Caseload and workload.
- 213 (g) Workforce well-being and support.
- 214 (h) Work-life balance and flexible scheduling.
- 215 (i) Agency culture and climate.

216 (3) WORKFORCE EDUCATION REQUIREMENTS.—

217 (a) The department shall make every effort to recruit and  
218 hire qualified professional staff to serve as child protective  
219 investigators and child protective investigation supervisors who  
220 are qualified by their education and experience to perform  
221 social work functions. The department, in collaboration with the  
222 lead agencies, subcontracted provider organizations, the Florida  
223 Institute for Child Welfare, and other partners in the child  
224 welfare system, shall develop a protocol for screening  
225 candidates for child protective positions which reflects the  
226 preferences specified in subparagraphs 1., 2., and 3. The  
227 following persons must be given preference in recruitment, but  
228 this preference serves only as guidance and does not limit the  
229 department's discretion to select the best available candidates:

- 230 1. Individuals with a baccalaureate degree in social work,



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231 and child protective investigation supervisors with a master's  
232 degree in social work, from a college or university social work  
233 program accredited by the Council on Social Work Education.

234 2. Individuals with a bachelor's degree or a master's  
235 degree in psychology, sociology, counseling, special education,  
236 education, human development, child development, family  
237 development, marriage and family therapy, or nursing.

238 3. Individuals with baccalaureate degrees who have a  
239 combination of directly relevant work and volunteer experience,  
240 preferably in a public service field related to children's  
241 services, which demonstrates critical thinking skills, formal  
242 assessment processes, communication skills, problem solving, and  
243 empathy; a commitment to helping children and families; a  
244 capacity to work as part of a team; an interest in continuous  
245 development of skills and knowledge; and sufficient personal  
246 strength and resilience to manage competing demands and handle  
247 workplace stresses.

248 (b) By each October 1, the department shall submit a report  
249 on the educational qualifications, turnover, and working  
250 conditions of child protective investigators and supervisors to  
251 the Governor, the President of the Senate, and the Speaker of  
252 the House of Representatives.

253 (c) By January 1, 2021, the community-based care lead  
254 agencies shall submit to the department a plan and timeline for  
255 recruiting and hiring child welfare staff providing care for  
256 dependent children which meet the same educational requirements  
257 as required for child protective investigators and child  
258 protective investigation supervisors under this subsection. The  
259 plan and timeline must include the same recruiting and hiring



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260 requirements for child welfare staff employed by subcontractors.

261 (4) WORKFORCE TRAINING.—

262 (a) In order to enable the state to recruit and retain a  
263 qualified and diverse child welfare workforce that is well-  
264 trained, well-supervised, and well-supported, the department  
265 shall establish a program for a comprehensive system to provide  
266 both preservice and inservice child welfare competency-based  
267 training that all child welfare staff, including all staff  
268 providing care for dependent children employed by a community-  
269 based care lead agency or by a subcontractor of such agency, are  
270 required to participate in and successfully complete,  
271 appropriate to their areas of responsibility. Such program must  
272 include training in the recognition of and appropriate responses  
273 to head trauma and brain injury in a child under 6 years of age,  
274 which must be developed by the Child Protection Team Program  
275 within the Department of Health.

276 (b) By January 1, 2021, the department shall establish,  
277 maintain, and oversee the operation of at least one regional  
278 child welfare professional development center in this state. The  
279 department shall determine the number and location of, and the  
280 timeframe for establishing, additional development centers and  
281 shall contract for the operation of the centers with a public  
282 postsecondary institution pursuant to s. 402.7305.

283 (5) WORKFORCE WELL-BEING AND SUPPORT.—The Legislature finds  
284 that vicarious trauma, burnout, and lack of self-care can  
285 challenge all first responders, including child welfare  
286 professionals. First responders who care for others often need  
287 peer counseling, crisis support, and other resilience-building  
288 services to normalize issues and promote retention. The



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289 Legislature further finds that these activities are best  
290 provided by those with shared life experiences who may provide  
291 assistance that traditional mental health or employee assistance  
292 programs are unable to provide.

293 (a) The department shall establish an Office of Well-Being  
294 and Support.

295 (b) The department shall contract with one or more  
296 university-based centers that have expertise in behavioral  
297 health to develop and coordinate the implementation of a  
298 helpline that is operational 24 hours per day and 7 days a week,  
299 staffed by former child welfare supervisors and caseworkers and  
300 child protective investigators, and reflective of the nationally  
301 recognized best practice reciprocal peer support model. The  
302 helpline must be capable of providing peer support, telephone  
303 assessment, and referral services.

304 (c) The department shall submit a report providing an  
305 update on the activities of the office and implementation of the  
306 helpline to the Governor, the President of the Senate, and the  
307 Speaker of the House of Representatives on December 1, 2020.

308 (6) CHILD WELFARE TRAINING TRUST FUND.—

309 (a) There is created within the State Treasury a Child  
310 Welfare Training Trust Fund to be used by the Department of  
311 Children and Families for the purpose of funding the  
312 professional development of persons providing child welfare  
313 services.

314 (b) One dollar from every noncriminal traffic infraction  
315 collected pursuant to s. 318.14(10)(b) or s. 318.18 shall be  
316 deposited into the Child Welfare Training Trust Fund.

317 (c) In addition to the funds generated by paragraph (b),



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318 the trust fund shall receive funds generated from an additional  
319 fee on birth certificates and dissolution of marriage filings,  
320 as specified in ss. 382.0255 and 28.101, respectively, and may  
321 receive funds from any other public or private source.

322 (d) Funds that are not expended by the end of the budget  
323 cycle or through a supplemental budget approved by the  
324 department shall revert to the trust fund.

325 (7) ATTORNEYS EMPLOYED BY THE DEPARTMENT TO HANDLE CHILD  
326 WELFARE CASES.—With the exception of attorneys hired after July  
327 1, 2014, but before July 1, 2020, who shall complete the  
328 training required under this subsection by January 31, 2021,  
329 attorneys hired by the department on or after July 1, 2014,  
330 whose primary responsibility is representing the department in  
331 child welfare cases shall receive training within the first 6  
332 months of employment in:

333 (a) The dependency court process, including the attorney's  
334 role in preparing and reviewing documents prepared for  
335 dependency court for accuracy and completeness;

336 (b) Preparing and presenting child welfare cases, including  
337 at least 1 week of shadowing an experienced children's legal  
338 services attorney who is preparing and presenting cases;

339 (c) Safety assessment, safety decisionmaking tools, and  
340 safety plans;

341 (d) Developing information presented by investigators and  
342 case managers to support decisionmaking in the best interest of  
343 children; and

344 (e) The experiences and techniques of case managers and  
345 investigators, including shadowing an experienced child  
346 protective investigator and an experienced case manager for at



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347 least 8 hours.

348 (8) ADOPTION OF RULES.—The department shall adopt rules  
349 necessary to administer this section.

350 Section 5. Paragraph (f) of subsection (1) and subsection  
351 (3) of section 409.988, Florida Statutes, is amended to read:

352 409.988 Lead agency duties; general provisions.—

353 (1) DUTIES.—A lead agency:

354 (f) Shall ensure that all individuals providing care for  
355 dependent children participate in and successfully complete the  
356 program of ~~receive appropriate~~ training relevant to the  
357 individual's area of responsibility and meet the minimum  
358 employment standards established by the department pursuant to  
359 s. 402.40. The training curriculum must include training in the  
360 recognition of and appropriate responses to head trauma and  
361 brain injury in a child under 6 years of age developed by the  
362 Child Protection Team Program within the Department of Health.

363 (3) SERVICES.—A lead agency must provide dependent children  
364 with services that are supported by research or that are  
365 recognized as best practices in the child welfare field. The  
366 agency shall give priority to the use of services that are  
367 evidence-based and trauma-informed and may also provide other  
368 innovative services, including, but not limited to, family-  
369 centered and cognitive-behavioral interventions designed to  
370 mitigate out-of-home placements and intensive family  
371 reunification services that combine child welfare and mental  
372 health services for families with dependent children under 6  
373 years of age.

374 Section 6. Section 943.17298, Florida Statutes, is created  
375 to read:





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376       943.17298 Training in the recognition of and responses to  
377 head trauma and brain injury.—Each law enforcement officer must  
378 successfully complete training on the subject of the recognition  
379 of and appropriate responses to head trauma and brain injury in  
380 a child under 6 years of age developed by the Child Protection  
381 Team Program within the Department of Health to aid an officer  
382 in the detection of head trauma and brain injury due to child  
383 abuse. Such training must be completed as part of the basic  
384 recruit training for a law enforcement officer, as required  
385 under s. 943.13(9), or as a part of continuing training or  
386 education required under s. 943.135(1), before July 1, 2022.

387       Section 7. Section 1004.615, Florida Statutes, is amended  
388 to read:

389       1004.615 Florida Institute for Child Welfare.—

390       (1) There is established the Florida Institute for Child  
391 Welfare within the Florida State University College of Social  
392 Work. The purpose of the institute is to advance the well-being  
393 of children and families who are involved with, or at risk of  
394 becoming involved with, the child welfare system by facilitating  
395 and supporting statewide partnerships to develop competency-  
396 based education, training, and support to prepare a diverse  
397 group of social work professionals for careers in child welfare  
398 ~~by improving the performance of child protection and child~~  
399 ~~welfare services through research, policy analysis, evaluation,~~  
400 ~~and leadership development.~~ The institute shall consist of a  
401 consortium of public and private universities offering degrees  
402 in social work and shall be housed within the Florida State  
403 University College of Social Work.

404       (2) Using such resources as authorized in the General



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405 Appropriations Act, the Department of Children and Families  
406 shall collaborate ~~contract~~ with the institute for performance of  
407 the duties described in subsection (3) ~~(4)~~ using state  
408 appropriations, public and private grants, and other resources  
409 obtained by the institute.

410 (3) In order to increase and retain a higher percentage of  
411 professionally educated social workers in the child welfare  
412 system and serve as a statewide resource for child welfare  
413 workforce education and training, the institute, in  
414 collaboration with the Department of Children and Families,  
415 shall:

416 (a) Design and disseminate a continuum of social work  
417 education and training which emphasizes child welfare workforce  
418 stabilization and professionalization by aligning social work  
419 curriculum and training with critical practice skills pursuant  
420 to s. 402.40.

421 (b) Identify methods to promote continuing professional  
422 development and systems of workplace support for existing child  
423 welfare staff.

424 (c) Develop a best practice model for providing feedback on  
425 curriculum to social work programs and for ensuring that interns  
426 who will be entering the child welfare profession are well-  
427 supervised by university personnel during their internships.

428 (d) Create a Title IV-E program designed to provide  
429 professional education and monetary support to undergraduate and  
430 graduate social work students who intend to pursue or continue a  
431 career in child welfare. Goals of the program should include:

432 1. Increasing the number of individuals in the child  
433 welfare workforce who have a bachelor's degree or master's



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434 degree in social work.

435 2. Prioritizing the enrollment of current child welfare  
436 staff employed by the state.

437 3. Prioritizing the enrollment of students who reflect the  
438 diversity of the state's child welfare population.

439 4. Providing specific program support through the provision  
440 of specialized competency-based child welfare curriculum and  
441 monetary support to students.

442 (e) Engage in evaluation and dissemination of evidence-  
443 based and promising practices in child welfare and build high-  
444 quality evaluation into new program models and pilots.

445  
446 The institute shall also provide consultation on the creation of  
447 the Office of Well-Being and Support within the Department of  
448 Children and Families pursuant to s. 402.40 ~~The institute shall~~  
449 ~~work with the department, sheriffs providing child protective~~  
450 ~~investigative services, community-based care lead agencies,~~  
451 ~~community-based care provider organizations, the court system,~~  
452 ~~the Department of Juvenile Justice, the Florida Coalition~~  
453 ~~Against Domestic Violence, and other partners who contribute to~~  
454 ~~and participate in providing child protection and child welfare~~  
455 ~~services.~~

456 ~~(4) The institute shall:~~

457 ~~(a) Maintain a program of research which contributes to~~  
458 ~~scientific knowledge and informs both policy and practice~~  
459 ~~related to child safety, permanency, and child and family well-~~  
460 ~~being.~~

461 ~~(b) Advise the department and other organizations~~  
462 ~~participating in the child protection and child welfare system~~



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463 ~~regarding scientific evidence on policy and practice related to~~  
464 ~~child safety, permanency, and child and family well-being.~~

465 ~~(c) Provide advice regarding management practices and~~  
466 ~~administrative processes used by the department and other~~  
467 ~~organizations participating in the child protection and child~~  
468 ~~welfare system and recommend improvements that reduce~~  
469 ~~burdensome, ineffective requirements for frontline staff and~~  
470 ~~their supervisors while enhancing their ability to effectively~~  
471 ~~investigate, analyze, problem solve, and supervise.~~

472 ~~(d) Assess the performance of child protection and child~~  
473 ~~welfare services based on specific outcome measures.~~

474 ~~(e) Evaluate the scope and effectiveness of preservice and~~  
475 ~~inservice training for child protection and child welfare~~  
476 ~~employees and advise and assist the department in efforts to~~  
477 ~~improve such training.~~

478 ~~(f) Assess the readiness of social work graduates to assume~~  
479 ~~job responsibilities in the child protection and child welfare~~  
480 ~~system and identify gaps in education which can be addressed~~  
481 ~~through the modification of curricula or the establishment of~~  
482 ~~industry certifications.~~

483 ~~(g) Develop and maintain a program of professional support~~  
484 ~~including training courses and consulting services that assist~~  
485 ~~both individuals and organizations in implementing adaptive and~~  
486 ~~resilient responses to workplace stress.~~

487 ~~(h) Participate in the department's critical incident~~  
488 ~~response team, assist in the preparation of reports about such~~  
489 ~~incidents, and support the committee review of reports and~~  
490 ~~development of recommendations.~~

491 ~~(i) Identify effective policies and promising practices,~~



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492 ~~including, but not limited to, innovations in coordination~~  
493 ~~between entities participating in the child protection and child~~  
494 ~~welfare system, data analytics, working with the local~~  
495 ~~community, and management of human service organizations, and~~  
496 ~~communicate these findings to the department and other~~  
497 ~~organizations participating in the child protection and child~~  
498 ~~welfare system.~~

499 ~~(j) Develop a definition of a child or family at high risk~~  
500 ~~of abuse or neglect. Such a definition must consider~~  
501 ~~characteristics associated with a greater probability of abuse~~  
502 ~~and neglect.~~

503 ~~(5)~~ The President of the Florida State University shall  
504 appoint a director of the institute. The director must be a  
505 child welfare professional with a degree in social work who  
506 holds a faculty appointment in the Florida State University  
507 College of Social Work. The institute shall be administered by  
508 the director, and the director's office shall be located at the  
509 Florida State University. The director is responsible for  
510 overall management of the institute and for developing and  
511 executing the work of the institute consistent with the  
512 responsibilities in subsection (3) ~~(4)~~. The director shall  
513 engage individuals in other state universities with accredited  
514 colleges of social work to participate in the institute.  
515 Individuals from other university programs relevant to the  
516 institute's work, including, but not limited to, economics,  
517 management, law, medicine, and education, may also be invited by  
518 the director to contribute to the institute. The universities  
519 participating in the institute shall provide facilities, staff,  
520 and other resources to the institute to establish statewide



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521 access to institute programs and services.

522 ~~(5)-(6)~~ By each October 1 ~~of each year~~, the institute shall  
523 provide a written report to the Governor, the President of the  
524 Senate, and the Speaker of the House of Representatives which  
525 outlines its activities in the preceding year, reports  
526 significant research findings, as well as results of other  
527 programs, and provides specific recommendations for improving  
528 education, training, and support for individuals in the child  
529 welfare workforce ~~child protection and child welfare services.~~

530 ~~(a) The institute shall include an evaluation of the~~  
531 ~~results of the educational and training requirements for child~~  
532 ~~protection and child welfare personnel established under this~~  
533 ~~act and recommendations for application of the results to child~~  
534 ~~protection personnel employed by sheriff's offices providing~~  
535 ~~child protection services in its report due October 1, 2017.~~

536 ~~(b) The institute shall include an evaluation of the~~  
537 ~~effects of the other provisions of this act and recommendations~~  
538 ~~for improvements in child protection and child welfare services~~  
539 ~~in its report due October 1, 2018.~~

540 ~~(7) The institute shall submit a report with~~  
541 ~~recommendations for improving the state's child welfare system.~~  
542 ~~The report shall address topics including, but not limited to,~~  
543 ~~enhancing working relationships between the entities involved in~~  
544 ~~the child protection and child welfare system, identification of~~  
545 ~~and replication of best practices, reducing paperwork,~~  
546 ~~increasing the retention of child protective investigators and~~  
547 ~~case managers, and caring for medically complex children within~~  
548 ~~the child welfare system, with the goal of allowing the child to~~  
549 ~~remain in the least restrictive and most nurturing environment.~~



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550 ~~The institute shall submit an interim report by February 1,~~  
551 ~~2015, and final report by October 1, 2015, to the Governor, the~~  
552 ~~President of the Senate, and the Speaker of the House of~~  
553 ~~Representatives.~~

554 Section 8. Section 402.402, Florida Statutes, is repealed.

555 Section 9. Section 402.731, Florida Statutes, is amended to  
556 read:

557 402.731 ~~Department of Children and Families certification~~  
558 ~~programs for employees and service providers;~~ Employment  
559 provisions for transition to community-based care.—

560 ~~(1) The Department of Children and Families is authorized~~  
561 ~~to approve third-party credentialing entities, as defined in s.~~  
562 ~~402.40, for its employees and service providers to ensure that~~  
563 ~~only qualified employees and service providers provide client~~  
564 ~~services.~~

565 ~~(2)~~ The department shall develop and implement employment  
566 programs to attract and retain competent staff to support and  
567 facilitate the transition to privatized community-based care.  
568 Such employment programs shall include lump-sum bonuses, salary  
569 incentives, relocation allowances, or severance pay. The  
570 department shall also contract for the delivery or  
571 administration of outplacement services. The department shall  
572 establish time-limited exempt positions as provided in s.  
573 110.205(2)(i), in accordance with the authority provided in s.  
574 216.262(1)(c)1. Employees appointed to fill such exempt  
575 positions shall have the same salaries and benefits as career  
576 service employees.

577 Section 10. Subsection (9) of section 409.996, Florida  
578 Statutes, is amended to read:



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579           409.996 Duties of the Department of Children and Families.-  
580           The department shall contract for the delivery, administration,  
581           or management of care for children in the child protection and  
582           child welfare system. In doing so, the department retains  
583           responsibility for the quality of contracted services and  
584           programs and shall ensure that services are delivered in  
585           accordance with applicable federal and state statutes and  
586           regulations.

587           (9) The department shall develop, in cooperation with the  
588           lead agencies, ~~a third-party credentialing entity approved~~  
589           ~~pursuant to s. 402.40(3)~~, and the Florida Institute for Child  
590           Welfare established pursuant to s. 1004.615, a standardized  
591           competency-based curriculum for certification training for child  
592           protection staff.

593           Section 11. Paragraph (h) of subsection (1) of section  
594           1009.25, Florida Statutes, is amended to read:

595           1009.25 Fee exemptions.-

596           (1) The following students are exempt from the payment of  
597           tuition and fees, including lab fees, at a school district that  
598           provides workforce education programs, Florida College System  
599           institution, or state university:

600           (h) Pursuant to s. 402.403, child protection and child  
601           welfare personnel ~~as defined in s. 402.402~~ who are enrolled in  
602           an accredited bachelor's degree or master's degree in social  
603           work program, provided that the student attains at least a grade  
604           of "B" in all courses for which tuition and fees are exempted.

605           Section 12. This act shall take effect July 1, 2020.



**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 122

INTRODUCER: Senator Rouson

SUBJECT: Child Welfare

DATE: December 9, 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 122 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 in Pinellas County.

The bill requires the Department of Children and Families (DCF or department) and the Florida Department of Law Enforcement (FDLE) to share certain information on a parent or caregiver who is the subject of a child protective investigation or is a parent or caregiver of a child who has been returned home after an adjudication of dependency. The bill requires a law enforcement officer who has an interaction with a parent or caregiver and the interaction results in the officer having a concern about the health, safety or wellbeing of the child, to notify the Florida Central Abuse Hotline (hotline) and provide information about the interaction. The hotline is then required to provide relevant information to specified individuals.

The bill requires specified child welfare professionals, judges, guardians ad litem, and law enforcement officers to receive training on the recognition of and response to head trauma and brain injury in children under six years old.

The bill allows the department to create and implement a pilot program in up to three judicial circuits to more effectively provide case management services for dependent children under the age of six. The bill requires an evaluation of the pilots by October 1, 2025.

The bill will have a significant fiscal impact on state government.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Jordan Belliveau

Jordan Belliveau, Jr., was killed 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 ongoing 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 the DCF, and lack of evidence provided by Directions for Living, the contracted case management organization for Eckerd Connects, the community-based care lead agency, regarding the parent's case plan compliance, ongoing 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 by law enforcement four days after his death. 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 in their home.

### 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 services provided during the 17 months he remained removed from the home 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 the 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 remained in foster care. His parents were offered 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 compliance, Jordan was eventually reunified with his mother and father. After reunification and

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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 November 15, 2019).

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 his 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 ongoing 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 was reunited with his father. 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. Jordan's mother admitted to killing him 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 wellbeing 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 assessment by the Pinellas County Sheriff's child protective investigator (CPI) was based solely on the fact that the incident wasn't reported to the 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, Guardians ad Litem, 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 specifically includes the recognition of and response to head trauma and brain injury in a child under age six.<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. The 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 the FCIC to see if there are any open wants or warrants for their arrest. The 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 noncriminal justice agencies.<sup>6</sup> The CJIS helps ensure the quality of data available on the FCIC system. Only agencies approved by the FDLE can view or enter information in the CJIS.

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

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

**Section 2** amends s. 25.385, F.S., relating to standards for instruction of circuit and county court judges, to require the Florida Court Educational Council to establish standards for periodic instruction of circuit and county court judges who have responsibility for dependency cases related to the recognition of and responses to head trauma and brain injury in children under six years old.

**Section 3** creates s. 39.0142, F.S., relating to notifying law enforcement of parent or caregiver names, to require the FDLE to enter the name of a parent or caregiver who is the subject of a child protective investigation or is a parent or caregiver of a child who has been returned home after an adjudication of dependency into the FCIC to notify local law enforcement agencies that this individual is involved in the child welfare system. If a law enforcement officer has an interaction with a parent or caregiver and the interaction results in the officer having a concern about the health, safety or wellbeing of the child, the officer must report the details of the interaction to the hotline even if the requirements for a hotline call are not met. The hotline is then required to provide any relevant information to specified individuals.

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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 November 15, 2019)

**Section 4** 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 recognition of and responses to head trauma and brain injury in children under six years old.

**Section 5** amends s. 402.402, F.S. relating to child protection staff and attorneys employed by the department, to require specialized training for all child protective investigators, child protection investigation supervisors, and attorneys handling child welfare cases. The specialized training must include information on the recognition of and responses to head trauma and brain injuries in children under six years old. This training requirement applies to employees in the department and the sheriff's offices that conduct child abuse investigations.

**Section 6** amends s. 409.988, F.S., relating to duties of the community-based care lead agencies (CBC), to require that all individuals employed by a CBC who provide care to dependent children receive training on the recognition of and responses to head trauma and brain injury in a children under six years old. The bill also requires CBCs to provide intensive family reunification services that combine child welfare and mental health services for families with dependent children under 6 years old.

**Section 7** amends s. 409.996, F.S., relating to duties of the DCF, to allow the department to create and implement a program in up to three judicial circuits to more effectively provide case management services for dependent children under the age of 6. The bill provides requirements for the program and requires an evaluation by October 1, 2025.

**Section 8** creates s. 943.17297, F.S., relating to training in the recognition of and response to head trauma and brain injury, subject to an appropriation, to require the Criminal Justice Standards and Training Commission (CJSTC) 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 of and responses to head trauma and brain injury in a children under six years old. 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.

**Section 9** provides an effective date of July 1, 2020.

#### **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 case management pilot requires that caseloads be capped, when possible, at no more than 15 cases per case manager and it requires that siblings be included in this caseload count. The pilot also requires additional training for case managers. As a result, there may be a cost associated with the pilot for private child welfare agencies.<sup>7</sup>

Local law enforcement agencies may incur additional costs to ensure that they are able to meet the requirements of this bill.<sup>8</sup>

C. Government Sector Impact:

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

The department reports that if the training for the recognition and treatment of head trauma and brain injury is conducted using an on-line format, no additional funds will be needed to develop or provide this training. This includes additional costs related to staff salaries and benefits.<sup>9</sup>

The department has reported the following costs associated with the bill:<sup>10</sup>

Bill Provision	Cost to Implement
<b>Training</b> — based on meeting the minimum requirements in the bill and the costs of other trainings that have been developed with similar length and scope. This topic is conducive to online learning and does not include classroom-based materials and trainer time.	\$35,000
<b>Hotline</b> — based on combining the two types of cases addressed in the bill, active investigation caregivers and judicial supervision	Indeterminate

<sup>7</sup> *Id.*

<sup>8</sup> Florida Department of Law Enforcement, 2020 FDLE Legislative Bill Analysis, SB 122 (September 24, 2019) (On file with the Senate Committee on Children, Families and Elder Affairs).

<sup>9</sup> Department of Children and Families, 2020 Agency Legislative Bill Analysis, SB 122 (August 20, 2019) (on file with the Senate Committee on Children, Families and Elder Affairs).

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

caregivers, there would be 36,170 individuals who may come into contact with law enforcement on any given day in Florida. Also the bill would likely also impact the Hotline’s Crime Intelligence Unit by requiring additional criminal records checks, but that increased workload is also indeterminate at this time.	
<b>Case Management Pilots</b> — bill requirements regarding caseloads, inclusion of siblings, and mandatory training may add a fiscal impact. The department would also be expected to pay the CBCs that choose to participate in the pilot program, but the projected cost is indeterminate at this time.	Indeterminate
<b>Technology</b> — this would be the cost to the department to prepare for the interface with FDLE.	\$160,000 – \$270,000

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

The department has reported the following costs associated with the bill:<sup>11</sup>

Bill Provision	Cost to Implement
<b>Training</b> — includes cost to design, develop and implement but does not include cost of time and cost for editing and quality control.	\$9,955
<b>Technology</b> — includes building a web service to interface with DCF’s Florida Safe Families Network (FSFN), which would be queried by FCIC requiring approximately 21 months of work (analysis, design, programming and testing) and hiring a contract programmer. It also includes updating its system to create child welfare training.	\$345,000

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

FDLE has raised questions and concerns related to provisions of the bill of the bill which include:

- Impacts to FDLE’s CJIS system:
  - The FCIC system houses actionable criminal justice information. This proposal represents 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 the new FCIC file.

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<sup>11</sup> Supra note 8.



- The 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 date of birth). 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>12</sup>
- Impact on Local Law Enforcement:
- Local law enforcement agencies would have to develop new policy and procedures for
- notification to the DCF when having contact with a person in this file. The bill is unclear as to what constitutes “having interaction 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 the DCF can be accomplished.
- Additional Considerations:
  - The DCF 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 inquiries. The FDLE will have to invest time in certifying these individuals as “full access” system users so that they can make entries into FCIC.
- The changes required to create the interface between the FDLE and the DCF cannot be done by the July 1, 2020 effective date. A change to March 30, 2022 is recommended.

### **VIII. Statutes Affected:**

The bill amends the following sections of the Florida Statutes: 25.385, 39.8296, 402.402, 409.988, and 409.996.

The bill creates ss. 39.0142 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.

- B. **Amendments:**

None.

By Senator Rouson

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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; deleting the definition  
7           of the term "family or household member"; creating s.  
8           39.0142, F.S.; requiring the Department of Law  
9           Enforcement to provide to law enforcement officers  
10          certain information relating to specified individuals;  
11          providing how such information shall be provided to  
12          law enforcement officers; requiring law enforcement  
13          officers and the central abuse hotline to follow  
14          certain procedures relating to specified interactions  
15          with certain persons and how to relay details of such  
16          interactions; amending s. 39.8296, F.S.; requiring  
17          that the guardian ad litem training program include  
18          training on the recognition of and responses to head  
19          trauma and brain injury in specified children;  
20          amending s. 402.402, F.S.; requiring certain entities  
21          to provide training to certain parties on the  
22          recognition of and responses to head trauma and brain  
23          injury in specified children; amending s. 409.988,  
24          F.S.; requiring lead agencies to provide certain  
25          individuals with training on the recognition of and  
26          responses to head trauma and brain injury in specified  
27          children; authorizing lead agencies to provide  
28          intensive family reunification services that combine  
29          child welfare and mental health services to certain

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30 families; amending s. 409.996, F.S.; authorizing the  
31 department and certain lead agencies to create and  
32 implement a program to more effectively provide case  
33 management services for specified children; providing  
34 criteria for selecting judicial circuits for  
35 implementation of the program; specifying requirements  
36 of the program; requiring a report to the Legislature  
37 and Governor under specified conditions; creating s.  
38 943.17298, F.S.; requiring the Criminal Justice  
39 Standards and Training Commission to incorporate  
40 training for specified purposes; requiring law  
41 enforcement officers to complete such training as part  
42 of either basic recruit training or continuing  
43 training or education by a specified date; providing  
44 an effective date.

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

47  
48 Section 1. This act may be cited as "Jordan's Law."

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

51 25.385 Standards for instruction of circuit and county  
52 court judges ~~in handling domestic violence cases.~~

53 (1) The Florida Court Educational Council shall establish  
54 standards for instruction of circuit and county court judges who  
55 have responsibility for domestic violence cases, and the council  
56 shall provide such instruction on a periodic and timely basis.

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

58 ~~(a)~~ the term "domestic violence" has the meaning set forth

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59 in s. 741.28.

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

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

68 Section 3. Section 39.0142, Florida Statutes, is created to  
69 read:

70 39.0142 Notifying law enforcement officers of parent or  
71 caregiver names.—The Department of Law Enforcement shall provide  
72 to a law enforcement officer information stating whether a  
73 person is a parent or caregiver who is currently the subject of  
74 a child protective investigation for alleged child abuse,  
75 abandonment, or neglect or is a parent or caregiver of a child  
76 who has been allowed to return to or remain in the home under  
77 judicial supervision after an adjudication of dependency. This  
78 information shall be provided via a Florida Crime Information  
79 Center query into the department's child protection database.

80 (1) If a law enforcement officer has an interaction with a  
81 parent or caregiver as described in this section and the  
82 interaction results in the officer having concern about a  
83 child's health, safety, or well-being, the officer shall report  
84 relevant details of the interaction to the central abuse hotline  
85 immediately after the interaction even if the requirements of s.  
86 39.201, relating to a person having actual knowledge or  
87 suspicion of abuse, abandonment, or neglect, are not met.

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88       (2) The central abuse hotline shall provide any relevant  
89 information to:

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

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

95       Section 4. Paragraph (b) of subsection (2) of section  
96 39.8296, Florida Statutes, is amended to read:

97       39.8296 Statewide Guardian Ad Litem Office; legislative  
98 findings and intent; creation; appointment of executive  
99 director; duties of office.—

100       (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a  
101 Statewide Guardian Ad Litem Office within the Justice  
102 Administrative Commission. The Justice Administrative Commission  
103 shall provide administrative support and service to the office  
104 to the extent requested by the executive director within the  
105 available resources of the commission. The Statewide Guardian Ad  
106 Litem Office shall not be subject to control, supervision, or  
107 direction by the Justice Administrative Commission in the  
108 performance of its duties, but the employees of the office shall  
109 be governed by the classification plan and salary and benefits  
110 plan approved by the Justice Administrative Commission.

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

115       1. The office shall identify the resources required to  
116 implement methods of collecting, reporting, and tracking

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117 reliable and consistent case data.

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

120       3. The office, in consultation with local guardian ad litem  
121 offices, shall develop statewide performance measures and  
122 standards.

123       4. The office shall develop a guardian ad litem training  
124 program, which shall include, but not be limited to, training on  
125 the recognition of and responses to head trauma and brain injury  
126 in a child under 6 years of age. The office shall establish a  
127 curriculum committee to develop the training program specified  
128 in this subparagraph. The curriculum committee shall include,  
129 but not be limited to, dependency judges, directors of circuit  
130 guardian ad litem programs, active certified guardians ad litem,  
131 a mental health professional who specializes in the treatment of  
132 children, a member of a child advocacy group, a representative  
133 of the Florida Coalition Against Domestic Violence, and a social  
134 worker experienced in working with victims and perpetrators of  
135 child abuse.

136       5. The office shall review the various methods of funding  
137 guardian ad litem programs, shall maximize the use of those  
138 funding sources to the extent possible, and shall review the  
139 kinds of services being provided by circuit guardian ad litem  
140 programs.

141       6. The office shall determine the feasibility or  
142 desirability of new concepts of organization, administration,  
143 financing, or service delivery designed to preserve the civil  
144 and constitutional rights and fulfill other needs of dependent  
145 children.

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146           7. In an effort to promote normalcy and establish trust  
147 between a court-appointed volunteer guardian ad litem and a  
148 child alleged to be abused, abandoned, or neglected under this  
149 chapter, a guardian ad litem may transport a child. However, a  
150 guardian ad litem volunteer may not be required or directed by  
151 the program or a court to transport a child.

152           8. The office shall submit to the Governor, the President  
153 of the Senate, the Speaker of the House of Representatives, and  
154 the Chief Justice of the Supreme Court an interim report  
155 describing the progress of the office in meeting the goals as  
156 described in this section. The office shall submit to the  
157 Governor, the President of the Senate, the Speaker of the House  
158 of Representatives, and the Chief Justice of the Supreme Court a  
159 proposed plan including alternatives for meeting the state's  
160 guardian ad litem and attorney ad litem needs. This plan may  
161 include recommendations for less than the entire state, may  
162 include a phase-in system, and shall include estimates of the  
163 cost of each of the alternatives. Each year the office shall  
164 provide a status report and provide further recommendations to  
165 address the need for guardian ad litem services and related  
166 issues.

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

169           402.402 Child protection and child welfare personnel;  
170 attorneys employed by the department.—

171           (2) SPECIALIZED TRAINING.—All child protective  
172 investigators and child protective investigation supervisors  
173 employed by the department or a sheriff's office must complete  
174 the following specialized training:

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

177 (b) Training that is either focused on serving a specific  
178 population, including, but not limited to, medically fragile  
179 children, sexually exploited children, children under 3 years of  
180 age, or families with a history of domestic violence, mental  
181 illness, or substance abuse, or focused on performing certain  
182 aspects of child protection practice, including, but not limited  
183 to, investigation techniques and analysis of family dynamics.  
184 The specialized training may be used to fulfill continuing  
185 education requirements under s. 402.40(3)(e). Individuals hired  
186 before July 1, 2014, shall complete the specialized training by  
187 June 30, 2016, and individuals hired on or after July 1, 2014,  
188 shall complete the specialized training within 2 years after  
189 hire. An individual may receive specialized training in multiple  
190 areas.

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

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

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

202 (c) Safety assessment, safety decisionmaking tools, and  
203 safety plans.†



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204 (d) Developing information presented by investigators and  
205 case managers to support decisionmaking in the best interest of  
206 children.~~;~~~~and~~

207 (e) The experiences and techniques of case managers and  
208 investigators, including shadowing an experienced child  
209 protective investigator and an experienced case manager for at  
210 least 8 hours.

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

213 Section 6. Paragraph (f) of subsection (1) and subsection  
214 (3) of section 409.988, Florida Statutes, are amended to read:  
215 409.988 Lead agency duties; general provisions.—

216 (1) DUTIES.—A lead agency:

217 (f) Shall ensure that all individuals providing care for  
218 dependent children receive appropriate training and meet the  
219 minimum employment standards established by the department.  
220 Appropriate training shall include, but is not limited to,  
221 training on the recognition of and responses to head trauma and  
222 brain injury in a child under 6 years of age.

223 (3) SERVICES.—A lead agency must provide dependent children  
224 with services that are supported by research or that are  
225 recognized as best practices in the child welfare field. The  
226 agency shall give priority to the use of services that are  
227 evidence-based and trauma-informed and may also provide other  
228 innovative services, including, but not limited to, family-  
229 centered and cognitive-behavioral interventions designed to  
230 mitigate out-of-home placements and intensive family  
231 reunification services that combine child welfare and mental  
232 health services for families with dependent children under 6

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233 years of age.

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

236 409.996 Duties of the Department of Children and Families.—  
237 The department shall contract for the delivery, administration,  
238 or management of care for children in the child protection and  
239 child welfare system. In doing so, the department retains  
240 responsibility for the quality of contracted services and  
241 programs and shall ensure that services are delivered in  
242 accordance with applicable federal and state statutes and  
243 regulations.

244 (24) The department, in collaboration with the lead  
245 agencies serving the judicial circuits selected in paragraph  
246 (a), may create and implement a program to more effectively  
247 provide case management services for dependent children under 6  
248 years of age.

249 (a) If the program is created, the department shall select  
250 up to three judicial circuits in which to develop and implement  
251 a program under this subsection, with priority given to a  
252 circuit that has a high removal rate, significant case  
253 management turnover rate, and the highest numbers of children in  
254 out-of-home care or a significant increase in the number of  
255 children in out-of-home care over the last 3 fiscal years.

256 (b) If the program is created, it shall:

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

261 2. Include case managers who are trained specifically in:

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262 a. Critical child development for children under 6 years of  
263 age.

264 b. Specific practices of child care for children under 6  
265 years of age.

266 c. The scope of community resources available to children  
267 under 6 years of age.

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

271 (c) If a child being served through the program has a  
272 dependent sibling, the sibling may be assigned to the same case  
273 manager as the child being served through the program; however,  
274 each sibling counts toward the case manager's maximum caseload  
275 as provided under paragraph (b).

276 (d) If the program is created, the department shall  
277 evaluate the permanency, safety, and well-being of children  
278 being served through the program and submit a report to the  
279 Governor, the President of the Senate, and the Speaker of the  
280 House of Representatives by October 1, 2025, detailing its  
281 findings.

282 Section 8. Section 943.17298, Florida Statutes, is created  
283 to read:

284 943.17298 Training in the recognition of and responses to  
285 head trauma and brain injury.—The commission shall establish  
286 standards for the instruction of law enforcement officers in the  
287 subject of recognition of and responses to head trauma and brain  
288 injury in a child under 6 years of age to aid an officer in the  
289 detection of head trauma and brain injury due to child abuse.  
290 Each law enforcement officer must successfully complete the

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291 training as part of the basic recruit training for a law  
292 enforcement officer, as required under s. 943.13(9), or as a  
293 part of continuing training or education required under s.  
294 943.135(1) before July 1, 2022.

295 Section 9. This act shall take effect July 1, 2020.

**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 344

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Courts

DATE: December 9, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Pre-meeting</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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

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**I. Summary:**

CS/SB 344 clarifies ambiguities in current law to better enable public guardians to meet the needs of their incapacitated wards. The bill clarifies that public guardians are exempt from paying any court-related fees or charges for accessing public records. The bill requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian’s ward.

Finally, the bill allows a physician assistant or advanced practice registered nurse to complete a ward’s annual medical evaluation and prepare and sign the report for the court, when the physician delegates that responsibility. Currently, only physicians are allowed to conduct the annual medical exams and prepare the reports.

The bill may have an insignificant fiscal impact on the clerks of court and takes effect July 1, 2020.

## II. Present Situation:

### Public Guardians

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.<sup>1</sup> Public guardians generally and primarily serve incapacitated people who have limited financial means.<sup>2,3</sup>

According to the Department of Elder Affairs, which houses the Office of Public and Professional Guardians, the 17 public guardian programs in the state served 3,816 wards in Fiscal Year 2018-19.<sup>4</sup> A program cost and activities report issued in March, 2019, stated that 42% of wards lived in nursing facilities, 23% lived in assisted living facilities, 15% lived in group homes, 6% were in hospitals, 6% lived in intermediate care facilities, and 4% were cared for in private homes. The remaining wards, who account for less than 4% of that population, were cared for in other living arrangements.<sup>5</sup>

### Clerks of Court Duty to Provide Access to Public Records and Waive Fees

The clerks of court are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request.<sup>6</sup> Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.<sup>7</sup> While these two provisions make clear that public guardians are entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges “apply only to state agencies and state entities and the party represented by the agency or entity.” Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

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<sup>1</sup> Section 744.2007(1), F.S.

<sup>2</sup> Section 744.2007(3), F.S.

<sup>3</sup> The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.

<sup>4</sup> Telephone interview with Scott Read, Legislative Affairs Director for the Department of Elder Affairs, in Tallahassee, Fla. (October 31, 2019).

<sup>5</sup> Pamela B. Teaster, Wen You, and Saman Mohsenirad, *Florida Public Guardian Programs: Program Costs and Activities, Report for the Office of Public and Professional Guardians, Florida Department of Elder Affairs* (March 2019) (on file with the Senate Committee on Judiciary).

<sup>6</sup> Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf Section 28.345(1), F.S.

<sup>7</sup> Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.

### **Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians**

Florida's extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the budget of the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward.<sup>8</sup> An additional statute provides that a court may waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward with a public guardian.<sup>9</sup> The court's ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

### **Annual Guardianship Plan and Physician's Report**

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward's condition, including the ward's current needs and how those needs will be met in the coming year.<sup>10</sup> The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A list of any professional medical treatment received during the preceding year.
- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period which contains an evaluation of the ward's condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.<sup>11</sup>

As noted above, the majority of public guardians' wards live in facilities where physicians seldom visit. However, because the statute specifically requires a physician's report, courts will not accept the signature of a physician's assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

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

### **Clarifying Language for Court-related Fees and Charges**

The bill clarifies s. 28.345(3), F.S., so that public guardians are exempt from the clerks' assessment of fees and charges. This is accomplished by stating that the "entities listed in subsections (1) and (2)," the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

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<sup>8</sup> Section 744.2008(1), F.S.

<sup>9</sup> Section 744.2008(2), F.S.

<sup>10</sup> Section 744.3675, F.S.

<sup>11</sup> Section 744.3675(1)(b), F.S.

### **Court's Discretion to Waive Court Costs and Filing Fees**

The bill amends s. 744.2008(1), F.S., to clarify that filing fees will not be assessed against a public guardian as a cost of administration. By deleting the phrase "including filing fees" the language makes clear that filing fees are not to be charged against the public guardian, which is consistent with the changes made to s. 28.345(3), F.S., If the phrase remained in the statute, it could create ambiguity as to whether filing fees may be assessed.

The bill amends s. 744.2008(2), F.S., to require a court to waive any costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward with a public guardian. Courts will be prohibited from imposing costs or filing fees under those circumstances.

### **Annual Guardianship Plan and Physician's Report**

The requirements for the annual guardianship plan that details a ward's needs and how those needs will be met is amended to expand the type of medical professionals who may be involved. If a guardian requests a ward's physician to complete the medical evaluation and prepare the report and the physician delegates that responsibility, a physician assistant or an advanced practice registered nurse may complete the examination and prepare and sign the report. The physician assistant must be acting pursuant to s. 458.347(4)(h), F.S., or s. 459.022(4)(g), F.S., by performing services delegated by a supervising physician in the physician assistant's practice in accordance with his or her education and training, unless expressly prohibited by law or rule. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.<sup>12</sup>

By increasing the type of medical professionals who may complete the examination and determine a ward's level of capacity for the annual report, the public guardian will be better able to meet the ward's needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>12</sup> The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.



D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill will reduce the collection of public record fees and filing fees by clerks of court. The amount is expected to be insignificant.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Clerks of Court Operations Corporation (CCOC) monitors clerk budgets and states in its fiscal summary<sup>13</sup> that the bill will have a slight indeterminate negative fiscal impact for some clerks who currently charge filing fees based on their interpretation of a statute requiring public guardians to pay filing fees from the budget of the office of public guardian.<sup>14</sup> The CCOC estimates the impact of the bill will be relatively small because many of the public guardian filings are accompanied by an affidavit demonstrating indigency such that most clerks currently waive those filing fees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

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<sup>13</sup> Florida Clerks of Court Operations Corporation, *Senate Bill 344 Fiscal Analysis*, (Oct. 2019) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29337>.

<sup>14</sup> Section 744.2008(1), F.S., provides that “All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.”

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

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

**CS by Judiciary on November 5, 2019:**

The committee substitute differs from the underlying bill by:

- Deleting a reference to filing fees in s. 744.2008(1), F.S., that could create ambiguity as to whether clerks may charge public guardians for filing fees; and
- Clarifying that a physician assistant or advanced practice nurse practitioner may complete the ward's annual exam and prepare and sign the report when those responsibilities are delegated by the ward's physician in s. 744.3675(1)2., F.S.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Bradley

590-01185-20

2020344c1

1                   A bill to be entitled  
2           An act relating to courts; amending s. 28.345, F.S.;  
3           specifying that certain exemptions from court-related  
4           fees and charges apply to certain entities; amending  
5           s. 744.2008, F.S.; requiring the court to waive any  
6           court costs or filing fees for certain proceedings  
7           involving public guardians; amending s. 744.3675,  
8           F.S.; providing that certain examinations may be  
9           performed and reports prepared by a physician  
10          assistant or an advanced practice registered nurse  
11          under certain circumstances; providing an effective  
12          date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Section 28.345, Florida Statutes, is amended to  
17           read:

18           28.345 State access to records; exemption from court-  
19           related fees and charges.—

20           (1) Notwithstanding any other provision of law, the clerk  
21           of the circuit court shall, upon request, provide access to  
22           public records without charge to the state attorney, public  
23           defender, guardian ad litem, public guardian, attorney ad litem,  
24           criminal conflict and civil regional counsel, and private court-  
25           appointed counsel paid by the state, and to authorized staff  
26           acting on their behalf. The clerk of court may provide the  
27           requested public record in an electronic format in lieu of a  
28           paper format if the requesting entity is capable of accessing  
29           such public record electronically.

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30 (2) Notwithstanding any other provision of this chapter or  
31 law to the contrary, judges and those court staff acting on  
32 behalf of judges, state attorneys, guardians ad litem, public  
33 guardians, attorneys ad litem, court-appointed private counsel,  
34 criminal conflict and civil regional counsel, public defenders,  
35 and state agencies, while acting in their official capacity, are  
36 exempt from all court-related fees and charges assessed by the  
37 clerks of the circuit courts.

38 (3) The exemptions from fees or charges provided in this  
39 section apply only to entities listed in subsections (1) and  
40 (2), state agencies and state entities, and the party  
41 represented by the agency or entity.

42 Section 2. Section 744.2008, Florida Statutes, is amended  
43 to read:

44 744.2008 Costs of public guardian.—

45 (1) All costs of administration, ~~including filing fees,~~  
46 shall be paid from the budget of the office of public guardian.  
47 No costs of administration, including filing fees, shall be  
48 recovered from the assets or the income of the ward.

49 (2) In any proceeding for appointment of a public guardian,  
50 or in any proceeding involving the estate of a ward for whom a  
51 public guardian has been appointed guardian, the court shall ~~may~~  
52 waive any court costs or filing fees.

53 Section 3. Paragraph (b) of subsection (1) of section  
54 744.3675, Florida Statutes, is amended to read:

55 744.3675 Annual guardianship plan.—Each guardian of the  
56 person must file with the court an annual guardianship plan  
57 which updates information about the condition of the ward. The  
58 annual plan must specify the current needs of the ward and how

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2020344c1

59 those needs are proposed to be met in the coming year.

60 (1) Each plan for an adult ward must, if applicable,  
61 include:

62 (b) Information concerning the medical and mental health  
63 conditions and treatment and rehabilitation needs of the ward,  
64 including:

65 1. A resume of any professional medical treatment given to  
66 the ward during the preceding year.

67 2. The report of a physician who examined the ward no more  
68 than 90 days before the beginning of the applicable reporting  
69 period. If the guardian has requested a physician to complete  
70 the examination and prepare the report and the physician has  
71 delegated that responsibility, the examination may be performed  
72 and the report may be prepared and signed by a physician  
73 assistant acting pursuant to s. 458.347(4)(h) or s.  
74 459.022(4)(g), or by an advanced practice registered nurse  
75 acting pursuant to s. 464.012(3). The report must contain an  
76 evaluation of the ward's condition and a statement of the  
77 current level of capacity of the ward.

78 3. The plan for providing medical, mental health, and  
79 rehabilitative services in the coming year.

80 Section 4. This act shall take effect July 1, 2020.

**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 358

**INTRODUCER:** Judiciary Committee and Senator Berman

**SUBJECT:** Decedents' Property

**DATE:** December 9, 2019      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<b>Pre-meeting</b>
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 358 amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, which persons may sue to recover property for the estate, 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.

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;
- Prohibits an attorney who prepared or supervised the preparation of a trust from being compensated as a trustee unless the attorney is a relative of the "settlor" (trust creator) or makes specified disclosures to the settlor before the trust is created;
- Provides that causes of action that a decedent held at death are estate property, and therefore subject to the control and possession of the personal representative (not the beneficiaries);
- 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;
- Clarifies what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding; and
- Categorizes as tangible property bullion and coins, such as collectible coins, that are not used as money.

## II. Present Situation:

### Conflict of Interests by Personal Representatives

Several types of transactions that involve a conflict of a personal representative's interests are voidable 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 voidable 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>

### Acquiring Jurisdiction Over a Person by Service of Formal Notice

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>

However, the Real Property, Probate, and Trust Law Section of The Florida Bar (the Section) 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>

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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).

<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.*

## **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 the Section contends there is a lack of consensus among practitioners regarding this issue.<sup>9</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 bullion and collectible coins are tangible property, it is unclear whether they must be specifically disposed of pursuant to this statute.

## **Notice of Administration**

Upon being appointed, a personal representative must serve a notice of administration on a surviving spouse, beneficiaries, and other interested parties.<sup>10</sup> This document advises them of important rights and responsibilities relating to the estate.<sup>11</sup>

### ***Notice of Right to Take Elective Share***

Section 733.212(2)(e), F.S., requires that a notice of administration include a statement alerting a surviving spouse that he or she has a specified time to choose the elective share. However, the notice need not alert the spouse that he or she has the option to ask the court to extend this time.<sup>12</sup> Accordingly, the notice of administration might lead a spouse to believe he or she does not have the option to move for the extension.

### ***Notice of Right to Contest Trust Incorporated in a Will***

A 2012 District Court of Appeal opinion appears to indicate that a person who wants to contest a trust that is incorporated by reference into a will must contest the will itself.<sup>13</sup> Nonetheless, the law does not expressly require a personal representative to include this fact in the notice of administration. Moreover, there are different timeframes for contesting wills and trusts, and the timeframes for contesting a will might conclude sooner than those for contesting a trust.<sup>14</sup> Accordingly, a person might have no idea that he or she must contest a will to contest a trust incorporated in the will, and might therefore fail to timely do so.

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<sup>9</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).

<sup>10</sup> Section 733.212(1), F.S.

<sup>11</sup> Section 733.212(2), F.S.

<sup>12</sup> See s. 732.2135(2), F.S.

<sup>13</sup> See *Pasquale v. Loving*, 82 So. 3d 1205, 1207 (Fla. 4th DCA 2012) (*stating* “We note, first, that the Pasquales could not challenge the validity of the trust without also contesting the will. The trust was incorporated into the 2005 will.”)

<sup>14</sup> A person may file a will contest within 3 months after receiving a notice of administration. Section 733.212(3), F.S. However, a challenge to a revocable trust within 6 months after receiving notice of the trust, or within the timeframes set forth within ch. 95, F.S., which can equate to 4 years from when a person learned of undue influence or some other basis for invalidating the trust. See s. 736.0604, F.S.; *Flanzer v. Kaplan*, 230 So. 3d 960 (Fla. 2d DCA 2017) (*stating* that the 4-year period begins to run when a beneficiary learns or should have learned of the wrongful conduct). Similarly, an action to challenge an irrevocable trust must be filed within 4 years after the person filing the action learned of or should have learned of the wrongful conduct. *Id.* at 961-62.



### **Actions for Recovery of Property Transferred Inter Vivos**

The Florida Statutes grant a personal representative the right to sue to recover property for the estate.<sup>15</sup> However, several Florida appellate courts have repeatedly indicated that this right is not exclusive, and thus that a beneficiary may also sue to recover property for the estate.<sup>16</sup> Moreover, the personal representative is not an indispensable party to every action to recover property to the estate.<sup>17</sup>

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

#### **Additional Information Required in a Notice of Administration (Section 5)**

Under the bill, just as under current law, the notice of administration must inform the surviving spouse of the standard timeframes within which he or she must choose the elective share or waive his or her right to it. However, under the bill the notice must also advise the surviving spouse that he or she may move the court for an extension of time to choose the elective share.

The bill also requires that the notice of administration state, “under certain circumstances and by failing to contest the will,” an interested person might waive his or her right to contest a *trust* that is incorporated by reference into the will.

#### **Formal Notice in a Probate Proceeding (Section 3)**

The bill provides that formal notice is sufficient notice to a person for a court to adjudicate the person’s interest in the estate property or in the decedent’s protected homestead. However, the bill specifies, this service of formal notice is not sufficient for the court to “acquire personal jurisdiction over [the] person.” So, for instance, a person given (only) formal notice could not be forced into court and made to pay damages in a probate litigation proceeding.<sup>18</sup>

#### **Causes of Action that are Subject to Possession and Control of the Personal Representative (Section 2, Section 7)**

Under the bill, the definition of “property” in the probate code is broadened to include “causes of action of the estate and causes of action the decedent had at the time of death.” Therefore, these

<sup>15</sup> Section 733.607, F.S. For example, a personal representative might sue to recover a car from a person who tricked an incapacitated testator into giving him or her the car *inter vivos*, thus precluding a beneficiary from inheriting the car unless the wrongful transfer is reversed.

<sup>16</sup> See, e.g., *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016); but see *All Children’s Hospital, Inc. v. Owens*, 754 So. 2d 802, 806 (Fla. 2d DCA 2000) (stating that the “personal representative has specific statutory authority to recover estate assets,” and that the court “saw little value” in allowing beneficiaries to pursue their own actions to recover assets that were wrongfully transferred *inter vivos*).

<sup>17</sup> See, e.g., *Id.*; *DeWitt v. Duce*, 408 So. 2d 216 (Fla. 1981).

<sup>18</sup> According to the Real Property, Probate and Trust Law Section, the changes to s. 731.301(2), F.S., are 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. See 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). The law firm objected to the trial court’s assertion of jurisdiction because it had not been served with process.

causes of action are subject to the “possession and control” of the personal representative, just as other items of estate property are, such as the decedent’s timepiece or automobile.<sup>19</sup> Thus, it appears that the personal representative would be an indispensable party to these cases.<sup>20</sup>

### **Personal Representative’s Conflict of Interest (Section 6)**

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.

### **Compensation of a Personal Representative or Trustee Who is also an Attorney (Section 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 information 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 for disclosures and acknowledgements 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.

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<sup>19</sup> Section 733.607, F.S. *See also* s. 733.612, F.S. (granting a personal representative broad and specific authority to control estate property).

<sup>20</sup> Assuming the bill makes the personal representative indispensable in “causes of action of the estate and causes of action the decedent had at the time of death,” the bill effectively abrogates *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016) and cases cited by the *Parker* court. In *Parker*, the Court held that the personal representative was *not* indispensable to several causes of action that were held by the decedent at death or that were otherwise causes of action of the estate, such as undue influence and replevin.

### **Precious Metals (Section 1)**

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 classification of bullion and coins clarifies current law. Accordingly, the bill states that these clarifying provisions apply to all written instruments, as well as to all probate proceedings except those proceedings in which a disposition of these items has not been finally determined.

The bill takes effect October 1, 2020, 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 two sections that are expressly intended to apply retroactively. 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 it 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>

<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)).

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.

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 of the Florida Statutes: 731.201, 731.301, 733.212, 733.610, 733.612, 733.617, and 736.0708.

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<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).

The bill creates section 731.1065 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Judiciary on November 5, 2019**

The committee substitute removes a provision of the bill that expressly stated that a personal representative has the exclusive right to maintain an action to recover estate property.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Berman

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1                   A bill to be entitled  
2       An act relating to estates and trusts; creating s.  
3       731.1065, F.S.; specifying that precious metals are  
4       tangible personal property for the purposes of the  
5       Florida Probate Code; providing for retroactive  
6       application; amending s. 731.201, F.S.; revising the  
7       definition of the term "property"; amending s.  
8       731.301, F.S.; specifying that formal notice is not  
9       sufficient to invoke a court's personal jurisdiction  
10      over a person receiving such formal notice; providing  
11      applicability; amending s. 733.212, F.S.; revising the  
12      required contents of a notice of administration;  
13      amending s. 733.610, F.S.; expanding the list of sales  
14      or encumbrances that are voidable by interested  
15      persons under certain circumstances; amending s.  
16      733.612, F.S.; revising the types of claims and  
17      proceedings a personal representative may properly  
18      prosecute or defend; amending s. 733.617, F.S.;  
19      specifying that certain attorneys and persons are not  
20      entitled to compensation for serving as a personal  
21      representative unless the attorney or person is  
22      related to the testator or unless certain disclosures  
23      are made before a will is executed; requiring the  
24      testator to execute a written statement that  
25      acknowledges that certain disclosures were made;  
26      providing requirements for the written statement;  
27      specifying when an attorney is deemed to have prepared  
28      or supervised the execution of a will; specifying how  
29      a person may be related to an individual; specifying

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

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Effective July 1, 2020, section 731.1065,  
52 Florida Statutes, is created to read:

53 731.1065 Precious metals.—

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

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59       (2) This section is intended to clarify existing law and  
60 applies retroactively to all written instruments executed  
61 before, on, or after July 1, 2020, as well as all proceedings  
62 pending or commenced before, on, or after July 1, 2020, in which  
63 the disposition of precious metals in any tangible form has not  
64 been finally determined.

65       Section 2. Subsection (32) of section 731.201, Florida  
66 Statutes, is amended to read:

67       731.201 General definitions.—Subject to additional  
68 definitions in subsequent chapters that are applicable to  
69 specific chapters or parts, and unless the context otherwise  
70 requires, in this code, in s. 409.9101, and in chapters 736,  
71 738, 739, and 744, the term:

72       (32) "Property" means both real and personal property or  
73 any interest in it and anything that may be the subject of  
74 ownership, including causes of action of the estate and causes  
75 of action the decedent had at the time of death.

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

79       731.301 Notice.—

80       (2) In a probate proceeding, formal notice to a person is  
81 sufficient notice for the court to exercise its in rem ~~to~~  
82 ~~acquire~~ jurisdiction over the ~~person receiving formal notice to~~  
83 ~~the extent of the person's interest in the estate~~ property or in  
84 the decedent's protected homestead. The court does not acquire  
85 personal jurisdiction over a person by service of formal notice.

86       Section 4. The amendment made by this act to s. 731.301,  
87 Florida Statutes, applies to all proceedings pending on or



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88 before, or commenced after, the date this act becomes a law.

89 Section 5. Paragraph (e) of subsection (2) of section  
90 733.212, Florida Statutes, is amended, and paragraph (f) is  
91 added to that subsection, to read:

92 733.212 Notice of administration; filing of objections.—

93 (2) The notice shall state:

94 (e) That, unless an extension is granted pursuant to s.  
95 732.2135(2), an election to take an elective share must be filed  
96 on or before the earlier of the date that is 6 months after the  
97 date of service of a copy of the notice of administration on the  
98 surviving spouse, or an attorney in fact or a guardian of the  
99 property of the surviving spouse, or the date that is 2 years  
100 after the date of the decedent's death.

101 (f) That, under certain circumstances and by failing to  
102 contest the will, the recipient of the notice of administration  
103 may be waiving his or her right to contest the validity of a  
104 trust or other writing incorporated by reference into a will.

105 Section 6. Effective July 1, 2020, section 733.610, Florida  
106 Statutes, is amended to read:

107 733.610 Sale, encumbrance, or transaction involving  
108 conflict of interest.—Any sale or encumbrance to the personal  
109 representative or the personal representative's spouse, agent,  
110 or attorney, or any corporation, other entity, or trust in which  
111 the personal representative, or the personal representative's  
112 spouse, agent, or attorney, has a substantial beneficial or  
113 ownership interest, or any transaction that is affected by a  
114 conflict of interest on the part of the personal representative,  
115 is voidable by any interested person except one who has  
116 consented after fair disclosure, unless:

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

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

121 Section 7. Subsection (20) of section 733.612, Florida  
122 Statutes, is amended to read:

123 733.612 Transactions authorized for the personal  
124 representative; exceptions.—Except as otherwise provided by the  
125 will or court order, and subject to the priorities stated in s.  
126 733.805, without court order, a personal representative, acting  
127 reasonably for the benefit of the interested persons, may  
128 properly:

129 (20) Prosecute or defend claims or proceedings in any  
130 jurisdiction for the protection of the estate, of the decedent's  
131 property, and of the personal representative.

132 Section 8. Subsection (6) of section 733.617, Florida  
133 Statutes, is amended, and subsection (8) is added to that  
134 section, to read:

135 733.617 Compensation of personal representative.—

136 (6) Except as otherwise provided in this section, if the  
137 personal representative is a member of The Florida Bar and has  
138 rendered legal services in connection with the administration of  
139 the estate, then in addition to a fee as personal  
140 representative, there also shall be allowed a fee for the legal  
141 services rendered.

142 (8) (a) An attorney serving as a personal representative, or  
143 a person related to the attorney, is not entitled to  
144 compensation for serving as a personal representative if the  
145 attorney prepared or supervised the execution of the will that

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146 nominated the attorney or person related to the attorney as  
147 personal representative, unless the attorney or person nominated  
148 is related to the testator, or the attorney makes the following  
149 disclosures to the testator before the will is executed:

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

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

157 3. Compensation payable to the personal representative is  
158 in addition to any attorney fees payable to the attorney or the  
159 attorney's firm for legal services rendered to the personal  
160 representative.

161 (b)1. The testator must execute a written statement  
162 acknowledging that the disclosures required under paragraph (a)  
163 were made prior to the execution of the will. The written  
164 statement must be in a separate writing from the will but may be  
165 annexed to the will. The written statement may be executed  
166 before or after the execution of the will in which the attorney  
167 or related person is nominated as the personal representative.

168 2. The written statement must be in substantially the  
169 following form:

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

172  
173 I have designated my attorney, an attorney employed in the  
174 same law firm as my attorney, or a person related to my attorney

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175 as a nominated personal representative in my will or codicil  
 176 dated ...(insert date)....

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

179 1. Subject to certain statutory limitations, most family  
 180 members, regardless of their residence, and any other  
 181 individuals who are residents of Florida, including friends and  
 182 corporate fiduciaries, are eligible to serve as a personal  
 183 representative.

184 2. Any person, including an attorney, who serves as a  
 185 personal representative is entitled to receive reasonable  
 186 compensation for serving as a personal representative.

187 3. Compensation payable to the personal representative is  
 188 in addition to any attorney fees payable to the attorney or the  
 189 attorney's firm for legal services rendered to the personal  
 190 representative.

192 ...(Signature)...

193 ...(Testator)...

194 ...(Insert date)...

196 (c) For purposes of this subsection:

197 1. An attorney is deemed to have prepared or supervised the  
 198 execution of a will if the preparation or supervision of the  
 199 execution of the will was performed by an employee or attorney  
 200 employed by the same firm as the attorney at the time the will  
 201 was executed.

202 2. A person is "related" to an individual if, at the time  
 203 the attorney prepared or supervised the execution of the will,

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204 the person is:

205 a. A spouse of the individual;

206 b. A lineal ascendant or descendant of the individual;

207 c. A sibling of the individual;

208 d. A relative of the individual or of the individual's

209 spouse with whom the attorney maintains a close, familial

210 relationship;

211 e. A spouse of a person described in sub-subparagraphs b.-

212 d.;

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

214 g. An employee or attorney employed by the same firm as the

215 attorney at the time the will is executed.

216 3. An attorney or a person related to the attorney is

217 deemed to have been nominated in the will when the will

218 nominates the attorney or the person related to the attorney as

219 personal representative, co-personal representative, successor,

220 or alternate personal representative in the event another person

221 nominated is unable to or unwilling to serve, or provides the

222 attorney or any person related to the attorney with the power to

223 nominate the personal representative and the attorney or person

224 related to the attorney was nominated using that power.

225 (d) Other than compensation payable to the personal

226 representative, this subsection does not limit any rights or

227 remedies that any interested person may have at law or in

228 equity.

229 (e) The failure to obtain an acknowledgment from the

230 testator under this subsection does not disqualify a personal

231 representative from serving and does not affect the validity of

232 a will.

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233 (f) This subsection applies to all nominations made  
234 pursuant to a will:

235 1. Executed by a resident of this state on or after October  
236 1, 2020; or

237 2. Republished by a resident of this state on or after  
238 October 1, 2020, if the republished will nominates the attorney  
239 who prepared or supervised the execution of the instrument that  
240 republished the will, or a person related to such attorney, as  
241 personal representative.

242 Section 9. Subsection (4) is added to section 736.0708,  
243 Florida Statutes, to read:

244 736.0708 Compensation of trustee.—

245 (4) (a) An attorney serving as a trustee, or a person  
246 related to such attorney, is not entitled to compensation for  
247 serving as a trustee if the attorney prepared or supervised the  
248 execution of the trust instrument that appointed the attorney or  
249 person related to the attorney as trustee, unless the attorney  
250 or person appointed is related to the settlor or the attorney  
251 makes the following disclosures to the settlor before the trust  
252 instrument is executed:

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

257 2. Any person, including an attorney, who serves as a  
258 trustee is entitled to receive reasonable compensation for  
259 serving as trustee; and

260 3. Compensation payable to the trustee is in addition to  
261 any attorney fees payable to the attorney or the attorney's firm

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262 for legal services rendered to the trustee.

263 (b)1. The settlor must execute a written statement  
264 acknowledging that the disclosures required under paragraph (a)  
265 were made prior to the execution of the trust instrument. The  
266 written statement must be in a separate writing from the trust  
267 instrument but may be annexed to the trust instrument. The  
268 written statement may be executed before or after the execution  
269 of the trust in which the attorney or related person is  
270 appointed as the trustee.

271 2. The written statement must be in substantially the  
272 following form:

273  
274 I, ...(Name)..., declare that:

275  
276 I have designated my attorney, an attorney employed in the  
277 same law firm as my attorney, or a person related to my attorney  
278 as a trustee in my trust instrument dated ...(insert date)....

279  
280 Before executing the trust, I was informed that:

281 1. Unless specifically disqualified by the terms of the  
282 trust instrument, any person, regardless of state of residence  
283 and including family members, friends, and corporate  
284 fiduciaries, is eligible to serve as a trustee.

285 2. Any person, including an attorney, who serves as a  
286 trustee is entitled to receive reasonable compensation for  
287 servng as trustee.

288 3. Compensation payable to the trustee is in addition to  
289 any attorney fees payable to the attorney or the attorney's firm  
290 for legal services rendered to the trustee.

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...(Signature)...  
...(Settlor)...  
...(Insert Date)...

(c) For purposes of this subsection:

1. An attorney is deemed to have prepared, or supervised the execution of, a trust instrument if the preparation, or supervision of the execution, of the trust instrument was performed by an employee or attorney employed by the same firm as the attorney at the time the trust instrument was executed.

2. A person is "related" to an individual if, at the time the attorney prepared or supervised the execution of the trust instrument, the person is:

- a. A spouse of the individual;
- b. A lineal ascendant or descendant of the individual;
- c. A sibling of the individual;
- d. A relative of the individual or of the individual's spouse with whom the attorney maintains a close, familial relationship;
- e. A spouse of a person described in sub-subparagraphs b.-d.;
- f. A person who cohabitates with the individual; or
- g. An employee or attorney employed by the same firm as the attorney at the time the trust instrument is executed.

3. An attorney or a person related to the attorney is deemed appointed in the trust instrument when the trust instrument appoints the attorney or the person related to the attorney as trustee, co-trustee, successor, or alternate trustee



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320 in the event another person nominated is unable to or unwilling  
321 to serve, or provides the attorney or any person related to the  
322 attorney with the power to appoint the trustee and the attorney  
323 or person related to the attorney was appointed using that  
324 power.

325 (d) Other than compensation payable to the trustee, this  
326 subsection does not limit any rights or remedies that any  
327 interested person may have at law or equity.

328 (e) The failure to obtain an acknowledgment from the  
329 settlor under this subsection does not disqualify a trustee from  
330 serving and does not affect the validity of a trust instrument.

331 (f) This subsection applies to all appointments made  
332 pursuant to a trust agreement:

333 1. Executed by a resident of this state on or after October  
334 1, 2020; or

335 2. Amended by a resident of this state on or after October  
336 1, 2020, if the trust agreement nominates the attorney who  
337 prepared or supervised the execution of the amendment or a  
338 person related to such attorney as trustee.

339 Section 10. Except as otherwise expressly provided in this  
340 act and except for this section, which shall take effect upon  
341 this act becoming a law, this act shall take effect October 1,  
342 2020.

**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 668

INTRODUCER: Senator Book

SUBJECT: Government-sponsored Recreation Programs

DATE: December 9, 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 668 revises the definition of the term “child care facility” to exclude government-sponsored recreation programs. The bill allows counties or other municipalities to create and operate recreation programs for children at least five years old and requires such programs to offer 4 programming hours per day and to adopt standards of care specifying staffing ratios, minimum staff qualifications, health and safety standards, and level 2 background screening requirement for all staff and volunteers. The bill also requires such programs to notify parents of all children participating in the program that the program is not state-licensed, and the program may not advertise itself as a child care facility. The bill requires the program to provide all parents with the county or municipality’s standards of care.

The bill is not expected to have a fiscal impact and has an effective date of July 1, 2020.

**II. Present Situation:**

**Child Care**

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.<sup>1</sup>

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.<sup>2</sup> The definition of child care does not specify a maximum or minimum age.

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<sup>1</sup> Section 402.302, F.S.

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

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- A school-age child care program is defined as any licensed child care facility serving school-aged children<sup>3</sup> or any before and after school programs that are licensed as a child care facility and serve only school-aged children.<sup>4</sup>
- Any of the after school programs accepting children under the age of the school-age child must be licensed.<sup>5</sup>
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.<sup>6</sup>

### **Child Care Facilities**

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.<sup>7</sup> The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509, F.S.,<sup>8</sup> which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435, F.S.<sup>9</sup>

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies<sup>10</sup> approved by the department are the entities responsible for the licensure of such child care facilities.<sup>11</sup>

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<sup>3</sup> Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least five years of age by September 1st of the beginning of the school year and who attends kindergarten through grade five.

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

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 402.302, F.S.

<sup>8</sup> “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

<sup>9</sup> Section 402.302, F.S.

<sup>10</sup> Currently, there are 5 counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota.

<sup>11</sup> Section 402.308, F.S.

### **Additional Exemptions**

In 1974 and in 1987, the Legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards. Child care facilities that are an integral part of church or parochial schools and meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.<sup>12</sup>

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

**Section 1** amends s. 402.302, F.S., related to child care facilities, by adding a definition for "government-sponsored recreation programs." The bill defines a government-sponsored recreation program as a recreation program for school-age children that:

- offers no more than 4 hours of programming per day, however the program may extend its operating hours in order to provide services before school and on teacher planning days, holidays, and breaks that occur during the school year;
- is operated by a county or municipality that has adopted standards of care by ordinance for the program, which include, but are not limited to, staffing ratios, minimum staff qualifications, level 2 background screening, including a check of the child abuse and neglect and sexual predator registries, for all staff and volunteers, and minimum facility, health, and safety standards;
- has been certified by the county or municipality for compliance with such standards of care;
- provides notice to the parents of all participating children that the program is not state-licensed or advertised as a child care facility and provides them with the county's or municipality's standards of care; and
- Does not receive funding through the federal Child Care Development Block Grant of 2014, cannot contract to provide a school readiness program, and cannot have a Gold Seal Quality Care designation.

**Section 2** exempts government-sponsored recreation programs from licensure requirements of child care facilities regulated by DCF. The bill also provides government-sponsored recreation programs with the ability to waive the exemption and become licensed as child-care facilities if the program meets all of the requisite standards and criteria to obtain licensure.

**Section 3** amends s. 39.201, F.S., relating to mandatory reports of child abuse, to correct a cross-reference.

**Section 4** amends s. 402.305, F.S., relating to licensing standards of child care facilities, to correct a cross-reference.

**Section 5** amends s. 1002.82, F.S., relating to powers and duties of the Office of Early Learning, to correct a cross-reference.

**Section 6** provides an effective date of July 1, 2020.

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<sup>12</sup> Section 402.316, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Florida Department of Law Enforcement may see an increased workload through requiring level 2 background screenings for employees of government-sponsored recreation programs. FDLE, however, is authorized to collect a fee to pay for such screenings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 1 of the bill excludes government-sponsored recreation programs from the statutory definition of “child-care facilities.” Section 2 exempts the programs from a requirement that they obtain licensure as child-care facilities. Excluding government-sponsored recreation programs from the definition of child-care facilities while simultaneously including them in the exemption

statute is contradictory; the programs should either be excluded from the definition entirely or included and exempted.

**VIII. Statutes Affected:**

This bill substantially amends sections 402.302, 402.316, 39.201, 402.305, and 1002.82 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.

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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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809918

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

Delete lines 55 - 96  
and insert:

(b) Is operated by a county, a municipality, or a school  
district that has adopted by ordinance or policy standards of  
care for the program which include, but are not limited to:

1. Meeting minimum staff-to-children ratios in accordance  
with s. 402.305(4) and rules adopted by the department  
thereunder;



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- 11           2. Ensuring that all personnel meet the requirements of  
12 this section and ss. 402.305 and 402.3055;
- 13           3. Meeting minimum facility, health, and safety standards,  
14 including annual fire inspections conducted by the city or  
15 county Fire Marshal;
- 16           4. Ensuring annual health inspections are conducted by the  
17 Department of Health;
- 18           5. Conducting regular inspection, cleaning, repair, and  
19 maintenance of buildings, grounds, and equipment;
- 20           6. Ensuring at least one staff person trained in  
21 cardiopulmonary resuscitation is present at all times when  
22 children are present;
- 23           7. Setting standards related to the provision of food;
- 24           8. Training program employees regarding working with  
25 school-age children;
- 26           9. Engaging in activities designed to address the ages,  
27 interests, and abilities of participants;
- 28           10. Carrying out annual inspections of vehicles  
29 transporting children;
- 30           11. Enforcing regulations related to the number of children  
31 in vehicles in accordance with vehicle capacity and searching  
32 vehicles after use to ensure no children are left in the  
33 vehicle;
- 34           12. Ensuring custodial parents or guardians have reasonable  
35 access to children while the children are in care; and
- 36           13. Developing age-appropriate policies relating to child  
37 discipline practices and making such policies available to  
38 parents or guardians at the time of registration.
- 39           (c) Has been certified by the county, municipality, or





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40 school district as compliant with such standards of care and  
41 provides annual attestation to the department of compliance with  
42 such standards of care.

43 (d) Provides notice to the parent or guardian of each child  
44 participating in the program that the program is not state-  
45 licensed or advertised as a child care facility and provides the  
46 parent or guardian with the county's, municipality's, or school  
47 district's standards



729490

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete lines 103 - 128.

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

And the title is amended as follows:

Delete lines 7 - 14

and insert:

program";

By Senator Book

32-00746A-20

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1                                   A bill to be entitled  
2       An act relating to government-sponsored recreation  
3       programs; amending s. 402.302, F.S.; revising the  
4       definition of the term "child care facility" to  
5       exclude government-sponsored recreation programs;  
6       defining the term "government-sponsored recreation  
7       program"; amending s. 402.316, F.S.; providing an  
8       exemption for government-sponsored recreation programs  
9       from specified child care facility requirements;  
10      providing that an otherwise exempt government-  
11      sponsored recreation program may waive the exemption  
12      by notifying the Department of Children and Families;  
13      providing that such a program may not withdraw its  
14      waiver of the exemption and continue to operate;  
15      amending ss. 39.201, 402.305, and 1002.82, F.S.;  
16      conforming cross-references; providing an effective  
17      date.

18  
19 Be It Enacted by the Legislature of the State of Florida:  
20

21       Section 1. Present subsections (9) through (18) of section  
22       402.302, Florida Statutes, are redesignated as subsections (10)  
23       through (19), respectively, a new subsection (9) is added to  
24       that section, and subsection (2) of that section is amended, to  
25       read:

26       402.302 Definitions.—As used in this chapter, the term:

27       (2) "Child care facility" includes any child care center or  
28       child care arrangement that ~~which~~ provides child care for more  
29       than five children unrelated to the operator and which receives

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30 a payment, fee, or grant for any of the children receiving care,  
31 wherever operated, and whether or not operated for profit. The  
32 following are not included:

33 (a) Public schools and nonpublic schools and their integral  
34 programs, except as provided in s. 402.3025;

35 (b) Summer camps having children in full-time residence;

36 (c) Summer day camps;

37 (d) Bible schools normally conducted during vacation  
38 periods; ~~and~~

39 (e) Operators of transient establishments, as defined in  
40 chapter 509, which provide child care services solely for the  
41 guests of their establishment or resort, provided that all child  
42 care personnel of the establishment are screened according to  
43 the level 2 screening requirements of chapter 435; and

44 (f) Government-sponsored recreation programs.

45 (9) "Government-sponsored recreation program" means an  
46 afterschool recreation program for school-age children which has  
47 organized, regularly scheduled activities, including educational  
48 or enrichment activities, and which meets all of the following  
49 requirements:

50 (a) Offers not more than 4 hours of programming per day.  
51 However, the program may extend its hours in order to provide  
52 services before school and on teacher planning days, holidays,  
53 and intercessions that occur during the school district's  
54 official calendar year.

55 (b) Is operated by a county or a municipality that has  
56 adopted for the program by ordinance standards of care that  
57 include, but are not limited to:

58 1. Meeting minimum staff-to-children ratios in accordance

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59 with s. 402.305(4) and rules adopted by the department  
60 thereunder;

61 2. Ensuring that all personnel meet the requirements of  
62 this section and ss. 402.305 and 402.3055;

63 3. Meeting minimum facility, health, and safety standards,  
64 including annual fire inspections conducted by the city or  
65 county Fire Marshal;

66 4. Ensuring annual health inspections are conducted by the  
67 Department of Health;

68 5. Conducting regular inspection, cleaning, repair, and  
69 maintenance of buildings, grounds, and equipment;

70 6. Ensuring at least one staff person trained in  
71 cardiopulmonary resuscitation is present at all times when  
72 children are present;

73 7. Setting standards related to the provision of food;

74 8. Training program employees regarding working with  
75 school-age children;

76 9. Engaging in activities designed to address the ages,  
77 interests, and abilities of participants;

78 10. Carrying out annual inspections of vehicles  
79 transporting children;

80 11. Enforcing regulations related to the number of children  
81 in vehicles in accordance with vehicle capacity and searching  
82 vehicles after use to ensure no children are left in the  
83 vehicle;

84 12. Ensuring custodial parents or guardians have reasonable  
85 access to children while the children are in care; and

86 13. Developing age-appropriate policies relating to child  
87 discipline practices and making such policies available to

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88 parents or guardians at the time of registration.

89 (c) Has been certified by the county or municipality as  
90 compliant with such standards of care and provides annual  
91 attestation to the department of compliance with such standards  
92 of care.

93 (d) Provides notice to the parent or guardian of each child  
94 participating in the program that the program is not state-  
95 licensed or advertised as a child care facility and provides the  
96 parent or guardian with the county's or municipality's standards  
97 of care.

98 (e) Does not receive funding through the Child Care  
99 Development Block Grant of 2014, does not contract to provide a  
100 school readiness program pursuant to s. 1002.88, and does not  
101 have a Gold Seal Quality Care designation pursuant to s.  
102 402.281.

103 Section 2. Subsections (1) and (3) of section 402.316,  
104 Florida Statutes, are amended to read:

105 402.316 Exemptions.—

106 (1) The provisions of ss. 402.301-402.319, except for the  
107 requirements regarding screening of child care personnel, do  
108 ~~shall~~ not apply to a government-sponsored recreation program or  
109 to a child care facility that ~~which~~ is an integral part of  
110 church or parochial schools conducting regularly scheduled  
111 classes, courses of study, or educational programs accredited  
112 by, or by a member of, an organization that ~~which~~ publishes and  
113 requires compliance with its standards for health, safety, and  
114 sanitation. However, such facilities shall meet minimum  
115 requirements of the applicable local governing body as to  
116 health, sanitation, and safety and shall meet the screening

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117 requirements pursuant to ss. 402.305 and 402.3055. Failure by a  
118 facility to comply with such screening requirements shall result  
119 in the loss of the facility's exemption from licensure.

120 (3) Any government-sponsored recreation program or child  
121 care facility covered by the exemption provisions of subsection  
122 (1) may waive the exemption, but desiring to be included in this  
123 act, is authorized to do so by submitting notification to the  
124 department. Once licensed, such a program or facility may not  
125 cannot withdraw from its waiver of the exemption and, except for  
126 the requirements regarding screening of child care personnel,  
127 must continue to comply with ss. 402.301-402.319 in order to  
128 continue operating the act and continue to operate.

129 Section 3. Subsection (6) of section 39.201, Florida  
130 Statutes, is amended to read:

131 39.201 Mandatory reports of child abuse, abandonment, or  
132 neglect; mandatory reports of death; central abuse hotline.—

133 (6) Information in the central abuse hotline may not be  
134 used for employment screening, except as provided in s.  
135 39.202(2) (a) and (h) or s. 402.302(16) ~~s. 402.302(15)~~.  
136 Information in the central abuse hotline and the department's  
137 automated abuse information system may be used by the  
138 department, its authorized agents or contract providers, the  
139 Department of Health, or county agencies as part of the  
140 licensure or registration process pursuant to ss. 402.301-  
141 402.319 and ss. 409.175-409.176. Pursuant to s. 39.202(2) (q),  
142 the information in the central abuse hotline may also be used by  
143 the Department of Education for purposes of educator  
144 certification discipline and review.

145 Section 4. Paragraph (a) of subsection (2) of section

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146 402.305, Florida Statutes, is amended to read:

147 402.305 Licensing standards; child care facilities.—

148 (2) PERSONNEL.—Minimum standards for child care personnel  
149 shall include minimum requirements as to:

150 (a) Good moral character based upon screening as defined in  
151 s. 402.302(16) ~~s. 402.302(15)~~. This screening shall be conducted  
152 as provided in chapter 435, using the level 2 standards for  
153 screening set forth in that chapter, and include employment  
154 history checks, and a search of criminal history records, sexual  
155 predator and sexual offender registries, and child abuse and  
156 neglect registries ~~registry~~ of any state in which the current or  
157 prospective child care personnel resided during the preceding 5  
158 years.

159 Section 5. Paragraph (y) of subsection (2) of section  
160 1002.82, Florida Statutes, is amended to read:

161 1002.82 Office of Early Learning; powers and duties.—

162 (2) The office shall:

163 (y) Establish staff-to-children ratios that do not exceed  
164 the requirements of s. 402.302(8) or (12) ~~s. 402.302(8) or (11)~~  
165 or s. 402.305(4), as applicable, for school readiness program  
166 providers.

167 Section 6. This act shall take effect July 1, 2020.



**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 828

INTRODUCER: Senator Benacquisto

SUBJECT: Florida ABLE Program

DATE: December 9, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 828 saves from repeal Florida ABLE, Inc., a direct-support organization for the Florida Prepaid College Board. Florida ABLE Inc. administers the Florida ABLE Program, a program that allows individuals to make tax exempt contributions to meet certain expenses associated with a disabled beneficiary.

The bill has no impact on state revenues or expenditures and takes effect upon becoming law.

**II. Present Situation:**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose are prescribed by statute and by a written contract with the agency the organization supports.

**Transparency and Reporting Requirements**

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.<sup>1</sup> Specifically, the law requires each organization to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:<sup>2</sup>

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;

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<sup>1</sup> Section 3, ch. 2014-96, L.O.F.

<sup>2</sup> Section 20.058(1), F.S.

- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).<sup>3</sup>

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the organization.<sup>4</sup> Additionally, any contract between an agency and a CSO or DSO must be contingent upon the organization submitting and posting the information.<sup>5</sup> If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the organization.<sup>6</sup> The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.<sup>7</sup>

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.<sup>8</sup>

Finally, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the organization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. Such organization in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.<sup>9</sup>

### **Audit Requirements**

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.<sup>10</sup> The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO supports and submitted to the Auditor General and applicable state agency within nine months after the end of the fiscal year.

In addition, the Auditor General may conduct audits or other engagements of the accounts and records of the organization, pursuant to his or her own authority, or at the direction of the

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<sup>3</sup> The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

<sup>4</sup> Section 20.058(2), F.S.

<sup>5</sup> Section 20.058(4), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 20.058(3), F.S.

<sup>9</sup> Section 20.058(5), F.S.

<sup>10</sup> The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Legislative Auditing Committee.<sup>11</sup> The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.<sup>12</sup>

### **Ethics Code Requirement**

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>13</sup>

### **ABLE Programs**

#### ***Federal ABLE Act of 2014***

The federal Achieving a Better Life Experience Act (ABLE) of 2014 authorizing states to implement ABLE programs became law on December 19, 2014.<sup>14</sup> An ABLE program provides a tax-advantaged approach for certain individuals with disabilities<sup>15</sup> to build financial resources without losing eligibility for Supplemental Security Income (SSI)<sup>16</sup> or Medicaid. The law authorizes ABLE accounts for individuals with disabilities who meet certain criteria, to spend distributions on “qualified disability expenses.”<sup>17</sup> The purposes of the federal ABLE Act are to encourage and assist individuals and families in saving to support individuals with disabilities in maintaining health, independence, and quality of life, and provide secure funding for disability-related expenses that will supplement, but not supplant, other sources.<sup>18</sup>

#### ***Florida Prepaid College Board***

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program and the Florida College Savings Program, and performs specified essential governmental functions.<sup>19</sup> Both are tax-favored 529 college savings plans authorized by Section

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<sup>11</sup> Section 11.45(3)(d), F.S.

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

<sup>13</sup> Section 112.3251, F.S.

<sup>14</sup> Public Law 113-295, 26 U.S.C. 529A.

<sup>15</sup> An individual is an eligible individual for a taxable year if during such taxable year: (1) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year. *Id.*

<sup>16</sup> An account balance exceeding \$100,000 may cause suspension of SSI benefits; no such restriction affects Medicaid eligibility. ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf), at 14.

<sup>17</sup> *Id.* The term “qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of Education under specified conditions. *Id.*

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

<sup>19</sup> Section 1009.971(1), F.S. See ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. *Id.* The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the

529 of the Internal Revenue Code. The Board establishes policy and oversees the investment and financial performance of the programs.<sup>20</sup>

### ***Florida ABLE Program***

The Florida ABLE Program was created in 2015<sup>21</sup> to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.<sup>22</sup>

The Florida Prepaid College Board is required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program. ABLE United is:<sup>23</sup>

- A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.
- Organized and operated to receive, hold, invest, and administer property and to make expenditures for the benefit of the Florida ABLE program.

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.<sup>24</sup>

ABLE United has developed the ABLE United Program to be a qualified ABLE program pursuant to Section 529A of the Internal Revenue Code. The program launched on July 1, 2016. As of May 15, 2019, 3,231 persons with disabilities have an ABLE United account with an average account balance of \$4,674. Among the individuals in the program, 44 percent have a developmental disability.<sup>25</sup>

### **Legislative Findings and Recommendations**

Senate professional staff reviewed documents related to ABLE United for compliance with accountability and authorizing statutes. ABLE United appears to be in compliance with such statutes. Findings and recommendations are summarized below.

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Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Section 1009.971(2), F.S.

<sup>20</sup> Florida Prepaid, *About the Board*, <https://www.myfloridaprepaid.com/about-us/> (last visited Aug. 19, 2019).

<sup>21</sup> Section 2, ch. 2015-56, L.O.F.

<sup>22</sup> Section 1009.986(1), F.S. The Florida ABLE program is authorized under s. 529A of the Internal Revenue Code to allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the ABLE account. Section 1009.986(2)(h), F.S.

<sup>23</sup> Section 1009.986(3), F.S.

<sup>24</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1. The maximum annual contribution to an ABLE account is \$15,000, which may be increased if the beneficiary is working. ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf), at 2.

<sup>25</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1.

### ***Compliance with Accountability Requirements***

By August 1 of each year, ABLE United must submit the following information to the Board:<sup>26</sup>

- The name, mailing address, telephone number, and website address of ABLE United.
- The statutory authority or executive order pursuant to which ABLE United was created.
- A brief description of the mission of, and results obtained by, ABLE United.
- A brief description of the plans of ABLE United for the next 3 fiscal years.
- A copy of ABLE United's code of ethics.
- A copy of ABLE United's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Senate Professional staff found that the ABLE United annual disclosure contains all required information.<sup>27</sup> However, the Internal Revenue Service has determined that ABLE United is exempt from the requirement of filing Form 990.<sup>28</sup>

The Board must make such information submitted above available to the public through the Board's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.<sup>29</sup> The Board includes the ABLE United required annual disclosure report on the Board's website.<sup>30</sup> However, the Board does not provide a link to ABLE United on the Board's website. Senate Professional staff recommend that the Board provide a link to the ABLE United website on the Board's website.

By August 15 of each year, the Board must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the OPPAGA the information provided by ABLE United. The report must also include a recommendation by the Board, with supporting rationale, to continue, terminate, or modify the Board's association with ABLE United.<sup>31</sup> The Board provided the ABLE United required annual disclosure on July 8, 2019. In the required annual disclosure report the Board recommended continued association with ABLE United.<sup>32</sup>

The contract between the Board and ABLE United must be contingent upon ABLE United's submission and posting of information required to be submitted to the Board and must include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by ABLE United within 30 days after its authorizing statute is repealed, the contract is terminated, or ABLE United is dissolved. If ABLE United fails to submit the required

<sup>26</sup> Section 20.058(1), F.S.

<sup>27</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 1.

<sup>28</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 10-11.

<sup>29</sup> Section 20.058(2), F.S.

<sup>30</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1.

<sup>31</sup> Section 20.058(3), F.S.

<sup>32</sup> Cover letters to the annual disclosure report dated July 8, 2019, were distributed to the Governor, Speaker of the House of Representatives, President of the Senate, and OPPAGA. Email, Florida Prepaid College Board (Aug. 23, 2019).

information for 2 consecutive years, the Board chair must terminate any contract between the Board and ABLE United.<sup>33</sup> Senate Professional staff found that the contract between the Board and ABLE United incorporates the ABLE United Articles of Incorporation and Bylaws.<sup>34</sup> The Articles of Incorporation includes a provision for termination of the program and distribution of funds to the Board, or to the State of Florida if the Board is terminated.<sup>35</sup> In addition, the ABLE United Bylaws include a similar provision regarding the dissolution of ABLE United and reversion of funds.<sup>36</sup>

ABLE United must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General (AG) pursuant to s. 11.45(8) and the Board. The audit report must be submitted within 9 months after the end of the fiscal year to the AG and to the Board.<sup>37</sup> Senate Professional staff found that ABLE United provided for an annual financial audit for the fiscal year ending June 30, 2018, conducted by Carr, Riggs & Ingram, LLC, and completed on December 21, 2018.<sup>38</sup>

ABLE United must adopt its own ethics code. The ethics code must contain the standards of conduct and disclosures required under ss. 112.313 and 112.3143(2), respectively. The ethics code must be conspicuously posted on the ABLE United website.<sup>39</sup> The Foundation's Code of Ethics must address specified standards of conduct.<sup>40</sup> ABLE United has adopted a code of ethics, which is also the code of ethics that applies to all employees of the State Board of Administration.<sup>41</sup> The review by Senate Professional staff found that the code of ethics addresses the required standards of conduct.<sup>42</sup> However, the code of ethics is not posted on the ABLE United website. Senate Professional staff recommend that ABLE United post its code of ethics on the ABLE United website.

### ***Compliance with Authorizing Requirements***

ABLE United must operate under a written contract with the Board. The contract must include, but is not limited to, provisions that require:<sup>43</sup>

- The articles of incorporation and bylaws of ABLE United approved by the Board.
- ABLE United to submit an annual budget for approval by the Board. The budget must comply with rules adopted by the Board.

<sup>33</sup> Section 20.058(4), F.S.

<sup>34</sup> Email, Florida Prepaid College Board (July 23, 2019).

<sup>35</sup> Florida ABLE, Inc., *Articles of Amendment to Articles of Incorporation of Florida ABLE, Inc.* (Dec. 6, 2019), at Article X.

<sup>36</sup> Florida ABLE, Inc., *First Amendment to the By-laws of Florida ABLE, Inc.* (Dec. 6, 2016), at Article XII.

<sup>37</sup> Section 215.981(1), F.S.

<sup>38</sup> Florida ABLE, Inc., *Financial Statements, June 30, 2018* (Dec. 21, 2018), available at <https://www.ableunited.com/wp-content/uploads/FINAL-FI-ABLE-with-required-12.21.18.pdf>.

<sup>39</sup> Section 112.3251, F.S.

<sup>40</sup> Section 112.313, F.S.

<sup>41</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 2.

<sup>42</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 2.

<sup>43</sup> Section 1009.986(3)(b), F.S.

- ABLE United to pay reasonable consideration to the Board for products or services provided directly or indirectly by the Board.
- The Board to solicit proposals, to contract or subcontract, or to amend contractual service agreements of the Board for the benefit of ABLE United.
- The Board to maintain the website of ABLE United.
- The Board to annually certify that ABLE United is complying with the terms of the contract and acting in a manner consistent with this section and in the best interest of the state. The certification must be reported in the official minutes of a meeting of the Board.
- The disclosure of material provisions in the contract and of the distinction between the Board and ABLE United to donors of gifts, contributions, or bequests, and the inclusion of such disclosure on all promotional and fundraising publications.
- The fiscal year for ABLE United to begin on July 1 and end on June 30 of the following year.

The Board and ABLE United entered into a contract on August 14, 2015.<sup>44</sup> The review by Senate Professional staff found that the contract between the Board and ABLE United includes all required provisions.<sup>45</sup> In addition, as required in the contract the Board certified on March 26, 2019, that ABLE United was in compliance with the terms of the contract and acting in a manner in the best interest of the State of Florida.<sup>46</sup>

ABLE United must provide for an annual financial audit in accordance with s. 215.981, F.S.<sup>47</sup> The review by Senate Professional staff found that ABLE United provided for an annual financial audit for the fiscal year ending June 30, 2018, conducted by Carr, Riggs & Ingram, LLC, and completed on December 21, 2018.<sup>48</sup>

The board of directors of ABLE United must consist of:<sup>49</sup>

- The chair of the FL Prepaid Board, who serves as chair of the board of directors of Florida ABLE, Inc.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the FL Prepaid Board. A current member of the FL Prepaid Board, other than the chair, may be appointed.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker

<sup>44</sup> Email, Florida Prepaid College Board (July 23, 2019).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Section 1009.986(3)(c), F.S. Section 215.981(1), F.S., requires that each direct-support organization and each citizen support organization with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than a university, district board of trustees of a community college, or district school board, must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and the state agency that created, approved, or administers the direct-support organization or citizen support organization.

<sup>48</sup> Florida ABLE, Inc., *Financial Statements, June 30, 2018* (Dec. 21, 2018), available at <https://www.ableunited.com/wp-content/uploads/FINAL-FL-ABLE-with-required-12.21.18.pdf>.

<sup>49</sup> Section 1009.986(3)(d)



of the House of Representatives. At least one of the individuals so appointed must be an advocate of persons with developmental disabilities.

In addition, ABLE United must comply with statutory requirements relating to the board of directors' meeting schedule, member terms, and member reimbursement.<sup>50</sup> The ABLE United Board of Directors includes the Chair of the Florida Prepaid College Board, an appointee of the Florida Prepaid College Board, and one member each appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate who meet the specified qualifications.<sup>51</sup> The review by Senate Professional staff found that the ABLE United Bylaws include provisions in compliance with requirements regarding member terms, individual authority of board members, meeting schedule, quorum, and reimbursement.<sup>52</sup>

The ABLE United participation agreement must include provisions specifying that:<sup>53</sup>

- The participation agreement is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund and is not a debt or obligation of the Board or the state.
- Participation in the Florida ABLE program does not guarantee that sufficient funds will be available to cover all qualified disability expenses for any designated beneficiary and does not guarantee the receipt or continuation of any product or service for the designated beneficiary.
- The designated beneficiary must be a resident of this state or a resident of a contracting state at the time the ABLE account is established.
- The establishment of an ABLE account in violation of federal law is prohibited.
- Contributions in excess of the limitations set forth in s. 529A of the Internal Revenue Code (IRC) are prohibited.
- The state is a creditor of ABLE accounts as, and to the extent, set forth in s. 529A of the IRC.
- Material misrepresentations by a party to the participation agreement, other than ABLE United, in the application for the participation agreement or in any communication with ABLE United regarding the Florida ABLE program may result in the involuntary liquidation of the ABLE account. If an account is involuntarily liquidated, the designated beneficiary is entitled to a refund, subject to any fees or penalties provided by the participation agreement and the IRC.

The review by Senate Professional staff found that the ABLE United Program Description and Participation Agreement<sup>54</sup> includes all required provisions.

Florida United must establish a comprehensive investment plan for the Florida ABLE program, subject to the approval of the Board. The comprehensive investment plan must specify the investment policies to be used by Florida United in its administration of the program.<sup>55</sup> Senate Professional staff found that ABLE United has established a Comprehensive Investment Plan

<sup>50</sup> *Id.*

<sup>51</sup> ABLE United, *About Us*, <https://www.ableunited.com/about-us/> (last visited Aug. 22, 2019).

<sup>52</sup> Florida ABLE, Inc., *By-Laws of Florida ABLE, Inc.* Email. *Florida Prepaid College Board*, July 23, 2019.

<sup>53</sup> Section 1009.986(4)(b), F.S.

<sup>54</sup> ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf).

<sup>55</sup> Section 1009.986(5), F.S.



approved by the Board. The plan establishes participant investment options, asset class allocation ranges and targets, administrative fees, and performance expectations and monitoring.<sup>56</sup>

On or before March 31 of each year, Florida United must prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the Florida ABLE program which includes a description of the financial condition of the program at the close of the fiscal year. Florida United must submit copies of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives and must make the report available to each designated beneficiary.<sup>57</sup> Senate Professional staff found that the ABLE United 2018 Annual Report contains the required financial information and is available on the ABLE United website.<sup>58</sup> The report was distributed to the required recipients in March 2019.<sup>59</sup>

The Board must adopt rules to administer the Florida ABLE program. Rules must include, but are not limited to:<sup>60</sup>

- Specifying the procedures by which Florida United must be governed and operate, including requirements for the budget of Florida United and conditions with which Florida United must comply to use property, facilities, or personal services of the Board.
- The procedures for determining that an ABLE account has been abandoned.
- Adoption of provisions determined necessary by the Board for the Florida ABLE program to retain its status as a qualified ABLE program or the tax-exempt status or other similar status of the program or its participants under the Internal Revenue Code.

Senate Professional staff found that the Board adopted the required rules to administer the Florida ABLE program. Rule 19B-17.001, F.A.C., addresses Florida ABLE, Inc., governance; submission of an annual budget; and use of property, facilities, and personal services. Rule 19B-18.003, F.A.C., incorporates the ABLE United Program Description and Participation Agreement,<sup>61</sup> which provides the procedures for abandoned accounts and necessary safeguards to retain its status as a qualified ABLE program.

### III. Effect of Proposed Changes:

Subsection (12) of s. 1009.986, F.S., repeals the entire section of statute that creates the ABLE program rather than subsection (3) that contains the DSO. So by removing subsection 12, the bill saves from repeal both the direct-support organization Florida ABLE Inc. and the Florida ABLE program. The bill will provide for the continuation of the administration of the Florida ABLE program by ABLE United, which provides private savings plans in tax-exempt accounts to pay

<sup>56</sup> Florida ABLE, Inc., *Comprehensive Investment Plan, Florida ABLE Program* (Apr. 1, 2019). Email. *Florida Prepaid College Board*, July 23, 2019.

<sup>57</sup> Section 1009.986(9), F.S.

<sup>58</sup> ABLE United, *2018 Annual Report*, available at [https://www.ableunited.com/wp-content/uploads/2018-ABLE\\_United-Annual-Report\\_FINAL-WEB-as-of-3.28.19.pdf](https://www.ableunited.com/wp-content/uploads/2018-ABLE_United-Annual-Report_FINAL-WEB-as-of-3.28.19.pdf).

<sup>59</sup> Email, Florida Prepaid College Board (July 23, 2019).

<sup>60</sup> Section 1009.986(10), F.S.

<sup>61</sup> ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf).

for qualified expenses for individuals with a disability, without removing eligibility for Supplemental Security Income and Medicaid.

The bill takes effect 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:

By extending the repeal date of the direct-support organization and the ABLE program, the bill will provide a source of tax exempt savings for individuals with a disability, without jeopardizing eligibility for certain benefits, such as Medicaid and Supplemental Security Income (SSI).

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1009.986 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.

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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 Benacquisto

27-00794-20

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1                   A bill to be entitled  
2       An act relating to the Florida ABLE program; amending  
3       s. 1009.986, F.S.; abrogating the future repeal of  
4       provisions relating to the Florida ABLE program;  
5       providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9       Section 1. Subsection (12) of section 1009.986, Florida  
10       Statutes, is amended, and subsections (1) through (11) of that  
11       section are republished, to read:

12       1009.986 Florida ABLE program.—

13       (1) LEGISLATIVE INTENT.—It is the intent of the Legislature  
14       to establish a qualified ABLE program in this state which will  
15       encourage and assist the saving of private funds in tax-exempt  
16       accounts in order to pay for the qualified disability expenses  
17       of eligible individuals with disabilities. The Legislature  
18       intends that the qualified ABLE program be implemented in a  
19       manner that is consistent with federal law authorizing the  
20       program and that maximizes program efficiency and effectiveness.

21       (2) DEFINITIONS.—As used in ss. 1009.987 and 1009.988 and  
22       this section, the term:

23       (a) "ABLE account" means an account established and  
24       maintained under the Florida ABLE program.

25       (b) "Contracting state" means a state that has entered into  
26       a contract with Florida ABLE, Inc., to provide residents of  
27       Florida or that state with access to a qualified ABLE program.

28       (c) "Designated beneficiary" means the eligible individual  
29       who established an ABLE account or the eligible individual to

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30 whom an ABLE account was transferred.

31 (d) "Eligible individual" has the same meaning as provided  
32 in s. 529A of the Internal Revenue Code.

33 (e) "Florida ABLE program" means the qualified ABLE program  
34 established and maintained under this section by Florida ABLE,  
35 Inc.

36 (f) "Internal Revenue Code" means the United States  
37 Internal Revenue Code of 1986, as defined in s. 220.03(1), and  
38 regulations adopted pursuant thereto.

39 (g) "Participation agreement" means the agreement between  
40 Florida ABLE, Inc., and a participant in the Florida ABLE  
41 program.

42 (h) "Qualified ABLE program" means the program authorized  
43 under s. 529A of the Internal Revenue Code which may be  
44 established by a state or agency, or instrumentality thereof, to  
45 allow a person to make contributions for a taxable year to an  
46 ABLE account established for the purpose of meeting the  
47 qualified disability expenses of the designated beneficiary of  
48 the ABLE account.

49 (i) "Qualified disability expense" has the same meaning as  
50 provided in s. 529A of the Internal Revenue Code.

51 (3) DIRECT-SUPPORT ORGANIZATION; FLORIDA ABLE, INC.—

52 (a) The Florida Prepaid College Board shall establish a  
53 direct-support organization to be known as "Florida ABLE, Inc.,"  
54 which is:

55 1. A Florida not-for-profit corporation registered,  
56 incorporated, organized, and operated in compliance with chapter  
57 617.

58 2. Organized and operated to receive, hold, invest, and

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59 administer property and to make expenditures for the benefit of  
60 the Florida ABLE program.

61 (b) Florida ABLE, Inc., shall operate under a written  
62 contract with the Florida Prepaid College Board. The contract  
63 must include, but is not limited to, provisions that require:

64 1. The articles of incorporation and bylaws of Florida  
65 ABLE, Inc., to be approved by the Florida Prepaid College Board.

66 2. Florida ABLE, Inc., to submit an annual budget for  
67 approval by the Florida Prepaid College Board. The budget must  
68 comply with rules adopted by the Florida Prepaid College Board.

69 3. Florida ABLE, Inc., to pay reasonable consideration to  
70 the Florida Prepaid College Board for products or services  
71 provided directly or indirectly by the Florida Prepaid College  
72 Board.

73 4. The Florida Prepaid College Board to solicit proposals,  
74 to contract or subcontract, or to amend contractual service  
75 agreements of the Florida Prepaid College Board for the benefit  
76 of Florida ABLE, Inc.

77 5. The Florida Prepaid College Board to maintain the  
78 website of Florida ABLE, Inc.

79 6. The Florida Prepaid College Board to annually certify  
80 that Florida ABLE, Inc., is complying with the terms of the  
81 contract and acting in a manner consistent with this section and  
82 in the best interest of the state. The certification must be  
83 reported in the official minutes of a meeting of the Florida  
84 Prepaid College Board.

85 7. The disclosure of material provisions in the contract  
86 and of the distinction between the Florida Prepaid College Board  
87 and Florida ABLE, Inc., to donors of gifts, contributions, or

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88 bequests, and the inclusion of such disclosure on all  
89 promotional and fundraising publications.

90 8. The fiscal year for Florida ABLE, Inc., to begin on July  
91 1 and end on June 30 of the following year.

92 (c) Florida ABLE, Inc., shall provide for an annual  
93 financial audit in accordance with s. 215.981. The Florida  
94 Prepaid College Board and the Auditor General may require  
95 Florida ABLE, Inc., or its independent auditor, to provide any  
96 supplemental data relating to the operation of Florida ABLE,  
97 Inc.

98 (d)1. The board of directors of Florida ABLE, Inc., shall  
99 consist of:

100 a. The chair of the Florida Prepaid College Board, who  
101 shall serve as the chair of the board of directors of Florida  
102 ABLE, Inc.

103 b. One individual who possesses knowledge, skill, and  
104 experience in the areas of accounting, risk management, or  
105 investment management, who shall be appointed by the Florida  
106 Prepaid College Board. A current member of the Florida Prepaid  
107 College Board, other than the chair, may be appointed.

108 c. One individual who possesses knowledge, skill, and  
109 experience in the areas of accounting, risk management, or  
110 investment management, who shall be appointed by the Governor.

111 d. Two individuals who are advocates of persons with  
112 disabilities, one of whom shall be appointed by the President of  
113 the Senate and one of whom shall be appointed by the Speaker of  
114 the House of Representatives. At least one of the individuals  
115 appointed under this sub-subparagraph must be an advocate of  
116 persons with developmental disabilities, as that term is defined

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117 in s. 393.063.

118 2.a. The term of the appointee under sub-subparagraph 1.b.  
119 shall be up to 3 years as determined by the Florida Prepaid  
120 College Board. Such appointee may be reappointed.

121 b. The term of the appointees under sub-subparagraphs 1.c.  
122 and d. shall be 3 years. Such appointees may be reappointed for  
123 up to one consecutive term.

124 3. Unless authorized by the board of directors of Florida  
125 ABLE, Inc., an individual director has no authority to control  
126 or direct the operations of Florida ABLE, Inc., or the actions  
127 of its officers and employees.

128 4. The board of directors of Florida ABLE, Inc.:

129 a. Shall meet at least quarterly and at other times upon  
130 the call of the chair.

131 b. May use any method of telecommunications to conduct, or  
132 establish a quorum at, its meetings or the meetings of a  
133 subcommittee or other subdivision if the public is given proper  
134 notice of the telecommunications meeting and provided reasonable  
135 access to observe and, if appropriate, to participate.

136 5. A majority of the total current membership of the board  
137 of directors of Florida ABLE, Inc., constitutes a quorum of the  
138 board.

139 6. Members of the board of directors of Florida ABLE, Inc.,  
140 and the board's subcommittees or other subdivisions shall serve  
141 without compensation; however, the members may be reimbursed for  
142 reasonable, necessary, and actual travel expenses pursuant to s.  
143 112.061.

144 (e) Subject to rule adopted by the Florida Prepaid College  
145 Board, Florida ABLE, Inc., may use property, other than money,



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146 facilities, and personal services of the Florida Prepaid College  
147 Board, provided that Florida ABLE, Inc., offers equal employment  
148 opportunities to all persons regardless of race, color,  
149 religion, sex, age, or national origin. As used in this  
150 paragraph, the term "personal services" means use of the Florida  
151 Prepaid College Board's full-time and part-time personnel,  
152 payroll processing services, and other services prescribed by  
153 rule of the Florida Prepaid College Board.

154 (4) FLORIDA ABLE PROGRAM.—

155 (a) On or before July 1, 2016, Florida ABLE, Inc., shall  
156 establish and administer the Florida ABLE program. Before  
157 implementing the program, Florida ABLE, Inc., must obtain a  
158 written opinion from counsel specializing in:

159 1. Federal tax matters which indicates that the Florida  
160 ABLE program is designed to comply with s. 529A of the Internal  
161 Revenue Code.

162 2. Federal securities law which indicates that the Florida  
163 ABLE program and the offering of participation in the program  
164 are designed to comply with applicable federal securities law  
165 and qualify for the available tax exemptions under such law.

166 (b) The participation agreement must include provisions  
167 specifying that:

168 1. The participation agreement is only a debt or obligation  
169 of the Florida ABLE program and the Florida ABLE Program Trust  
170 Fund and, as provided under paragraph (f), is not a debt or  
171 obligation of the Florida Prepaid College Board or the state.

172 2. Participation in the Florida ABLE program does not  
173 guarantee that sufficient funds will be available to cover all  
174 qualified disability expenses for any designated beneficiary and

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175 does not guarantee the receipt or continuation of any product or  
176 service for the designated beneficiary.

177 3. The designated beneficiary must be a resident of this  
178 state or a resident of a contracting state at the time the ABLE  
179 account is established.

180 4. The establishment of an ABLE account in violation of  
181 federal law is prohibited.

182 5. Contributions in excess of the limitations set forth in  
183 s. 529A of the Internal Revenue Code are prohibited.

184 6. The state is a creditor of ABLE accounts as, and to the  
185 extent, set forth in s. 529A of the Internal Revenue Code.

186 7. Material misrepresentations by a party to the  
187 participation agreement, other than Florida ABLE, Inc., in the  
188 application for the participation agreement or in any  
189 communication with Florida ABLE, Inc., regarding the Florida  
190 ABLE program may result in the involuntary liquidation of the  
191 ABLE account. If an account is involuntarily liquidated, the  
192 designated beneficiary is entitled to a refund, subject to any  
193 fees or penalties provided by the participation agreement and  
194 the Internal Revenue Code.

195 (c) The participation agreement may include provisions  
196 specifying:

197 1. The requirements and applicable restrictions for opening  
198 an ABLE account.

199 2. The eligibility requirements for a party to a  
200 participation agreement and the rights of the party.

201 3. The requirements and applicable restrictions for making  
202 contributions to an ABLE account.

203 4. The requirements and applicable restrictions for

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204 directing the investment of the contributions or balance of the  
205 ABLE account.

206 5. The administrative fee and other fees and penalties  
207 applicable to an ABLE account.

208 6. The terms and conditions under which an ABLE account or  
209 participation agreement may be modified, transferred, or  
210 terminated.

211 7. The disposition of abandoned ABLE accounts.

212 8. Other terms and conditions determined to be necessary or  
213 proper.

214 (d) The participation agreement may be amended throughout  
215 its term for purposes that include, but are not limited to,  
216 allowing a participant to increase or decrease the level of  
217 participation and to change designated beneficiaries and other  
218 matters authorized by this section and s. 529A of the Internal  
219 Revenue Code.

220 (e) If an ABLE account is determined to be abandoned  
221 pursuant to rules adopted by the Florida Prepaid College Board,  
222 Florida ABLE, Inc., may use the balance of the account to  
223 operate the Florida ABLE program.

224 (f) A contract or participation agreement entered into by  
225 or an obligation of Florida ABLE, Inc., on behalf of and for the  
226 benefit of the Florida ABLE program does not constitute a debt  
227 or obligation of the Florida Prepaid College Board or the state,  
228 but is only a debt or obligation of the Florida ABLE program and  
229 the Florida ABLE Program Trust Fund. The state does not have an  
230 obligation to a designated beneficiary or any other person as a  
231 result of the Florida ABLE program. The obligation of the  
232 Florida ABLE program is limited solely to amounts in the Florida

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233 ABLE Program Trust Fund. All amounts obligated to be paid from  
234 the Florida ABLE Program Trust Fund are limited to the amounts  
235 available for such obligation. The amounts held in the Florida  
236 ABLE program may be disbursed only in accordance with this  
237 section.

238 (g) Notwithstanding any other provision of law, Florida  
239 ABLE, Inc., may enter into an agreement with a contracting state  
240 which allows Florida ABLE, Inc., to participate under the  
241 design, operation, and rules of the contracting state's  
242 qualified ABLE program or which allows the contracting state to  
243 participate under the Florida ABLE program.

244 (h) The Florida ABLE program shall continue in existence  
245 until terminated by law. If the state determines that the  
246 program is financially infeasible, the state may terminate the  
247 program. Upon termination, amounts in the Florida ABLE Program  
248 Trust Fund held for designated beneficiaries shall be returned  
249 in accordance with the participation agreement.

250 (i) The state pledges to the designated beneficiaries that  
251 the state will not limit or alter their rights under this  
252 section which are vested in the Florida ABLE program until the  
253 program's obligations are met and discharged. However, this  
254 paragraph does not preclude such limitation or alteration if  
255 adequate provision is made by law for the protection of the  
256 designated beneficiaries pursuant to the obligations of Florida  
257 ABLE, Inc., and does not preclude termination of the Florida  
258 ABLE program if the state determines that the program is not  
259 financially feasible. This pledge and undertaking by the state  
260 may be included in participation agreements.

261 (5) COMPREHENSIVE INVESTMENT PLAN.—Florida ABLE, Inc.,

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262 shall establish a comprehensive investment plan for the Florida  
263 ABLE program, subject to the approval of the Florida Prepaid  
264 College Board. The comprehensive investment plan must specify  
265 the investment policies to be used by Florida ABLE, Inc., in its  
266 administration of the program. Florida ABLE, Inc., may place  
267 assets of the program in investment products and in such  
268 proportions as may be designated or approved in the  
269 comprehensive investment plan. Such products shall be  
270 underwritten and offered in compliance with the applicable  
271 federal and state laws or regulations or exemptions therefrom. A  
272 designated beneficiary may not direct the investment of any  
273 contributions to the Florida ABLE program, unless specific fund  
274 options are offered by Florida ABLE, Inc. Directors, officers,  
275 and employees of Florida ABLE, Inc., may enter into  
276 participation agreements, notwithstanding their fiduciary  
277 responsibilities or official duties related to the Florida ABLE  
278 program.

279 (6) EXEMPTION FROM CLAIMS OF CREDITORS.—Moneys paid into or  
280 out of the Florida ABLE Program Trust Fund by or on behalf of a  
281 designated beneficiary are exempt, as provided by s. 222.22,  
282 from all claims of creditors of the designated beneficiary if  
283 the participation agreement has not been terminated. Moneys paid  
284 into the Florida ABLE program and benefits accrued through the  
285 program may not be pledged for the purpose of securing a loan.

286 (7) MEDICAID RECOVERY; PRIORITY OF DISTRIBUTIONS.—

287 (a) Unless prohibited by federal law, upon the death of a  
288 designated beneficiary, funds in the ABLE account must first be  
289 distributed for qualified disability expenses then transferred  
290 to the estate of the designated beneficiary or an ABLE account

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291 of another eligible individual specified by the designated  
292 beneficiary or by the estate of the designated beneficiary.

293 (b) Except as required by federal law, the state Medicaid  
294 program may not file a claim for Medicaid recovery of funds in  
295 an ABLE account.

296 (c) Florida ABLE, Inc., shall assist and cooperate with the  
297 Agency for Health Care Administration and Medicaid programs in  
298 other states by providing the agency and programs with the  
299 information needed to accomplish the purpose and objective of  
300 this subsection.

301 (8) PAYROLL DEDUCTION AUTHORITY.—The payroll deduction  
302 authority provided under s. 1009.975 applies to the Florida  
303 Prepaid College Board and Florida ABLE, Inc., for purposes of  
304 administering this section.

305 (9) REPORTS.—

306 (a) On or before November 1, 2015, Florida ABLE, Inc.,  
307 shall prepare a report on the status of the establishment of the  
308 Florida ABLE program by Florida ABLE, Inc. The report must also  
309 include, if warranted, recommendations for statutory changes to  
310 enhance the effectiveness and efficiency of the program. Florida  
311 ABLE, Inc., shall submit copies of the report to the Governor,  
312 the President of the Senate, and the Speaker of the House of  
313 Representatives.

314 (b) On or before March 31 of each year, Florida ABLE, Inc.,  
315 shall prepare or cause to be prepared a report setting forth in  
316 appropriate detail an accounting of the Florida ABLE program  
317 which includes a description of the financial condition of the  
318 program at the close of the fiscal year. Florida ABLE, Inc.,  
319 shall submit copies of the report to the Governor, the President

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320 of the Senate, the Speaker of the House of Representatives, and  
321 the minority leaders of the Senate and the House of  
322 Representatives and shall make the report available to each  
323 designated beneficiary. The accounts of the Florida ABLE program  
324 are subject to annual audit by the Auditor General.

325 (10) RULES.—The Florida Prepaid College Board shall adopt  
326 rules to administer this section. Such rules must include, but  
327 are not limited to:

328 (a) Specifying the procedures by which Florida ABLE, Inc.,  
329 shall be governed and operate, including requirements for the  
330 budget of Florida ABLE, Inc., and conditions with which Florida  
331 ABLE, Inc., must comply to use property, facilities, or personal  
332 services of the Florida Prepaid College Board.

333 (b) The procedures for determining that an ABLE account has  
334 been abandoned.

335 (c) Adoption of provisions determined necessary by the  
336 Florida Prepaid College Board for the Florida ABLE program to  
337 retain its status as a qualified ABLE program or the tax-exempt  
338 status or other similar status of the program or its  
339 participants under the Internal Revenue Code. Florida ABLE,  
340 Inc., shall inform participants in the Florida ABLE program of  
341 changes to the tax or securities status of their interests in  
342 the ABLE program and participation agreements.

343 (11) STATE OUTREACH PARTNERS.—The Agency for Health Care  
344 Administration, the Agency for Persons with Disabilities, the  
345 Department of Children and Families, and the Department of  
346 Education shall assist, cooperate, and coordinate with Florida  
347 ABLE, Inc., in the provision of public information and outreach  
348 for the Florida ABLE program.

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349       ~~(12) REPEAL. In accordance with s. 20.058, this section is~~  
350 ~~repealed October 1, 2020, unless reviewed and saved from repeal~~  
351 ~~by the Legislature.~~

352       Section 2. This act shall take effect upon becoming a law.