

Tab 1	SB 68 by Garcia ; (Identical to H 00691) Public Records/Staff and Volunteers of Domestic Violence Centers
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Tab 2	SB 70 by Garcia ; (Identical to H 00689) Domestic Violence Centers
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Tab 3	SB 252 by Stewart (CO-INTRODUCERS) Torres ; Child Care Facilities
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Tab 4	SB 368 by Baxley ; (Similar to H 00441) Elder-focused Dispute Resolution Process
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Tab 5	SB 380 by Perry ; (Identical to H 00297) Child Restraint Requirements
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Book, Chair
Senator Albritton, Vice Chair

MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Book, Chair; Senator Albritton, Vice Chair; Senators Brodeur, Garcia, Harrell, Rouson, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 68 Garcia (Identical H 691)	Public Records/Staff and Volunteers of Domestic Violence Centers; Exempting personal identifying and location information of current and former staff and volunteers of domestic violence centers certified by the Department of Children and Families under ch. 39, F.S., and personal identifying and location information of spouses and children of such personnel, from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 02/03/2021 Favorable CJ RC	Favorable Yeas 8 Nays 0
2	SB 70 Garcia (Identical H 689)	Domestic Violence Centers; Prohibiting the unlawful disclosure of certain information about domestic violence centers; providing criminal penalties, etc. CF 02/03/2021 Fav/CS CJ RC	Fav/CS Yeas 8 Nays 0
3	SB 252 Stewart	Child Care Facilities; Citing this act as the "Child Safety Alarm Act"; requiring certain vehicles, by a specified date, to be equipped with a reliable alarm system that meets specified criteria; requiring the Department of Children and Families to adopt by rule minimum safety standards for such systems and to maintain a list of approved alarm manufacturers and alarm systems, etc. CF 02/03/2021 Favorable TR RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Wednesday, February 3, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 368 Baxley (Similar H 441)	Elder-focused Dispute Resolution Process; Authorizing the courts to appoint an eldercaring coordinator and refer certain parties and elders to eldercaring coordination; prohibiting the courts from referring certain parties to eldercaring coordination without the consent of the elder and other parties to the action; requiring the courts to conduct intermittent review hearings regarding the conclusion or extension of such appointments; requiring that notice of hearing on removal of a coordinator be timely served; requiring the court to appoint successor eldercaring coordinators under certain circumstances, etc. CF 02/03/2021 Favorable JU AP	Favorable Yeas 8 Nays 0
5	SB 380 Perry (Identical H 297)	Child Restraint Requirements; Increasing the age of children for whom operators of motor vehicles must provide protection by using a crash-tested, federally approved child restraint device; increasing the age of children for whom a separate carrier, an integrated child seat, or a child booster seat may be used, etc. CF 02/03/2021 Favorable TR RC	Favorable Yeas 8 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 68

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Staff and Volunteers of Domestic Violence Centers

DATE: February 2, 2021

REVISED: 02/03/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 68 amends s. 119.071(4)(d), F.S., creating a new exemption from public records disclosure for specified personal information of staff and volunteers of domestic violence centers certified by the Department of Children and Families (DCF) under ch. 39, F.S., and specified personal information relating to their spouses and children.

The bill exempts the following information from public records disclosure:

- Home addresses, telephone numbers, places of employment, dates of birth, and photographs of such personnel;
- Name, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and child; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill makes findings that the new exemption from public records disclosure is a public necessity as required by the Florida Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2024 in accordance with s. 119.15, F.S., unless the statute is reviewed and reenacted by the Legislature before that date. This is the same sunset review date as the other exemptions in s. 119.071(4)(d), F.S., will be reviewed.

There is no anticipated fiscal impact on state, county or municipal governments. Agency costs incurred in responding to public records requests for the specified information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹ However, an exemption may be reviewed under the Open Government Sunset Review Act prior to the fifth year since enactment.

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²⁷

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(4)(a) and (b), F.S.

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁸ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁹

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.³⁰ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.³¹

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.³²

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.³³

**Public Records Exemptions for Specified Agency Personnel and Their Families
(s. 119.071(4)(d), F.S.)**

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include, in part:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of DCF and the Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;³⁴
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;³⁵

²⁸ Section 119.071(4)(a)1., F.S.

²⁹ Section 119.071(4)(a), F.S.

³⁰ Section 119.071(5)(a)5., F.S.

³¹ Section 119.071(5)(a)6.f. and g., F.S.

³² Section 119.071(4)(b)1., F.S.

³³ Section 119.071(4)(b)2., F.S.

³⁴ Section 119.071(4)(d)2.a., F.S.

³⁵ Section 119.071(4)(d)2.b., F.S.

- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations;³⁶
- Current or former certified firefighters;³⁷
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;³⁸
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;³⁹
- Current or former code enforcement officers;⁴⁰
- Current or former guardians ad litem;⁴¹
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;⁴²
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;⁴³
- County tax collectors;⁴⁴
- Current or former certified emergency medical technicians and paramedics;⁴⁵
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴⁶ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁴⁷

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee’s information.⁴⁸ Further, all of these exemptions have retroactive application.⁴⁹

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses,⁵⁰ telephone numbers,⁵¹ and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

³⁶ Section 119.071(4)(d)2.c., F.S.

³⁷ Section 119.071(4)(d)2.d., F.S.

³⁸ Section 119.071(4)(d)2.e., F.S.

³⁹ Section 119.071(4)(d)2.f., F.S.

⁴⁰ Section 119.071(4)(d)2.i., F.S.

⁴¹ Section 119.071(4)(d)2.j., F.S. Guardians ad litem are volunteers who offer their services to the program.

⁴² Section 119.071(4)(d)2.l., F.S.

⁴³ Section 119.071(4)(d)2.m., F.S.

⁴⁴ Section 119.071(4)(d)2.n., F.S.

⁴⁵ Section 119.071(4)(d)2.q., F.S.

⁴⁶ Section 119.071(4)(d)2.s., F.S.

⁴⁷ Section 119.071(4)(d)2.t., F.S.

⁴⁸ Section 119.071(4)(d)3., F.S.

⁴⁹ Section 119.071(4)(d)4., F.S.

⁵⁰ Section 119.071(4)(d)1.a., F.S., defines “home addresses” to mean “the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.”

⁵¹ Section 119.071(4)(d)1.b., F.S., defines “telephone numbers” to include “home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.”

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

Domestic Violence Centers

A domestic violence center means an agency whose primary mission is to provide services to victims of domestic violence.⁵² Currently, Florida has 41 certified domestic violence centers that are the leading providers of domestic violence services. They provide crisis counseling and support services to victims of domestic violence and their children.⁵³

The DCF is tasked with performing specified duties and functions with respect to domestic violence under ch. 39, F.S. Section 39.903, F.S., states the DCF must:

- Operate the domestic violence program and coordinate and administer statewide activities related to the prevention of domestic violence.
- Receive and approve or reject applications for initial certification of domestic violence centers, and annually renew the certification thereafter.
- Have the right to enter and inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification to effectively evaluate the state of compliance with minimum standards.
- Promote the involvement of certified violence centers in the coordination, development, and planning of domestic violence programming in the circuits.
- Coordinate with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation.
- Cooperate with, assist in, and participate in, programs of other properly qualified state agencies, including any agency of the federal government, schools of medicine, hospitals,

⁵² Section 39.902(2), F.S. Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Further, s. 741.28(3), F.S., defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit."

⁵³ The Department of Children and Families, *Domestic Violence Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited January 27, 2021).

and clinics, in planning and conducting research on the prevention of domestic violence and the provision of services to clients.

- Contract with an entity or entities for the delivery and management of services for the state's domestic violence program if the DCF determines that doing so is in the best interest of the state.
- Consider applications from certified domestic violence centers for capital improvement grants and award those grants in accordance with s. 39.9055, F.S.
- Adopt by rule procedures to administer this section, including developing criteria for the approval, suspension, or rejection of certification of domestic violence centers and developing minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.

Services provided free of charge by domestic violence centers include emergency shelter, 24-hour crisis and information hotline, safety planning, counseling, case management, child assessments, information and referrals, education for community awareness, and training for law enforcement and other professionals, and other ancillary services such as relocation assistance, daycare, and transitional housing.⁵⁴

Domestic violence centers employ staff and rely on volunteers to provide these services to victims. A domestic violence advocate is an employee or a volunteer who receives training and provides direct services to victims of domestic violence.⁵⁵ A volunteer is an unpaid staff member who provides direct or indirect services for a domestic violence center. All employees and volunteers receive some degree of training on domestic violence.⁵⁶

Staff, including volunteers, are required to submit to a background screening, except personnel who assist on an intermittent basis for less than 10 hours per month if a person who meets the screening requirement is always present and has the volunteer within his or her line of sight.⁵⁷ Some also require personal reference letters.⁵⁸ As a practical matter, domestic violence centers generally require background screens for all volunteers, such as the centers in Baker County,⁵⁹ Broward County,⁶⁰ and Escambia County.⁶¹

⁵⁴ *Id.*

⁵⁵ Section 90.5036, F.S.; Rule 65H-1.011(9), F.A.C., states "'domestic violence advocate' means an employee or volunteer of a certified domestic violence center who: provides direct services to individuals victimized by domestic violence; has received 30 hours of domestic violence core competency training; and, has been identified by the domestic violence center as an individual who may assert a claim to privileged communications with domestic violence victims under section 39.905, F.S."

⁵⁶ Rule 65H-1.011(19), F.A.C., states "'volunteer' means unpaid staff members trained in the dynamics of domestic violence who provide direct and indirect services to those seeking and receiving services from a domestic violence center."

⁵⁷ Section 39.001(2), F.S.

⁵⁸ Women in Distress of Broward County, Inc. Jim & Jan Moran Family Center, *Interested in becoming a volunteer?*, available at <https://www.womenindistress.org/what-you-can-do/volunteer/> (last visited January 31, 2021).

⁵⁹ Hubbard House, *How do I get started?*, available at <https://www.hubbardhouse.org/getstarted> (last visited January 28, 2021).

⁶⁰ Women in Distress of Broward County, Inc. Jim & Jan Moran Family Center, *Interested in becoming a volunteer?*, available at <https://www.womenindistress.org/what-you-can-do/volunteer/> (last visited January 31, 2021).

⁶¹ Family House of Northwest Florida, Inc., *Volunteers Make It Happen!*, available at <https://favorhouse.org/page/Volunteer.html> (last visited January 28, 2021).

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d)2., F.S., exempting certain information pertaining to current or former staff and volunteers of domestic violence centers certified by DCF under ch. 39, F.S.

The bill exempts specific information from public records requirements for the above-mentioned personnel including the:

- Home addresses, telephone numbers, places of employment, dates of birth, and photographs of such personnel;
- Name, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and child; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

A custodian of a record who is not the employer of the person covered by the exemption must maintain the exempt status of the information if the covered person submits a written request for maintenance of the exemption to the custodial agency.

This exemption applies to information held by an agency before, on, or after the effective date of the exemption.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2024, unless the statute is reviewed and reenacted by the Legislature before that date.

The bill also provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure specified information of certain agency personnel and their families. The public necessity statement notes:

[t]he Legislature finds...[domestic violence centers' staff, volunteers] and their family members are at a heightened risk of physical and emotional harm from perpetrators of domestic violence who have contentious reactions to actions taken by such personnel to house and protect victims to actions taken by such personnel to house and protect victims of domestic violence and limit further harm to such activities. The Legislature further finds that it is necessary to provide safeguards to staff and volunteers who are offering their time to protect victims of domestic violence. Without such protection, individuals may be less willing to volunteer or work for such centers, thus reducing the pool of resources and assistance available to address the already significant needs of victims of domestic violence.

The DCF reports that the law would provide some level of protection to the persons covered under the bill who are at risk of or who have been threatened with harm from perpetrators of domestic violence.⁶²

⁶² The DCF, *Agency Analysis for SB 68*, p. 2, January 11, 2021 (On file with the Senate Committee on Children, Families, and Elder Affairs).

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. SB 68 enacts a new exemption for specified public records relating to domestic violence centers' staff, volunteers, and their spouse and children and the bill will require, therefore, two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires the law state with specificity the public necessity to justify a new or substantially amended exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect staff, volunteers, and their spouse and children from perpetrators of domestic violence who pose a risk of harm to them, and reduce the risk that individuals may be less willing to volunteer or work for domestic violence centers as a result of such risk. The bill exempts only those persons who are at risk of harm and their relevant location or identifying information which could pose a harm to them. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁶³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁶³ Section 119.07(2) and (4), F.S.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 68
FINAL ACTION: Favorable
MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: 37 Senate Building

Table with 10 columns: FINAL VOTE (Yea, Nay), SENATORS, and four pairs of Yea/Nay columns. Includes rows for Brodeur, Garcia, Harrell, Rouson, Torres, Wright, Albritton (VICE CHAIR), and Book (CHAIR), plus a TOTALS row at the bottom showing 8 Yea and 0 Nay.

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting



2021 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Children and Families

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 68
BILL TITLE:	<u>Public Records/Staff and Volunteers of Domestic Violence Centers</u>
BILL SPONSOR:	Senator Garcia
EFFECTIVE DATE:	Upon becoming a law.

<u>COMMITTEES OF REFERENCE</u>
1) Children, Families, and Elder Affairs
2) Criminal Justice
3) Rules
4)
5)

<u>CURRENT COMMITTEE</u>
N/A

<u>SIMILAR BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	N/A
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	

<u>Is this bill part of an agency package?</u>
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 11, 2021 For further information, please contact John Paul Fiore at (850) 488-9410.
LEAD AGENCY ANALYST:	Nina Zollo, DV Office
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Stefanie Camfield, OGC
FISCAL ANALYST:	Emily Chavez, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill exempts from public records personal identifying information of current and former staff and volunteers of domestic violence centers that are certified by the Department of Children and Families (Department). The bill also exempts personal identifying information of spouses and children of current and former staff and volunteers of certified domestic violence centers.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 1., s. 119.071, F.S., General exemptions from inspection or copying of public records. –

Currently, there is no public records exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by the Department pursuant to Chapter 39. There is no public records exemption for the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of current or former staff and volunteers of certified domestic violence centers, or for the names and locations of schools and day care facilities attended by the children of center personnel.

Some certified domestic violence centers have reported to the Department that employees and volunteers have been physically threatened, stalked and emotionally abused by perpetrators of domestic violence and families of perpetrators because of the protective services centers provide to survivors of domestic violence and their children. Such threats and intimidation by perpetrators can extend to the spouses and children of certified domestic violence employees and volunteers because their employee and volunteer files that contain their home addresses and other personal information are subject to public records requests. It has been reported that perpetrator threats and emotional abuse have led to staff leaving their employment with centers because of safety concerns and additional stress. The possibility that employee and volunteer records with personal information can be released to perpetrators through public records requests also may discourage potential qualified employees and volunteers, some of whom are survivors themselves, from working or volunteering at the centers because of safety concerns.

Section 2. Statement of Public Necessity. -

Currently, there is no recognition in statute by the legislature that current and former employees and volunteers of certified domestic violence centers and their families are at a heightened risk of physical and emotional harm from perpetrators because of the work they do at the centers to protect survivors of domestic violence and their children. There is no recognition in statute that a public records exemption for home addresses and other personal information would provide the necessary protection to current and former center employees, volunteers and their families and would encourage more people to work and volunteer at certified domestic violence centers.

2. EFFECT OF THE BILL:

Section 1., s. 119.071, F.S., General exemptions from inspection or copying of public records. –

This section creates (i), a public records exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by the department pursuant to Chapter 39; (ii) a public records exemption for the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of current or former staff and volunteers of certified domestic violence centers; (iii) a public records exemption for the names and locations of schools and day care facilities attended by the children of these personnel.

The bill would provide a level of protection to current and former employees and volunteers of certified domestic violence centers and their families who are a risk of, or have been threatened with physical harm, stalked and emotionally abused by perpetrators of domestic violence solely because they work for agencies that provide shelter and services to victims of domestic violence and their children.

Section 2. Statement of Public Necessity

This section demonstrates that the Legislature recognizes that current and former employees and volunteers of certified domestic violence centers and their families are at risk of physical and emotional harm from perpetrators because of the work they do at the centers, and that a public records exemption for home addresses and other personal information provides them with a level of protection to reduce the risk. This acknowledgment that a public records exemption is necessary will help reduce the stress and fear experienced by current and former center employees, volunteers and their families, and will encourage more people to work and volunteer at certified domestic violence centers.

Section 3.

The act shall take effect upon becoming a law.

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

If yes, explain:	No
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	None

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

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

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

If yes, provide a description:	No
Date Due:	N/A
Bill Section Number(s):	N/A

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

Board:	No
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation increase local taxes or fees?	The Department's Office of Administrative Services finds that this bill does not increase local taxes or fees.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	The Department's Office of Administrative Services finds that this section is not applicable.

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation contain a State Government appropriation?	The Department's Office of Administrative Services finds that this bill does not contain a State Government Appropriation.
If yes, was this appropriated last year?	The Department's Office of Administrative Services finds that this section is not applicable.

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Other:	The Department's Office of Administrative Services finds that this section is not applicable.

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

Does the bill increase taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not increase taxes, fees or fines.
Does the bill decrease taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not decrease taxes, fees or fines.
What is the impact of the increase or decrease?	The Department's Office of Administrative Services finds that this section is not applicable.
Bill Section Number:	The Department's Office of Administrative Services finds that this section is not applicable.

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No system changes are anticipated to be needed. The Department and domestic violence centers may need to review practice on what is posted on the web, redacted, or provided to the public.
If yes, describe the anticipated impact to the agency including any fiscal impact.	None anticipated based on analysis.

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	The Office of General Council has no issues, concerns, comments or recommended action.
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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.)

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

BILL: CS/SB 70

INTRODUCER: Children, Families, and Elder Affairs and Senator Garcia

SUBJECT: Domestic Violence Centers

DATE: February 5, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Fav/CS
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 70 creates s. 39.9057, F.S., making it a first degree misdemeanor to maliciously publish, disseminate, or disclose any information or image which may identify a domestic violence center certified under s. 39.905, F.S. Any person who violates the law commits a misdemeanor of the first degree, punishable by up to one year imprisonment or \$1,000 fine as provided in s. 775.082, F.S., or s. 775.083, F.S.

The bill reclassifies the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent violation. A third degree felony is punishable by up to five years imprisonment or \$5,000 fine as provided in s. 775.82, F.S, s. 775.83, F.S., or s.775.084, F.S.

The bill creates a new first degree misdemeanor. To the extent this results in persons being sentenced to jail, it will likely have a positive insignificant jail bed impact (i.e. an increase of 10 or fewer beds). The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a third degree felony. To the extent this results in persons being sentenced to prison, the bill will likely have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Certified Domestic Violence Centers

Section 39.903, F.S., requires the DCF to comply with a variety of duties related to domestic violence centers. In part, the DCF is required to approve or reject the applications for initial certification of domestic violence centers, and annually renew the certification thereafter.¹ Certified domestic violence centers must comply and meet minimum statutory requirements.²

The DCF and domestic violence center employees and volunteers must keep the location of the centers and any information received by center clients as such information is deemed confidential and exempt³ from the requirements of ch. 119, F.S.⁴ Center clients may provide written consent to disclose information or records pertaining to them, and information about a client or the location of a center may be provided by staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:

- To medical personnel in a medical emergency.
- Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.
- Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.
- To firefighting personnel in a fire emergency.
- To any other person necessary to maintain the safety and health standards in the domestic violence shelter.
- Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.⁵

Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁶

¹ Section 39.903(2), F.S.

² Section 39.905(1), F.S. (requiring, for instance, certified domestic violence centers to: provide a facility which will serve as a center to receive and house persons who are victims of domestic violence, including children of the victim; provide services such as information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, and training for law enforcement personnel; file with the DCF a list of the names of the domestic violence advocates who are employed or who volunteer at the domestic violence center who may claim privilege under s. 90.5036, F.S.)

³ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁴ Section 39.908(1), F.S.

⁵ Section 39.908(2), F.S.

⁶ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted the statutory definition of “public record” to include material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.⁸

A domestic violence victim may request in writing that information which reveals his or her home or employment telephone number, home address, or personal assets is exempt from s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, but such request must contain official verification that an applicable crime has occurred.⁹

Any public officer who violates any provision of the Public Records Act commits a noncriminal infraction or, if he or she knowingly violated it, is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree.^{10, 11} Any person who willfully and knowingly violates any provision of Public Records Act commits a misdemeanor of the first degree.

Address of Domestic Violence Victim Exempt

Chapter 741, F.S., establishes an Address Confidentiality Program in which the Attorney General serves as the address¹² of a domestic violence victim who fears for his or her safety or his or her children’s safety.¹³ Addresses, telephone numbers, and social security numbers of participants in the program that are held by the Attorney General, supervisor of elections, and Department of State are exempt from public records disclosure under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, except in limited circumstances.¹⁴

⁷ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.071(2)(j), F.S. Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁰ Section 119.10(1), F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 741.465(1), F.S., states that “address” means a residential street address, school address, or work address, as specified on the individual’s application to be a program participant in the Address Confidentiality Program for Victims of Domestic Violence.

¹³ Section 741.403(1), F.S. Section 741.30, F.S., permits domestic violence victims to file petition for an injunction in a confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.

¹⁴ Section 741.465(1) and (2), F.S. (providing exceptions to the exemption from s. 119.071(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, including to law enforcement for purposes of assisting in the execution of a valid arrest warrant; if directed by a court order, to a person identified in the order; or, if held by the Attorney General, if the certification has been canceled).

Federal and Other States' Legislation

The Federal government awards grants to states to prevent incidents of domestic violence, including funds for shelters.¹⁵ Federal law provides that the address or location of any shelter facility that maintains a confidential location shall not be made public, except by written authorization of the person responsible for the operation of the shelter.¹⁶

There are at least 19 states, including Florida, that require the location of safe houses to be confidential.¹⁷ Eight of the states impose penalties for the unlawful disclosure of the location, and four states create criminal offenses for unlawfully disclosing the information relating to the location of safe houses.¹⁸

Reclassification

Florida currently has numerous statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Examples of criminal offenses that provide for such reclassification include, in part:

- A violation of driving under the influence is a first degree misdemeanor that provides for the offense to be reclassified to a third degree¹⁹ felony upon a third conviction within a 10 year period.²⁰
- A violation of driving while license suspended is a second degree misdemeanor²¹ for a first offense.²² A second or subsequent conviction is reclassified from a second degree misdemeanor to a first degree misdemeanor.²³ Further, a third or subsequent conviction is reclassified to a third degree felony if the violation or the most recent prior conviction is related to a violation of specified driving offenses.²⁴
- A violation of the theft statute under s. 812.014, F.S., can be classified from a second degree misdemeanor up to a first degree felony²⁵ depending on the circumstances, type, and value of the property stolen. Additionally, theft offenses are reclassified when a person is convicted more than once, such as a petit theft where the property is valued at more than \$100, but less

¹⁵ 42 U.S.C.A. §§ 10401, 10406(a).

¹⁶ 42 U.S.C.A. §§ 10401, 10406(H).

¹⁷ Michelle Kirby, *OLR Research Report*, p. 1, available at <https://www.cga.ct.gov/2014/rpt/2014-R-0011.htm> (last visited February 4, 2021). "Safe house" refers to a shelter provided to people who are in danger, including domestic and family violence shelters, trafficking shelters, shelters for victims of dating violence or sexual assault, temporary emergency shelters, and transitional housing for victims and their dependents.

¹⁸ *Id.* (noting that California, Georgia, South Carolina, and Washington have criminal statutes for disclosing information relating to the location of safe houses).

¹⁹ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

²⁰ Section 316.193(2)(b)1., F.S.

²¹ A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

²² Section 322.34(2)(a), F.S.

²³ Section 322.34(2)(b), F.S.

²⁴ Section 322.34(2)(c), F.S. The enumerated specified offenses include driving under the influence; refusal to submit to a urine, breath-alcohol, or blood alcohol test; a traffic offense causing death or serious bodily injury; or fleeing and eluding.

²⁵ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

than \$750, is a first degree misdemeanor but a person who has previously been convicted two or more times for petit theft commits a third degree felony.²⁶

Freedom of Speech

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech...”²⁷ This language prohibits the government from having the ability to constrain the speech of citizens.²⁸ However, the prohibition on restricting freedom of speech is not absolute.

Speech may be restricted on the basis of its content if the restriction passes a strict scrutiny test which means that the government may regulate the content of speech if there is a “compelling interest” and it is “the least restrictive means to further the articulated interest.”²⁹ Further, speech that enjoys the broadest First Amendment protection may still be subject to “regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”³⁰ Governments commonly restrict speech by making it subject to criminal penalties or civil fines and sanction a person if they use it.³¹

III. Effect of Proposed Changes

The bill creates s. 39.9057, F.S., making it a first degree misdemeanor to maliciously publish, disseminate, or disclose any information or image which may identify a domestic violence center certified under s. 39.905, F.S. The bill reclassifies the offense to a third degree felony when a person commits a second or subsequent violation of s. 39.9057, F.S.

The bill limits the application of the criminal penalty to any person who *maliciously* publishes, disseminates, or discloses any descriptive information, image or other information that may identify the location of a domestic violence center. Therefore, a person must be found to publish, disseminate, or disclose such information wrongfully, intentionally, and without legal justification or excuse to be subject to the criminal penalties created in the bill.³²

The bill is effective July 1, 2021.

²⁶ Section 812.04(3)(a), F.S.

²⁷ U.S. CONST. amend. I.

²⁸ Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at <https://fas.org/sgp/crs/misc/95-815.pdf> (last visited February 4, 2021)(hereinafter cited as “Exceptions to the First Amendment”).

²⁹ *Id.*; See also *Sable Communications of California, Inc. v. Federal Communications Commission*, 492 U.S. 115, 126 (1989).

³⁰ *Exceptions to the First Amendment*, p. 6.

³¹ *Id.*

³² See *Kennedy v. State*, 59 So. 3d 376, 380 (Fla. 4th DCA 2011); See also *See Reed v. State*, 837 So.2d 366 (Fla.2002).

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

Section 1 of the bill creates a new criminal offense that may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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 creates a new misdemeanor offense. To the extent that this results in persons being sentenced to jail, the bill will likely have a positive insignificant jail bed impact (i.e. an increase of 10 or fewer beds). To the extent that fines are imposed, they will be deposited in the Fine and Forfeiture Fund established in s. 142.01, F.S.

The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a third degree felony. To the extent this results in persons being sentenced to prison, the bill will likely have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer beds).

The Department of Office Administration Services finds that there are no expenditures generated by this bill.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 39.9057 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 3, 2021:

The committee substitute reclassifies the criminal offense from a first degree misdemeanor to a third degree felony for a second or subsequent conviction.

- B. **Amendments:**

None.

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

³³ The DCF, *Agency Analysis for SB 70*, p. 4, January 11, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).



263948

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/03/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 17 - 19
and insert:
otherwise maliciously discloses the location of a center commits
a:
(1) Misdemeanor of the first degree, punishable as provided
in s. 775.082 or s. 775.083.
(2) Felony of the third degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084, upon a second or



263948

11 subsequent conviction.

By Senator Garcia

37-00391C-21

202170__

1 A bill to be entitled
2 An act relating to domestic violence centers; creating
3 s. 39.9057, F.S.; prohibiting the unlawful disclosure
4 of certain information about domestic violence
5 centers; providing criminal penalties; providing an
6 effective date.

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

9
10 Section 1. Section 39.9057, Florida Statutes, is created to
11 read:

12 39.9057 Unlawful disclosure of certified domestic violence
13 center location; penalties.—Any person who maliciously
14 publishes, disseminates, or discloses any descriptive
15 information or image that may identify the location of a
16 domestic violence center certified under s. 39.905 or who
17 otherwise maliciously discloses the location of a center commits
18 a misdemeanor of the first degree, punishable as provided in s.
19 775.082 or s. 775.083.

20 Section 2. This act shall take effect July 1, 2021.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 70
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: 37 Senate Building

FINAL VOTE		SENATORS	2/03/2021 ¹ Amendment 263948					
			Albritton		Yea	Nay	Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brodeur						
X		Garcia						
X		Harrell						
X		Rouson						
X		Torres						
X		Wright						
X		Albritton, VICE CHAIR						
X		Book, CHAIR						
8	0		FAV	-				
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting



2021 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Children and Families

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 70
BILL TITLE:	<u>Domestic Violence Centers</u>
BILL SPONSOR:	Senator Garcia
EFFECTIVE DATE:	July 1, 2021

<u>COMMITTEES OF REFERENCE</u>
1) Children, Families, and Elder Affairs
2) Criminal Justice
3) Rules
4)
5)

<u>CURRENT COMMITTEE</u>
N/A

<u>SIMILAR BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	N/A
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	

<u>Is this bill part of an agency package?</u>
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 11, 2021 For further information, please contact John Paul Fiore at (850) 488-9410.
LEAD AGENCY ANALYST:	Nina Zollo, DV Office
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Stefanie Camfield, OGC
FISCAL ANALYST:	Emily Chavez, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill proposes a new statute prohibiting the malicious publication, dissemination or disclosure of any descriptive information or image that may identify the location of a domestic violence center certified by the Department of Children and Families (Department) under Chapter 39, F.S., and provides criminal penalties.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 1., s. 39.9057, F.S., Unlawful disclosure of certified domestic violence center location; penalties. - Pursuant to s. 39.903, F.S., the Department certifies and monitors certified domestic violence centers that meet the requirements of s. 39.905, F.S.

The Florida Legislature has exempted from public records the location of certified domestic violence centers and facilities to protect the safety of survivors and their children and employees and volunteers of the centers. Survivors are more likely to seek help if they know they are receiving shelter and other services in a confidential location that cannot be located by perpetrators.

Section 39.908, F.S., "Confidentiality of information received by department or domestic violence center", provides that:

- (1) *Information about clients received by the department or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection, or otherwise, is confidential and exempt from the provisions of s. 119.07(1). Information about the location of domestic violence centers and facilities is confidential and exempt from the provisions of s. 119.07(1).*

Section 39.908, F.S., currently authorizes disclosure of the location of certified domestic violence centers to certain persons in specific situations:

- (2) *Information about domestic violence center clients may not be disclosed without the written consent of the client to whom the information or records pertain. For the purpose of state law regarding searches and seizures, domestic violence centers shall be treated as private dwelling places. Information about a client or the location of a domestic violence center may be given by center staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:*
- (a) *To medical personnel in a medical emergency.*
 - (b) *Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.*
 - (c) *Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.*
 - (d) *To firefighting personnel in a fire emergency.*
 - (e) *To any other person necessary to maintain the safety and health standards in the domestic violence shelter.*
 - (f) *Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.*
- (3) *The restriction on the disclosure or use of the information about domestic violence center clients does not apply to:*
- (a) *Communications from domestic violence shelter staff or volunteers to law enforcement officers when the information is directly related to a client's commission of a crime or threat to commit a crime on the premises of a domestic violence shelter; or*
 - (b) *Reporting suspected abuse of a child or a vulnerable adult as required by law. However, when cooperating with protective investigation services staff, the domestic violence shelter staff and volunteers must protect the confidentiality of other clients at the domestic violence center.*

Currently, there are no criminal penalties in Chapter 39, F.S., or in any other Florida statute for persons who maliciously publish, disseminate or disclose the confidential location of a certified domestic violence center.

2. EFFECT OF THE BILL:**Section 1., s. 39.9057, F.S., Unlawful disclosure of certified domestic violence center location; penalties. –**

Creates s. 39.9057, F.S., to criminalize the malicious publication, dissemination or disclosure of any descriptive information or image that may identify the location of a certified domestic violence center or that otherwise maliciously discloses the location of a center.

Persons convicted of this crime commit a misdemeanor of the first degree, may be sentenced to serve up to one year in prison, and/or of a fine not to exceed \$1,000.00 and imposition of court costs. The threat of criminal penalties may dissuade persons with malicious intent from disclosing or publishing the location of or descriptive information or images that disclose the location of certified domestic violence centers and thus prevent harm to survivors, their children, as well as to center employees and volunteers.

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

If yes, explain:	NO
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	None

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

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

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

If yes, provide a description:	No
Date Due:	N/A
Bill Section Number(s):	N/A

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

Board:	No
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation increase local taxes or fees?	The Department's Office of Administrative Services finds that this bill does not increase local taxes or fees.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	The Department's Office of Administrative Services finds that this section is not applicable.

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	Indeterminant. Pursuant to s. 775.083, F.S., a person may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000 if convicted of a misdemeanor of the first degree. The fine imposed in this subsection will be deposited by the Clerk of the Court in the Fine and Forfeiture Fund established in s. 142.01, F.S.
Expenditures:	The Department's Office of Administration Services finds that there are no expenditures generated by this bill.
Does the legislation contain a State Government appropriation?	The Department's Office of Administrative Services finds that this bill does not contain a State Government Appropriation.
If yes, was this appropriated last year?	The Department's Office of Administrative Services finds that this section is not applicable.

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	The Department's Office of Administration Services finds that there are no revenues generated by this bill.
Expenditures:	A person who is convicted of this crime may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000, pursuant to s. 775.082, F.S., and s. 775.083, F.S.
Other:	The Department's Office of Administrative Services finds that this section is not applicable.

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

Does the bill increase taxes, fees or fines?	This bill proposed a new criminal law with a penalty, if a person is convicted, may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000, pursuant to s. 775.082, F.S., and s. 775.083, F.S.
Does the bill decrease taxes, fees or fines?	The Department's Office of Administrative Services finds this bill does not decrease taxes, fees or fines.

What is the impact of the increase or decrease?	A person who is convicted of this crime may serve a term of imprisonment not exceeding one year and/or a fine up to \$1,000 per s. 775.082, F.S., and s. 775.083, F.S.
Bill Section Number:	Section 1.

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No system changes are anticipated to be needed. The Department does publish the phone number and county (no address) of domestic violence centers at: https://www.myflfamilies.com/service-programs/domestic-violence/map.shtml https://www.myflfamilies.com/service-programs/domestic-violence/map.shtml It is not specified whether these centers are certified under section 39.905, F.S., and it appears that the information available is necessary to individuals who need the services of the centers but does not provide the information the bill seeks to protect.
If yes, describe the anticipated impact to the agency including any fiscal impact.	None anticipated based on analysis.

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

The proposed bill does not define "maliciously" or cross-reference to another statute that defines "maliciously." Other Florida criminal statutes define maliciously as "wrongfully, intentionally and without legal justification or excuse." The proposed bill also does not define what constitutes "publication, dissemination or disclosure" of descriptive information or images that identify the location of a certified domestic violence center. The lack of definitions of these terms could result in the bill impacting persons who probably are not the intended targets of the bill.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments
and recommended action:

The Department's Office of General Counsel has no issues, concerns,
comments on this bill.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 252

INTRODUCER: Senator Stewart

SUBJECT: Child Care Facilities

DATE: February 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Favorable</u>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 252 creates the “Child Safety Alarm Act” and requires that after January 1, 2022, vehicles used by child care facilities to transport children must be equipped with an approved alarm system that prompts the driver to inspect the vehicle for the presence of children before leaving the area. This change is in response to reported deaths of small children who are left in vehicles during periods of hot weather.

The bill requires the Department of Children and Families (DCF) to adopt minimum safety standards for reliable alarm systems and maintain a list of alarm manufacturers and alarm systems that are approved to be installed in vehicles.

The bill also provides rulemaking authority.

The bill is expected to have a significant fiscal impact on private entities. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

Death by hyperthermia, or vehicular heat stroke deaths, have become more prevalent since federal law required that children ride in the backseat due to the danger of front passenger seat airbags.¹ The national average number of these deaths is 39 per year.² Fifty-five percent of hyperthermia deaths involve children under the age of one, and eighty-eight percent involve

¹ See Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car is a Horrifying Mistake. Is it a Crime?*, The Washington Post, Mar. 8, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549.html> (last visited January 27, 2021).

² See Kids and Cars.org, *Children Vehicular Heatstroke Deaths by Year*, available at <https://www.kidsandcars.org/how-kids-get-hurt/heat-stroke/> (last visited January 27, 2021).

children under the age of three.³ Between 1998 and 2021, Florida has the second highest number of child deaths from vehicular heat stroke.⁴ In 2020, 24 children fell victim to vehicular heat stroke deaths nationwide.⁵ Three of these 24 deaths in 2020 occurred in Florida.⁶

Technology Based Prevention

Automobile Manufacturers

The auto industry has been aware of the problem for years and has researched ways to solve this problem. General Motors (GM) tried over ten years ago to find a solution, but found the results were unreliable. At the 2002 New York Auto Show, GM revealed a new mechanism capable of identifying the heartbeat of a child left in a car and measure the temperature of the vehicle. Once the heartbeat was detected, the mechanism prompted the car to activate its horn to alert individuals nearby. GM later reported that the system was abandoned after it was found "not reliable enough to put into production."⁷

Ford was another automaker who attempted to develop such a system. However, a decade after starting, the technology isn't available on any automobile as a factory standard feature or option. Auto safety groups have called for manufacturers to do more, but for several reasons including cost, technology, liability and privacy issues, there is still no foolproof way of preventing overheating deaths or warning of the possibility before they happen.⁸

In 2016, GM announced it would introduce a new safety system to remind drivers to check for children in the rear seats and that features could be developed later to detect forgotten children.⁹ Later that same year, the National Highway Traffic Safety Administration (NHTSA) said it didn't plan to require automakers to add in-vehicle technology that would alert those who leave young children behind in hot cars.¹⁰

Aftermarket Systems

There are numerous aftermarket warning systems that alert a parent to a child left in a safety seat, shopping cart, or elsewhere, but federal regulators have questioned their efficacy.¹¹

³ See Kids and Cars.org, *Fact Sheet*, available at <https://www.kidsandcars.org/wp-content/uploads/2020/01/Heatstroke-fact-sheet.pdf> (last visited January 27, 2021).

⁴ National Safety Council, *Hot Car Deaths*, available at <https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/hotcars/> (last visited January 27, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ Paul Eisenstein, *Death in Hot Cars: Why Can't the Automakers Prevent the Danger?* July 14, 2014, available at <http://www.nbcnews.com/storyline/hot-cars-and-kids/death-hot-cars-why-cant-automakers-prevent-danger-n152911> (last visited January 27, 2021).

⁸ *Id.*

⁹ David Shepardson, *GM has a way to help prevent drivers from forgetting children in the back seat*, Business Insider, January 12, 2016, available at <https://www.businessinsider.com/r-gm-unveils-technology-to-help-avoid-child-heatstroke-deaths-2016-1> (last visited January 27, 2021).

¹⁰ *Id.*

¹¹ Ryan Jaslow, *Gov't study: Devices that alert parents they left a child in a car deemed unreliable*, CBS News, July 31, 2012, available at <https://www.cbsnews.com/news/govt-study-devices-that-alert-parents-they-left-a-child-in-car-deemed-unreliable/> (last visited February 1, 2021).

A preliminary assessment performed on technology devices aimed at helping to prevent a child from being unintentionally left in a hot car concluded that they are not reliable and limited in their effectiveness, according to a study by NHTSA and the Children's Hospital of Philadelphia.¹²

The study revealed as number of potential issues, including inconsistent sensitivity in the arming of the device, discrepancies in the distance of the warning signal, potential electronic interference from other devices, children accidentally disarming the alarm by slumping over or sleeping out of position, and other common scenarios, such as a spilled beverage.¹³ Installation was complex and extensive for several of the products tested. Moreover, since the devices are restraint-based, the 20 to 40 percent of children who are killed after entering a vehicle without adult permission would not be helped by these products.¹⁴

Licensing Standards for Child Care Facilities and Large Family Child Care Homes

The DCF establishes licensing standards that each licensed child care facility¹⁵ in the state must meet.¹⁶ Statutory licensing standards for child care facilities are extensive and reference transportation and vehicles, including, in part, the requirement that minimum standards include accountability for children being transported.¹⁷ The Florida Administrative Code provides requirements for licensed child care facilities and large family child care homes¹⁸ to follow in relation to vehicles that are owned, operated, or regularly used by the facility or home, as well as vehicles that provide transportation through a contract or agreement with an outside entity.¹⁹

For example, providers are required to maintain a driver's log for all children being transported. This log must include the child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle.²⁰ Upon arrival at the destination, the driver of the vehicle must mark each child off the log as the child departs the vehicle, conduct a physical inspection and visual sweep of the vehicle, and sign, date, and record the driver's log immediately to verify all children were accounted for and that the sweep was conducted.²¹ Upon arrival at the destination, a second staff member must also conduct a physical inspection and visual sweep of the vehicle and sign, date,

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 402.302(2), F.S., defines a "child care facility" as "any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit." Exceptions to this definition include public and nonpublic schools and their integral programs, summer camps with children in full-time residence, summer day camps, bible schools normally conducted during vacation periods, and operators of transient establishments under certain conditions.

¹⁶ *See* Section 402.305, F.S.

¹⁷ *Id.*

¹⁸ Section 402.302(11), F.S. defines a "large family child care home", in part, as an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation.

¹⁹ *See* 65C-22.001(6), F.A.C.

²⁰ *Id.*

²¹ *Id.*

and record the driver's log to verify all children were accounted for and that the driver's log is complete.²²

As of December 14, 2020, approximately 1,566 child care providers licensed by the DCF offer transportation services.²³ Current standards for child care facilities and large family child care homes do not address alarm systems in vehicles. However, Palm Beach County and Broward County have requirements similar to the one proposed in the bill.²⁴

III. Effect of Proposed Changes:

The bill provides that the act may be cited as the "Child Safety Alarm Act."

The bill amends s. 402.305, F.S., in part, to require that on or after January 1, 2022, vehicles used by child care facilities and large family child care homes to transport children must have an approved alarm system that prompts the driver to inspect the vehicle for the presence of children before leaving the area. The bill requires the DCF to adopt by rule minimum safety standards for reliable alarm systems and maintain a list of alarm manufacturers and alarm systems that are approved to be installed in vehicles.

The bill also modifies existing minimum safety standards pertaining to transportation for child care facilities. Specifically, the bill amends certain standards in s. 402.305(10), F.S., to:

- Clarify that the limitations on the number of children is related to how many may be transported within each vehicle;
- Provide that the standards must include procedures to ensure that children are not inadvertently left in vehicles when transported by the facility, rather than just procedures to avoid leaving children in vehicles; and
- Require that systems are in place to ensure accountability measures for each facility.

The bill also clarifies that child care facilities and large family child care homes are not responsible for the safe transport of children when they are being transported by a parent or guardian.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²² *Id.*

²³ The DCF, Agency Analysis of Senate Bill 252, p. 6 (December 14, 2020)(on file with the Senate Committee on Children, Families, and Elder Affairs)(hereinafter cited as, "The DCF Analysis").

²⁴ The DCF Analysis, p. 7.

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 DCF anticipates that all of the 1,566 licensed providers offering transportation services will need to purchase at least one of the alarm systems required by the bill.²⁵ The DCF estimates that the lowest cost for one of the alarms would be \$130, plus \$100 for installation for a total of \$230 and the highest cost would be \$156 plus \$450 for installation for a total of \$606.²⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 402.305 of the Florida Statutes.

²⁵ The DCF Analysis, p. 6.

²⁶ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Stewart

13-00124-21

2021252__

1 A bill to be entitled
2 An act relating to child care facilities; providing a
3 short title; amending s. 402.305, F.S.; requiring
4 certain vehicles, by a specified date, to be equipped
5 with a reliable alarm system that meets specified
6 criteria; requiring the Department of Children and
7 Families to adopt by rule minimum safety standards for
8 such systems and to maintain a list of approved alarm
9 manufacturers and alarm systems; making technical
10 changes; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. This act may be cited as the "Child Safety Alarm
15 Act."

16 Section 2. Subsection (10) of section 402.305, Florida
17 Statutes, is amended to read:

18 402.305 Licensing standards; child care facilities.—

19 (10) TRANSPORTATION SAFETY.—

20 (a) Minimum standards shall include all of the following:

21 1. Requirements for child restraints or seat belts in
22 vehicles used by child care facilities and large family child
23 care homes to transport children.

24 2. Requirements for annual inspections of such the
25 vehicles.

26 3. Limitations on the number of children that may be
27 transported in such the vehicles.

28 4. Procedures to ensure that ~~avoid leaving~~ children are not
29 inadvertently left in vehicles when transported by the facility

13-00124-21

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30 or home, and that systems are in place to ensure accountability
31 for children transported by such facilities and homes ~~the child~~
32 ~~care facility.~~

33 (b) By January 1, 2022, all vehicles used by child care
34 facilities and large family child care homes to transport
35 children must be equipped with a reliable alarm system approved
36 by the department which prompts the driver to inspect the
37 vehicle for children before exiting the vehicle. The department
38 shall adopt by rule minimum safety standards for such systems
39 and shall maintain a list of approved alarm manufacturers and
40 alarm systems that meet or exceed those standards.

41 (c) A child care facility or large family child care home
42 is not responsible for the safe transport of children when they
43 are being transported by a parent or guardian.

44 Section 3. This act shall take effect October 1, 2021.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 252
FINAL ACTION: Favorable
MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: 37 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brodeur						
X		Garcia						
X		Harrell						
X		Rouson						
X		Torres						
X		Wright						
X		Albritton, VICE CHAIR						
X		Book, CHAIR						
8	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting



2020 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Children and Families

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 252
BILL TITLE:	<u>Child Care Facilities</u>
BILL SPONSOR:	Senator Stewart
EFFECTIVE DATE:	October 1, 2021

<u>COMMITTEES OF REFERENCE</u>
1) Not yet assigned
2)
3)
4)
5)

<u>CURRENT COMMITTEE</u>
Not yet assigned

<u>SIMILAR BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	2012: HB 419/SB0274 2011: HB 1131/SB 1140 HB 1150 (Compare Bills) 2018: SB 486/HB 0305 2019: HB 69/ SB 94 2020: SB 88/ HB 679
SPONSOR:	2012: Rep. Berman; Sachs 2011: Rep. Berman; Latvala, Sachs 2018: Sen. Stewart; Rep. Antone 2019: Sen. Stewart; Rep. Antone 2020: Sen. Stewart; Rep. Antone
YEAR:	2012 2011 2018 2019 2020
LAST ACTION:	2012: SB 0274 –Died in Budget Subcommittee on Health and Human Service Appropriations; HB 419 Died in Health and Human Services Access Subcommittee 2011: HB 1131 Died in HHS Access Subcommittee; SB 1140 Died in Messages SB1150 Died in Messages 2018: SB 486 Died in Transportation HB 0486 Died in Children, Families & Seniors Subcommittee

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	NA
SPONSOR:	NA

<u>Is this bill part of an agency package?</u>
No

2019:HB 69 Died in Health Care Appropriations SB 94 Died in Messages
2020: Both bills Died in Messages.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	12/14/2020
LEAD AGENCY ANALYST:	Hue Reynolds, Child Care
ADDITIONAL ANALYST(S):	Max Kruse, Child Care
LEGAL ANALYST:	Stefanie Camfield, OGC
FISCAL ANALYST:	Sharon Bufford, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill cites this act as the "Child Safety Alarm Act" and requires by a specified date that vehicles used by child care facilities and large family child care homes to transport children be equipped with a reliable alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle. The Department of Children and Families (~~department~~Department) is required to adopt by rule minimum safety standards for such systems and to maintain a list of approved alarm manufacturers and alarm systems, etc.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 402.305 (10) F.S., requires that the ~~De~~partment establish licensing standards for transportation safety, including child restraints or seat belts in vehicles used by child care facilities and large family child care homes to transport children, requirements for annual inspection of the vehicles, limitations on the number of children in the vehicles, procedures to avoid leaving children in vehicles when transported by the facility, and accountability for children transported by the child care facility or large family child care home. A child care facility is not responsible for children when they are transported by a parent or guardian.

The ~~De~~partment established the licensing standards for transportation safety in Chapters 65C-20, Florida Administrative Code (F.A.C), Family Day Care Standards and Large Family Child Care Home Standards, and 65C-22, F.A.C., Child Care Standards.

The ~~De~~partment does not maintain any list of approved products. Providers are required to operate and/or maintain products they chose to purchase according to the manufacturer's recommendations.

Licensed Large Family Child Care Homes:

Rule 65C-20.008 (6), F.A.C., incorporates the "Family Day Care Home and Large Family Child Care Home Licensing Handbook" (Family Day Care Home Handbook), dated May 2019, that establishes the standards for family child care homes and large family child care homes which includes requirements that homes must follow when transportation services are provided to the children in care. Such requirements are applicable to vehicles that are owned, operated, or regularly used by the home and vehicles that provide transportation through a contract or agreement with an outside entity.

Section 2.4 Transportation in the Family Day Care Home Handbook currently requires family day care homes and large family child care homes that transport children meet standards addressing: driver requirements, transportation log, emergency care plans, vehicle requirements, and seatbelt/child restraints. The Transportation Log standards address ways to ensure children are not left in the vehicle as follows:

2.4.2 Transportation Log: A log must be maintained for all children being transported in the vehicle or on foot away from and/or to the premises of the home. The log must be retained for a minimum of 12 months. The log must include each child's name, date, time of departure, time of arrival and the signature of the driver verifying all children were accounted for during the visual sweep.

- A. Prior to transporting children, the transportation log must be recorded, and dated immediately, verifying that all children were accounted for and that the log is complete.
- B. Upon arrival at the destination, the driver of the vehicle must:
 1. Mark each child off the log as the child departs the vehicle;
 2. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
 3. Record, sign, and date the transportation log immediately, verifying that all children were accounted for, and that the visual sweep was conducted.
 4. If the provider contracts/agrees with an outside entity/person to provide transportation, then the provider must perform the duties of the driver outlined above in numbers 1-3.

Large Family Child Care Home

In addition to the transportation log requirements above, the home employee or person(s) authorized by the large family child care home operator must:

- C. Conduct a second physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
- D. Sign, date and record the transportation log immediately, verifying that all children were accounted for, and that the log is complete.

Licensed Child Care Facilities:

Section 2.5 Transportation in the Child Care Facility Handbook currently requires child care facilities that transport children meet standards addressing: driver requirements, transportation log, emergency care plans, vehicle requirements, and seatbelt/child restraints. The Transportation Log standards address ways to ensure children are not left in the vehicle as follows:

2.5.2 Transportation Log:

- A. A log must be maintained for all children being transported in a vehicle or on foot away from the premises of the child care facility. The log must be retained on file at the facility for a minimum of 12 months and available for review by the licensing authority. The log must include:
 1. Each child's name,
 2. The date and time of departure,
 3. Time of arrival at the destination,
 4. The signature of the driver (or in the case of travelling on foot, the signature of the child care personnel), and
 5. The signature of a second staff member or person(s) authorized by the provider to verify the transportation log and that all children have arrived safely and have left the vehicle (if applicable).
- B. Prior to transporting children, the transportation log must be recorded, signed, and dated immediately, verifying that all children were accounted for and that the log is complete.
- C. Upon arrival at the destination by vehicle or by foot, the child care personnel must record, sign and date the transportation log immediately, verifying that all children were accounted for. The same must occur immediately upon returning to the facility premises.
- D. Upon arrival at the destination by vehicle, the driver of the vehicle must:
 1. Mark each child off the log as the child departs the vehicle;
 2. Conduct a physical inspection and visual sweep of the vehicle interior to ensure that no child is left in the vehicle; and
 3. Record, sign, and date the transportation log immediately, verifying that all children were accounted for, and that the visual sweep was conducted.
 4. Ensure that a second staff member signs and dates the transportation log verifying that all children were accounted for, and that the log is complete.
- E. Upon arrival at the destination by vehicle, a second and different staff member must:
 1. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
 2. Sign, date and record the transportation log immediately, verifying that all children were accounted for, and that the log is complete.

Licensed School-Age Child Care Facilities:

Section 2.5 Transportation in the School-Age Child Care Facility Handbook currently requires school-age facilities that transport children meet standards addressing: driver requirements, transportation log, emergency care plans,

vehicle requirements, and seatbelt/child restraints. –The Transportation Log standards address ways to ensure children are not left in the vehicle as follows:

2.5.2 Transportation Log

- A. A log –must be maintained for all children being transported in the vehicle or on foot away from and/or to the premises of the child care facility. The log must be retained on file at the facility for a minimum of 12 months and available for review by the licensing authority. The log must include:
1. Each child's name,
 2. Date and time of departure,
 3. Time of arrival at the destination,
 4. The signature of the driver (or in the case of traveling on foot, the signature of the child care personnel), and
 5. The signature of a second child care personnel or person(s) authorized by the parent to verify the transportation log and that all children have left the vehicle (if applicable).

Transportation bBy Foot

- B. Prior to transporting children by foot, the transportation log must be recorded with each child's name, the date and time of departure, and initialed by the child care personnel verifying that all children were accounted for and that the log is complete.
- C. Upon arrival at the destination by foot, the child care personnel must:
1. Record the date and time the child(ren) arrived at the destination on the transportation log immediately,
 2. Conduct roll call, record, date, and initial verifying that all children were accounted for.
 3. The same must occur prior to leaving that location and immediately upon returning to the facility premises. The first and second child care personnel must sign the log verifying all children are accounted for and the log is complete at each destination.
- D. Upon arrival at the destination by foot, a second and different child care personnel must:
1. Witness roll call to verify all children are accounted for and that the log is complete.
 2. Sign and date the transportation log.

Transportation bBy Vehicle

- E. Prior to transporting children by vehicle, the transportation log must be recorded with each child's name, the date and time of departure, and initialed by the child care personnel verifying that all children were accounted for and that the log is complete.
- F. Upon arrival at the destination, the driver of the vehicle must:
1. Mark each child off the log as the child departs the vehicle;
 2. Conduct a physical inspection and visual sweep of the vehicle interior to ensure that no child is left in the vehicle; and
 3. Record, sign, and date the transportation log immediately, verifying that all children were accounted for, and that the visual sweep was conducted.
 4. Ensure that a second child care personnel conducts a second visual sweep, signs and dates the transportation log verifying that all children were accounted for, and that the log is complete.
 5. If the provider contracts with an outside entity to provide transportation, then the provider must assign a child care personnel to perform the duties of the driver outlined above in numbers 1-3.
- G. Upon arrival at the destination by vehicle, a second and different child care personnel must:
1. Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
 2. Sign, date and record the transportation log immediately, verifying that all children were accounted for, and that the log is complete.

2. EFFECT OF THE BILL:

Section 2

This bill amends s. 402.305, F.S., requiring the ~~department~~Department to adopt additional minimum standards that include procedures to ensure that children are not inadvertently left in vehicles, as well as, have systems in place to ensure accountability for children transported by facilities and homes. Also, the bill requires that all vehicles used to transport children by a child care facility or a large family child care home be equipped with a reliable alarm system approved by the ~~department~~Department that prompts the driver to inspect the vehicle before exiting the vehicle on or before January 1, 2021.

The bill requires the ~~department~~Department to adopt by rule minimum safety standards for alarm systems and to maintain a list of approved alarm manufacturers and alarm systems which meet or exceed standards. In addition, the bill amends s. 402.305(10)(c), F.S., clarifying that a child care facility is not responsible for the safe transport of children when they are being transported by a parent or guardian.

Based on these amendments, the ~~De~~partment is required to determine/create a level of standards for these alarm systems and maintain a list of approved alarm systems.

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

If yes, explain:	The bill requires the department <u>Department</u> to adopt additional minimum safety standards for procedures and systems to ensure accountability for children being transported, require reliable alarm systems in vehicles used to transport children, and maintain a listing of approved alarm systems.
What is the expected impact to the agency's core mission?	None
Rule(s) impacted (provide references to F.A.C., etc.):	65C-20.008(6), F.A.C. 65C-22.001(6), F.A.C. 65C-22.008(5), F.A.C.

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

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

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? NO

If yes, provide a description:	No
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? NO

Board:	No
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT? YES

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	Pinellas, Hillsborough, and Sarasota counties would be required to adopt standards that address the minimum standards in the bill. On or before January 1, 2021, all vehicles used by child care facilities and large family child care homes must be equipped with a reliable alarm system, approved by the department Department, that prompts the driver to inspect the vehicle before exiting vehicle.
Does the legislation increase local taxes or fees?	The Department's Office of Administrative Services finds that this bill does not increase local taxes or fees.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	The Department's Office of Administrative Services finds that this section is not applicable.

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT? NONE

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill."
Expenditures:	The department Department recognizes that there is a workload increase in establishing and maintaining a list of approved alarm manufacturers. In addition, there is a cost of approximately \$6,500 for rule promulgation to adopt minimum safety standards for the alarm systems.- However, this minimal fiscal impact can be absorbed through existing resources. The IT cost associated with the new inspection template is \$40,000 to \$50,000 for the four-week project with a contracted vendor service. This impact can be absorbed by the Department through normal business operations.
Does the legislation contain a State Government appropriation?	The Department's Office of Administrative Services finds that this bill does not contain a State Government Appropriation.
If yes, was this appropriated last year?	The Department's Office of Administrative Services finds that this section is not applicable.

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR? NONE

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	Approximately 1,566 providers report to the department Department of offering a transportation service.- These programs would be required to purchase at a minimum one of the alarm systems required by this bill. The fiscal impact on individual providers will vary based on unit cost, installation costs, possible future warranty, maintenance/repair, and replacement fees. -The lowest cost would be \$130 for the alarm plus \$100 for installation for a total of \$230 and the highest cost would be \$156 for the alarm plus \$450 for installation for a total of \$606.

	Also, facilities and homes may incur additional costs to comply with standards adopted pursuant to the bill for procedures that children are not inadvertently left in vehicles and systems are in place to ensure accountability for children transported by facilities and homes.
Other:	The Department's Office of Administrative Services finds that this section is not applicable. N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? NO.

Does the bill increase taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not increase taxes, fees, or fines.
Does the bill decrease taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not decrease taxes, fees, or fines.
What is the impact of the increase or decrease?	The Department's Office of Administrative Services finds that this section is not applicable.
Bill Section Number:	The Department's Office of Administrative Services finds that this section is not applicable.

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	The Department's Office of Information Technology Services finds that this bill does impact the Department's technology systems.
If yes, describe the anticipated impact to the agency including any fiscal impact.	New inspection template that includes new standards pertaining to this bill. This project is estimated to take four weeks with an estimated cost of \$40,000 to \$50,000 for contracted vendor services. This impact can be absorbed by the Department through normal business operations.

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	The Department's Office of Child Welfare does not find that there will a federal impact due to the provisions of this bill. <u>No</u>
If yes, describe the anticipated impact including any fiscal impact.	The Department's Office of Child Welfare finds that this section is not applicable. <u>N/A</u>

ADDITIONAL COMMENTS

DCF regulates 62 of the 67 counties in Florida – five counties have Local Licensing Authority and must meet or exceed DCF standards.- Two of the Local Licensing counties, Palm Beach and Broward, have requirements similar to the one proposed in this bill.

Please note: Since Broward and Palm Beach counties already have a similar regulation in place, their providers were not included in our count of providers who would be impacted.

The wording "safe transport" was added to existing statutory language regarding child care facility not being responsible for children being transported by parent or guardians.- Clarification needs to be added as to what "safe transport" means and when it applies to the facility or home.²

Licensed Family Day Care Homes also provide transportation, but the bill only indicates large family day care homes. ~~Licensed Family Day Care Homes are much smaller operations and this requirement will be burdensome as an added expense that providers may not be able to afford.~~

Afterschool Program exempt from licensure pursuant to Chapter 65C-22.008, F.A.C., transport children to programs and would not be captured in this bill as requiring to have such an alarm.

There are numerous products available for purchase that purport to operate in a manner consistent with the purpose of this bill. ~~They are manufactured in numerous countries. Evaluating these products and determining which of these products to include on a department/Department-approved list will require extensive evaluation will be time consuming and expensive,~~ potentially requiring an expertise that may not be present in the ~~department/Department~~ currently. ~~There is a concern that this/This~~ could open the ~~department/Department~~ up to endorsing a product that ends up defective or result in private companies continually lobbying the ~~department/Department~~ to have their product featured on the approved list.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	The Department's Office of the General Counsel has no issues, concerns, or comments on this bill.
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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

2/3/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

252

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Child Care Facilities

Name Doug Bell

Job Title Lobbyist

Address 119 S. Monroe Street, Suite 200

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-205-9000

Email doug.bell@mhdfirm.com

Speaking: [] For [] Against [] Information

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

Representing Florida Chapter of the American Academy of Pediatrics (FCAAP)

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/03/21

Meeting Date

SB 252

Bill Number (if applicable)

Topic Child Care Facilities

Amendment Barcode (if applicable)

Name Andrew Kael

Job Title Legislative Affairs Director

Address 227 N. Bronough Street

Phone (850) 999-4655

Street

Tallahassee

FL

32301

City

State

Zip

Email andrew.kael@regionalcounsel.com

Speaking: For Against Information

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

Representing Office of Criminal Conflict and Civil Regional Counsel 5th Region

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/21

Meeting Date

SB 252

Bill Number (if applicable)

Topic Child Care Facilities

Amendment Barcode (if applicable)

Name Edeline Joseph-Theophile

Job Title _____

Address 413 Old Village Way

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Phone 727-469-3082

Oldsmar

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FL

State

34677

Zip

Email EdelineJT.PTA@gmail.com

Speaking: For Against Information

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

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 368

INTRODUCER: Senator Baxley

SUBJECT: Elder-focused Dispute Resolution Process

DATE: February 2, 2021

REVISED: 02/04/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Favorable
2.			JU	
3.			AP	

I. Summary:

SB 368 creates s. 44.407, F.S., providing an alternative dispute resolution option in which court-appointed eldercaring coordinators assist elders, their legally authorized decision makers, and their family members in resolving high-conflict disputes that can impact an elder's safety and autonomy.

The bill authorizes the court to refer cases to eldercaring coordination and establishes a specified framework for the referral process. The bill prohibits the referral of certain cases where a party has a history of domestic violence or exploitation of an elderly person, unless the parties consent to the referral and the court considers certain factors specific to the case.

The bill provides that an eldercaring coordinator is appointed for a specified period of time and requires the court to conduct review hearings periodically. The bill prescribes that eldercaring coordinators satisfy specified qualifications, including, in part:

- Professional requirements, including good standing status with the applicable professional licensing or certification board;
- Minimum requirements related to the number of years of post-licensure or post-certification practice; and
- Training in certain topics.

The bill provides specified procedures for the disqualification of a person serving as an eldercaring coordinator and provides for the suspension or removal of the coordinator under certain circumstances. The bill also requires the court to appoint successor eldercaring coordinators under certain circumstances.

The bill prohibits a court from ordering parties to eldercaring coordination without first confirming the financial ability of the parties to pay relevant fees and costs. Further, the court is required to determine the allocation among the parties of fees and costs for eldercaring

coordination and may make an unequal allocation based on the financial circumstances of each party after considering certain factors. If a court finds that a party is indigent, the bill prohibits the court from ordering the party to eldercaring coordination unless funds are available to pay the indigent party's allocated portion.

The bill provides that all communications that meet specified requirements and are made during eldercaring coordination must be kept confidential. The bill provides that parties to the eldercaring coordination, including the coordinator, may not testify unless one of the enumerated exceptions applies.

The bill provides legislative findings and requires the Florida Supreme Court to establish minimum standards and procedures for training, qualifications, discipline, and education of eldercaring coordinators. The bill also defines a number of terms, including:

- “Action”;
- “Elder”;
- “Eldercaring coordination”;
- “Eldercaring coordination communication”;
- “Eldercaring coordinator”;
- “Eldercaring plan”;
- “Good cause”;
- “Legally authorized decisionmaker”;
- “Participant”; and
- “Party”.

The Office of State Courts Administrator states that the bill will have an indeterminate fiscal impact on the state court system and no impact on the private sector. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Elder Population

As the country's “baby-boomer” population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016¹ to 77 million by 2034.² Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.³ In 2018, individuals age 65 and older

¹ Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing*, *Census Bureau Reports* (June 22, 2017), Release Number: CB17-100, available at <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> (last visited January 28, 2021).

² Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised Oct. 8, 2019), available at <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (last visited January 28, 2021).

³ Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (last visited January 28, 2021).

represented approximately 20 percent of Florida’s total population.⁴ By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state’s population and it is estimated that individuals age 65 and older will account for approximately 47.9% of the state’s population growth between 2010 and 2030.⁵

Mediation

Mediation is a process in which a neutral third person acts to facilitate the resolution of a lawsuit or other dispute between two or more parties.⁶ The statutes currently authorize courts to use mediation to aid in resolving cases, but the statutes also provide that many of the procedural aspects of mediation are to be governed by the Florida Rules of Civil Procedure.⁷ Depending on the type of case, there are different circumstances under which a court would refer the matter to mediation. In a lawsuit for money damages, the court must refer the matter to mediation upon the request of a party if the party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties.⁸ However, a court need not refer such a case to mediation if it is one of medical malpractice or debt collection, is a landlord-tenant dispute not involving personal injury, is governed by the Small Claims Act, or involves one of the few other circumstances set forth in statute.⁹

Beyond these cases that a court *must* refer to mediation, the court *may*, in general, refer all or part of any other filed civil action to mediation.¹⁰

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member^{11, 12} by another family or household member, including, but not limited to: how

- Assault;¹³

⁴ U.S. Census Bureau, *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States*, available at <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited January 28, 2021).

⁵ The Office of Economic & Demographic Research (EDR), *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, p. 89-90 and 269-70, available at http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf (last visited January 28, 2021); The EDR, *Econographic News: Economic and Demographic News for Decision Makers, 2019, Vol. 1*, available at: <http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited January 28, 2021).

⁶ Section 44.1011(2), F.S.; *See also* Fla. Jur. 2d, Arbitration and Award §113.

⁷ Section 44.102(1), F.S.

⁸ Section 44.102(2)(a), F.S.

⁹ *Id.*

¹⁰ Section 44.102(2)(b)-(d), F.S. Additionally, a court is required or authorized to refer certain family law and dependency matters to litigation, as specified in s. 44.102(2)(c) and (d), F.S.

¹¹ Section 741.28(2), F.S.

¹² Section 741.28(3), F.S., defines “family or household member” to mean spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

¹³ Section 784.011, F.S., defines “assault” to mean an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent.

- Aggravated assault;¹⁴
- Battery;¹⁵
- Aggravated battery;¹⁶
- Sexual assault;¹⁷
- Sexual battery;¹⁸
- Stalking;¹⁹
- Aggravated stalking;²⁰
- Kidnapping;²¹ or
- False imprisonment.²²

In 2018, Florida law enforcement agencies received 104,914 domestic violence reports,²³ resulting in 64,573 arrests.²⁴ Additionally, Florida's 41 certified domestic violence shelters²⁵

¹⁴ Section 784.021, F.S., defines "aggravated assault" means an assault with a deadly weapon without intent to kill or with intent to commit a felony.

¹⁵ Section 784.03, F.S., defines "battery" to mean the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another.

¹⁶ Section 784.045, F.S., defines "aggravated battery" to mean a battery in which the offender: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or victimizes a person the offender knew or should have known was pregnant.

¹⁷ "Sexual assault" has the same meaning as sexual battery. *See* University of South Florida, *USF Health in South Tampa Annual Security Report 2020*, p. 3-1, available at <https://health.usf.edu/-/media/3573942FF8E04B5F8B3FB4BF956BBC31.ashx>.

¹⁸ Section 794.011(1)(h), F.S., defines "sexual battery" to mean oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose.

¹⁹ Section 784.048(2), F.S., defines "stalking" to mean willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. Section 784.048(1)(d), F.S., defines "cyberstalk" to mean to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose.

²⁰ Section 784.048(3), F.S., defines "aggravated stalking" to mean willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person.

²¹ Section 787.01(1), F.S., defines "kidnapping" to mean forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to: hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function.

²² Section 787.02(1), F.S., defines "false imprisonment" to mean forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

²³ Florida Department of Law Enforcement, *Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2018*, p. 22, available at http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR18.aspx (last visited February 2, 2021).

²⁴ Florida Department of Law Enforcement, *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2018*, p. 21, available at http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_ARR_JUR18.aspx (last visited February 2, 2021).

²⁵ The Department of Children and Families ("The DCF") operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards. *See* The DCF, *Domestic Violence Program Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml>

²⁵ The DCF, *Domestic Violence Annual Report*, p. 2, available at <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2018-2019%20DV%20Service%20Report.pdf> (last visited February 2, 2021).

admitted new 14,817 victims to a residential services program and 38,869 new victims to a non-residential services program in FY 2018-19.²⁶

Exploitation of Vulnerable Adults

The “Adult Protective Services Act” (ch. 415, F.S.) defines abuse as “any willful act or threatened act by a relative, caregiver, or household member, which causes or is likely to cause significant impairment to a vulnerable adult’s²⁷ physical, mental, or emotional health.”²⁸ The Adult Protective Services program is located within the Department of Children and Families (“DCF”), and is responsible for investigating allegations of abuse, neglect²⁹, or exploitation³⁰, as provided in the Adult Protective Services Act.³¹

Section 415.1034, F.S., requires any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately.

Once a person reports to the central abuse hotline, the DCF must initiate a protective investigation within 24 hours.³² If a caregiver refuses to allow the DCF to begin a protective investigation or interferes with the investigation, the DCF can contact the appropriate law enforcement agency for assistance.³³

Chapter 825, F.S., also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.³⁴ Section 825.103, F.S., provides that a person commits the offense of “exploitation of an elderly person³⁵ or disabled adult”³⁶ when he or she:

- Stands in a position of trust and confidence, or has a business relationship, with an elderly person or a disabled adult and knowingly obtains or uses, or endeavors to obtain or use, the elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult;

²⁶ The DCF, *Domestic Violence Annual Report*, p. 2, available at <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2018-2019%20DV%20Service%20Report.pdf> (last visited February 2, 2021).

²⁷ Section 415.102(28), F.S., defines “vulnerable adult” to mean a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

²⁸ Section 415.102(1), F.S.

²⁹ See s. 415.102(16), F.S.

³⁰ See s. 415.102(8), F.S., for the definition of “exploitation”.

³¹ See ss. 415.101-415.113, F.S.

³² Section 415.104, F.S.

³³ *Id.*

³⁴ See ss. 825.101-106, F.S.

³⁵ Section 825.101(4), F.S., defines “elderly person” to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

³⁶ Section 825.101(3), F.S., defines “disabled adult” to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

- Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, and he or she knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;
- Breaches a fiduciary duty to the elderly person or disabled adult while acting as the person's guardian, trustee, or agent under a power of attorney, and such breach results in an unauthorized appropriation, sale, or transfer of property;
- Misappropriates, misuses, or transfers without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer; or
- Intentionally or negligently fails to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance while acting as a caregiver or standing in a position of trust and confidence with the elderly person or disabled adult.

An elderly person or disabled adult "lacks capacity to consent" when suffering from impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, causing the elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.³⁷

Parenting Coordination

In 2009, the Florida Legislature established a statutory framework for a form of child-focused mediation known as parenting coordination.³⁸ Parenting coordinators are appointed by the court to assist parents in developing, implementing, or resolving disputes in a parenting plan. The parenting coordinators help parents to resolve disputes by providing education, making recommendations, and making limited decisions within the scope of the court's order of referral.³⁹ To be a qualified parenting coordinator, a person must complete various training requirements and must be a:

- Licensed mental health professional;
- Licensed physician with certification by the American Board of Psychiatry and Neurology;
- Certified family law mediator with a master's degree related to mental health; or
- Member of the Florida Bar.⁴⁰

Additionally, a parenting coordinator must complete all of the following:

- Three years of post-licensure or post-certification practice.
- A family mediation training program certified by the Florida Supreme Court.

³⁷ Section 825.101(8), F.S.

³⁸ Chapter 2009-180, s. 2, L.O.F. (creating s. 61.125, F.S., effective October 1, 2009).

³⁹ Section 61.125(2) and (3), F.S.

⁴⁰ Section 61.152(5)(a)1., F.S.

- A minimum of 24 hours of parenting coordination training.⁴¹
- A minimum of 4 hours of training in domestic violence and child abuse which is related to parenting coordination.⁴²

Eldercaring Coordination

As parenting coordination became recognized as a viable method of dispute resolution in contentious child custody and visitation matters, courts and legal professionals used the concept as a model to develop a similar option for disputes involving elders.⁴³

Eldercaring coordination emphasizes improving relationships between elders, family members, and others in supportive roles so that all parties are able to collaborate successfully with professionals in making difficult decisions and adapting to changing circumstances.⁴⁴ The Association for Conflict Resolution defines eldercaring coordination as, “a dispute resolution process during which an eldercaring coordinators assists elders, legally authorized decision-makers, and others who participate by court order or invitation, to resolve disputes with high conflict levels in a manner that respects the elder’s need for autonomy and safety.”⁴⁵

Eldercaring coordination is used to complement other services, such as obtaining legal information or representation; individual or family therapy; and medical, psychological, or psychiatric evaluation or mediation.⁴⁶ Eldercaring coordination can assist elders, family members, and other parties in a number of ways, including:

- Resolving non-legal issues outside of court;
- Fostering a need for self-determination among both elders and family members;
- Monitoring high-risk situations for signs of elder abuse, neglect, or exploitation;
- Offering an additional source of support during times of transition.⁴⁷

Currently, fourteen jurisdictions in five states are utilizing eldercare coordination pilot programs.⁴⁸

⁴¹ The topics include parenting coordination concepts and ethics, family systems theory and application, family dynamics in separation and divorce, child and adolescent development, the parenting coordination process, parenting coordination techniques, and Florida family law and procedure. Section 61.125(5)(a)2.c., F.S.

⁴² Section 61.125(5)(a)2., F.S.

⁴³ The Association for Conflict Resolution, *Guidelines for Eldercare Coordination*, p. 2, October 2014, available at <https://ncpj.files.wordpress.com/2017/05/m4-fieldstone-morley-acr-guidelines-for-eldercaring-coordination.pdf> (last visited January 28, 2021) (hereinafter “ACR Guidelines”).

⁴⁴ Sue Bronson & Linda Fieldstone, *From Friction to Fireworks to Focus: Eldercaring Coordination Sheds Light in High-Conflict Cases*, 24 *Experience* 29, p. 2, American Bar Association, Fall/Winter 2015 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁵ ACR Guidelines, p. 15

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Karen Campbell, *Dispute Resolution Tactics Emerge to Aid the Elderly*, 27 *Experience* 2, 13, American Bar Association, July 2017. (On file with the Senate Committee on Children, Families, and Elder Affairs).

Eldercaring Coordination in Florida

While parenting coordination is utilized throughout Florida in many cases involving issues related to children, there is currently no statewide alternative dispute resolution option to address cases involving elder-related issues.⁴⁹ In March 2013, the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) created a task force known as the Task Force on Eldercaring Coordination (FLAFCC Task Force), which sought to develop a dispute resolution model for contentious cases involving elders, their family members, and other participants.⁵⁰

The FLAFCC Task Force worked collaboratively with the Association for Conflict Resolution's Task Force on Eldercaring Coordination (ACR Task Force), which provided general, non-state specific guidance and suggestions on the practice of eldercaring coordination.⁵¹ The ACR Guidelines for Eldercaring Coordinators were developed, and on November 6, 2014, these guidelines were adopted by the Association of Family and Conciliation Courts.⁵² Subsequently, on November 10, 2014, the FLAFCC Board of Directors approved their own, Florida-specific guidelines, which are utilized by eldercare coordinators in Florida.⁵³

In 2015, eight of Florida's twenty judicial circuits were chosen to participate in a pilot program intended to provide eldercare coordination services: the Fifth, Seventh, Ninth, Twelfth, Thirteenth, Fifteenth, Seventeenth, and Eighteenth Circuits.⁵⁴ Court administrators representing the First, Sixth, Eighth, and Eleventh circuits have since expressed interest in becoming a part of the pilot.⁵⁵ Pilot programs were also created in four other states: Idaho, Indiana, Ohio, and Minnesota.⁵⁶ The pilot programs⁵⁷ function by having eldercaring coordinators assigned to elder law cases involving typical indicators of family discord.⁵⁸ A total of approximately 75 cases have been referred to the eight Florida sites since their inception.⁵⁹

According to the FLAFCC Elder Justice Initiative on Eldercaring Coordination (Initiative), judges from the Probate and Guardianship Divisions of courts from each pilot site first evaluated and selected individuals to be trained as eldercaring coordinators.⁶⁰ Judges, eldercaring

⁴⁹ Florida Chapter of the Association of Family and Conciliation Courts Task Force on Eldercaring Coordination, *Guidelines for Eldercaring Coordinators*, p. 3 (October 2014), available at https://flafcc.org/wp-content/uploads/2020/08/flafcc_guidelines_for_eldercaring_coordination_website.pdf (last visited January 28, 2021).

⁵⁰ *Id.*

⁵¹ *Id.* at 4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Jim Ash, 'Eldercaring' Program Serves the Courts and Florida's Aging Citizens, *The Florida Bar News*, October 15, 2018, available at <https://www.floridabar.org/the-florida-bar-news/eldercaring-program-serves-the-courts-and-floridas-aging-citizens/> (last visited January 28, 2021) (hereinafter cited as "Florida Bar News").

⁵⁵ *Id.*; see also The Office of the State Courts Administrator (OSCA), *Judicial Branch 2021 Legislative Agenda*, p. 18-19, (2021) (On file with the Senate Committee on Children, Families, and Elder Affairs.).

⁵⁶ *Id.*; see also OSCA *Judicial Branch 2021 Legislative Agenda*, p. 18-19 (2021) (On file with the Senate Committee on Children, Families, and Elder Affairs)(hereinafter cited as "Judicial Branch 2021 Legislative Agenda").

⁵⁷ "Pilot site" is defined as: "One judge or group of judges or magistrates that refer at least six cases for eldercaring coordination, or a group of attorneys that initiate at least six cases for eldercaring coordination through agreed order, where those families choose to participate in the independent research of the process." *Judicial Branch 2021 Legislative Agenda*, p. 19.

⁵⁸ Florida Bar News.

⁵⁹ *Id.*

⁶⁰ *Judicial Branch 2021 Legislative Agenda*, p. 19.

coordinators, and administrators were then trained on eldercaring coordination.⁶¹ Cases were referred and the FLAFCC has since reported the following findings from cases at the pilot sites:

- Fewer motions;
- Shorter, more efficient hearings;
- Reduced levels of family conflict, leading to minimized abuse, neglect, and exploitation of elders;
- A reduced need for guardianships and a reduced number of cases in need of final determinations of capacity; and
- An increased ability of elders and family members to respond to issues efficiently and without needing further judicial intervention.⁶²

III. Effect of Proposed Changes:

The bill creates s. 44.407, F.S., establishing a statewide option for eldercaring coordination to offer an alternative dispute resolution process for elders, their family members, and their legally authorized decision makers, engaged in disputes involving an elder's wants, needs, and best interests.

Definitions

The bill provides a number of definitions, including:

- “Action”, which is defined as a proceeding in which a party sought or seeks a judgment or an order from the court to:
 - Determine if someone is or is not incapacitated pursuant to s. 744.331, F.S.
 - Appoint or remove a guardian.
 - Undertake an investigation pursuant to s. 415.104, F.S.
 - Audit an annual guardianship report.
 - Review a proxy's decision pursuant to s. 765.105, F.S.
 - Appoint a guardian advocate pursuant to s. 393.12, F.S.
 - Enter an injunction for the protection of an elder under s. 825.1035, F.S.
 - Follow up on a complaint made to the Office of Public and Professional Guardians pursuant to s. 744.2004, F.S.
 - Address advice received by the court from the clerk of the court pursuant to s. 744.368(5), F.S.
 - At the discretion of the presiding judge, address other matters pending before the court which involve the care or safety of an elder or the security of an elder's property.
- “Elder”, which is defined as a person 60 years of age or older who is alleged to be suffering from the infirmities of aging as manifested by a physical, a mental, or an emotional dysfunction to the extent that the elder's ability to provide adequately for the protection or care of his or her own person or property is impaired.
- “Eldercaring coordination”, which is defined as an elder-focused dispute resolution process during which an eldercaring coordinator assists an elder, legally authorized decisionmakers, and others who participate by court order or by invitation of the eldercaring coordinator, in resolving disputes regarding the care and safety of an elder by:

⁶¹ *Id.*

⁶² Judicial Branch 2021 Legislative Agenda, p. 19-20.

- Facilitating more effective communication and negotiation and the development of problem-solving skills.
- Providing education about eldercare resources.
- Facilitating the creation, modification, or implementation of an eldercaring plan and reassessing it as necessary to reach a resolution of ongoing disputes concerning the care and safety of the elder.
- Making recommendations for the resolution of disputes concerning the care and safety of the elder.
- With the prior approval of the parties to an action or of the court, making limited decisions within the scope of the court’s order of referral.
- “Eldercaring coordination communication”, which is defined to mean an oral or a written statement or nonverbal conduct intended to make an assertion by or to an eldercaring coordinator or individuals involved in eldercaring coordination made during an eldercaring coordination activity, or before the activity if made in furtherance of eldercaring coordination.⁶³
- “Eldercaring coordinator”, which is defined to mean an impartial third person who is appointed by the court or designated by the parties and who meets the requirements of of the bill.⁶⁴
- “Eldercaring plan” to mean a continually reassessed plan for the items, tasks, or responsibilities needed to provide for the care and safety of an elder which is modified throughout eldercaring coordination to meet the changing needs of the elder and which takes into consideration the preferences and wishes of the elder. The plan is not a legally enforceable document, but is meant for use by the parties and participants.
- “Good cause” to mean a finding that the eldercaring coordinator:
 - Is not fulfilling the duties and obligations of the position;
 - Has failed to comply with any order of the court, unless the order has been superseded on appeal;
 - Has conflicting or adverse interests that affect his or her impartiality;
 - Has engaged in circumstances that compromise the integrity of eldercaring coordination;
 - or
 - Has had a disqualifying event occur.⁶⁵
- “Legally authorized decisionmaker”, which is defined to mean an individual designated, either by the elder or by the court, pursuant to ch. 709, F.S. (relating to powers of attorney), ch. 744, F.S. (relating to guardianships), ch. 747, F.S. (relating to conservatorships), or ch. 765, F.S. (relating to health care advance directives) who has the authority to make specific decisions on behalf of the elder who is the subject of an action.
- “Participant”, which is defined to mean an individual who joins eldercaring coordination by invitation of or with the consent of the eldercaring coordinator but who has not filed a pleading in the action from which the case was referred to eldercaring coordination.

⁶³ The definition goes on to state that the term does not include statements made during eldercaring coordination which involve the commission of a crime, the intent to commit a crime, or ongoing abuse, exploitation, or neglect of a child or vulnerable adult.

⁶⁴ The definition further states that the role of the eldercaring coordinator is to assist parties through eldercaring coordination in a manner that respects the elder’s need for autonomy and safety.

⁶⁵ The bill provides that the term does not include a party’s disagreement with the eldercaring coordinator’s methods or procedures.

- “Party”, which is defined to include the elder who is the subject of an action and any other individual over whom the court has jurisdiction.

Referral Process

The bill allows a court to appoint an eldercaring coordinator and refer the parties to eldercaring coordination upon agreement of the parties, the court’s own motion, or the motion of any party. The bill prohibits the court from referring parties with a history of domestic violence or exploitation of an elder to eldercaring coordination absent the consent of all parties, including the elder. Further, the court must offer each party a chance to consult with either an attorney or a domestic violence advocate prior to accepting consent of the referral and the court is required to determine whether or not each of the parties has given their consent freely and voluntarily.

When a court is determining whether to refer parties that may have an above-mentioned history that would otherwise preclude the referral, the court must consider:

- Whether a party has committed a violation of an act of exploitation as defined in s. 415.102(8), F.S., or s. 825.103(1), F.S., or domestic violence as defined in s. 741.28, F.S. against another party or any member of another party’s family;
- Engaged in a behavioral pattern where power and control are used against another party and that could jeopardize another party’s ability to negotiate fairly; or
- Behaved in a way that leads another party to reasonably believe that they are in imminent danger of becoming a victim of domestic violence.

The bill also requires the court to consider all relevant factors, including, but not limited to, those listed in s. 741.30(6)(b), F.S.

The court is required to order necessary precautions to protect the safety of all parties to the proceeding, all participants, the elder and their property if it refers a case that involves a party who has any history of domestic violence or exploitation of an elder. These precautions may include adherence to all provisions of an injunction for protection or conditions of bail, probation, a criminal sentence, and other relevant precautions.

Appointment and Qualifications of the Eldercaring Coordinator

The bill provides that the court’s appointment of an eldercaring coordinator is for a term of up to two years. The court must conduct review hearings intermittently to determine whether it is appropriate to conclude or extend the term of the appointment. The bill prescribes the qualifications of eldercaring coordinators and also identifies factors that disqualify individuals from serving as eldercaring coordinators. Specifically, the bill requires eldercaring coordinators to be in good standing or in clear and active status with all professional licensing authorities or certification boards and to meet at least one of the following requirements related to professional training:

- Be a licensed mental health professional under ch. 491, F.S., and hold a master’s degree (or a higher degree) in their field;
- Be a licensed psychologist under ch. 490, F.S.;
- Be a licensed physician under ch. 458, F.S.;
- Be a licensed nurse under ch. 464, F.S., and hold a master’s degree or a higher degree;

- Hold a family mediator certification from the Florida Supreme Court and a master's degree or a higher degree;
- Be a member in good standing of The Florida Bar; or
- Serve as a professional guardian as defined in s. 744.102(17), F.S., and hold a master's degree or a higher degree.

The bill also requires eldercaring coordinators to complete all of the following:

- Three years of post-licensure or post-certification practice;
- A Florida Supreme Court-certified family mediation training program;
- An elder mediation training program which adheres to the standards of the Florida Supreme Court; however, if the Florida Supreme Court has not yet adopted such standards, then the eldercaring coordinator must complete a program which adhered to the standards for elder mediation training adopted by the Association for Conflict Resolution; and
- Eldercaring coordinator training, which totals 28 or more hours and includes:
 - Eldercaring coordination;
 - Elder, guardianship, and incapacity law and procedures and less restrictive alternatives to guardianship relating to eldercaring coordination;
 - A minimum of four hours on the implications of elder abuse, neglect, and exploitation along with other safety issues relevant to eldercaring coordination;
 - The role of the elder in eldercaring coordination;
 - Family dynamics pertaining to eldercaring coordination;
 - Eldercaring coordination skills and techniques;
 - Multicultural competence and its use in eldercaring coordination;
 - A minimum of two hours of ethical considerations related to eldercaring coordination;
 - The use of technology in eldercaring coordination; and
 - Court-specific eldercaring coordination procedures.

Further, qualified eldercaring coordinators must:

- Pass a Level 2 background screening pursuant to s. 435.04(2) and (3), F.S., or be exempt from disqualification under s. 435.07, F.S.;
- Have not had a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person filed against them;
- Meet any additional qualifications required by the court to address party-specific issues.

If an eldercaring coordinator no longer meets the minimum qualifications to serve as such or one of the disqualifying circumstances occurs, the bill provides that an eldercaring coordinator must resign and promptly notify the court. Further, the bill requires the court to remove an eldercaring coordinator upon their resignation or disqualification, or upon a finding of good cause.

Upon a motion of the court or any party, the court is permitted to suspend the authority of an eldercaring coordinator pending a hearing on the motion for removal. Notice of such a hearing must be timely served on the eldercaring coordinator and all other parties to the action.

If it is shown that a motion was made in bad faith, the court has discretion to award reasonable attorney fees and costs to a party or an eldercaring coordinator who prevails on a motion for removal, in addition to any other legal remedy.

The bill provides that whenever an eldercaring coordinator resigns, is removed, or is suspended from an appointment, the court must then appoint a successor qualified eldercaring coordinator agreed to by all parties to the action, or another qualified eldercaring coordinator to serve for the remainder of the original term if the parties are unable to come to an agreement on a successor.

Fees and Costs for Eldercaring Coordination

The court is prohibited from ordering the parties to eldercaring coordination without the parties' consent unless the court determines that the parties have the financial ability to pay the eldercaring coordination fees and costs. The bill provides that the court must determine the allocation of fees and costs of eldercaring coordination between the parties and that a party who is asserting that he or she is unable to pay the eldercaring coordination fees and costs must complete an approved financial affidavit form. The court is required to consider specified factors for determining whether a non-indigent party has the ability to pay, including:

- Income;
- Assets and liabilities;
- Financial obligations; and
- Resources, including, but not limited to, whether the party can receive or is receiving trust benefits, whether the party is represented by and paying a lawyer, and whether paying the fees and costs of eldercaring coordination would create a substantial hardship.

If a party is found to be indigent pursuant to s. 57.082, F.S., which provides for the appointment of an attorney in certain civil cases, the court may not order eldercaring coordination unless public funds are available to pay the indigent party's portion or a non-indigent party agrees to pay all of the fees and costs.

Confidentiality of Eldercaring Coordination Communications

The bill protects the confidentiality of all communications by, between, or among the parties and the eldercaring coordinator during eldercaring coordination, and precludes the eldercaring coordinator from testifying or offering evidence, except in specified circumstances, as follows:

- The relevant communications are needed to identify, authenticate, confirm, or deny a written and signed agreement which the parties entered into during the course of eldercaring coordination.
- The relevant communications are needed in order to identify an issue to be resolved by the court without disclosing any other communications made by any party or the eldercaring coordinator.
- The relevant communications are limited to the subject of a party's compliance with the order of referral to eldercaring coordination, orders for psychological evaluation, court orders or health care provider recommendations for counseling, or court orders for substance abuse testing or treatment.
- The relevant communications are needed in order to determine whether the eldercaring coordinator is sufficiently qualified or to determine the immunity and liability of an eldercaring coordinator shown to have acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties.

- The parties mutually agree that the communications can be disclosed.
- The relevant communications are needed in order to protect a person from future acts which would constitute domestic violence under ch. 741, F.S.; child abuse, neglect, or abandonment under ch. 39, F.S.; or abuse, neglect, or exploitation of an elderly or disabled adult under ch. 415, F.S., or ch. 825, F.S., or are required in an investigation conducted pursuant to s. 744.2004, F.S., or a review pursuant to s. 744.368(5), F.S.
- The relevant communications are offered to report, prove, or disprove professional misconduct alleged to have occurred during eldercaring coordination, solely for the internal use of the body conducting the investigation of such misconduct.
- The relevant communications are offered to report, prove, or disprove professional malpractice alleged to have occurred during eldercaring coordination, solely for the professional malpractice proceeding.
- The relevant communications were deliberately used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence.

The bill requires an eldercaring coordinator to inform the court of any emergency situation, and defines an emergency situation as follows:

- An eldercaring coordinator has made, or intends to make, a report pursuant to ch. 39, F.S., or ch. 415, F.S., related to child abuse or elder abuse; or
- Any party, or a person acting on their behalf, is threatening to, or is believed to be planning to, kidnap an elder as defined in s. 787.01, F.S., or wrongfully removes or is removing the elder from the jurisdiction of the court absent court approval or compliance with the relevant requirements of s. 744.1098, F.S.⁶⁶

The bill also limits the civil liability of an eldercaring coordinator who acts in good faith, and requires the Florida Supreme Court to establish minimum standards and procedures for the training, ethical conduct, and discipline of eldercaring coordinators. The bill allows the Court to employ or appoint personnel as necessary to assist in carrying out these functions.

The bill also provides a number of legislative findings.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁶⁶ The bill further provides that where an eldercaring coordinator believes that a party or family member has relocated an elder within the state in order to safeguard the elder from domestic violence, the eldercaring coordinator is not permitted to disclose the location of the elder unless required to do so by the court.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill is not expected to have a fiscal impact on the private sector.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the bill will lead to a decreased workload for courts because cases which utilize eldercaring coordination generally have fewer motions filed, shorter hearings, and very few require emergency hearings.⁶⁷ The fiscal impact to the state is indeterminate because there is currently insufficient data to reliably calculate the effect of the bill on judicial workload.⁶⁸ However, some level of costs are anticipated in order to implement eldercaring coordination throughout the state.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 44.407 of the Florida Statutes.

⁶⁷ The OSCA, *Senate Bill 368 Judicial Impact Statement*, p. 2 (February 1, 2021)(on file with the Senate Committee on Children, Families, and Elder Affairs).

⁶⁸ The OSCA, *Senate Bill 368 Judicial Impact Statement*, p. 3 (February 1, 2021)(on file with the Senate Committee on Children, Families, and Elder Affairs).

⁶⁹ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Baxley

12-00022E-21

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1 A bill to be entitled
2 An act relating to an elder-focused dispute resolution
3 process; creating s. 44.407, F.S.; providing
4 legislative findings; defining terms; authorizing the
5 courts to appoint an eldercaring coordinator and refer
6 certain parties and elders to eldercaring
7 coordination; prohibiting the courts from referring
8 certain parties to eldercaring coordination without
9 the consent of the elder and other parties to the
10 action; specifying the duration of eldercaring
11 coordinator appointments; requiring the courts to
12 conduct intermittent review hearings regarding the
13 conclusion or extension of such appointments;
14 providing qualifications and disqualifications for
15 eldercaring coordinators; providing for the removal
16 and suspension of authority of certain eldercaring
17 coordinators; requiring that notice of hearing on
18 removal of a coordinator be timely served; authorizing
19 the courts to award certain fees and costs under
20 certain circumstances; requiring the court to appoint
21 successor eldercaring coordinators under certain
22 circumstances; authorizing the courts to make certain
23 determinations based on the fees and costs of
24 eldercaring coordination; providing that certain
25 communications between the parties and eldercaring
26 coordinators are confidential; providing exceptions to
27 confidentiality; providing requirements for emergency
28 reporting to courts under certain circumstances;
29 providing immunity from liability for certain parties

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30 under specified circumstances; requiring the Florida
31 Supreme Court to establish certain minimum standards
32 and procedures for eldercaring coordinators; providing
33 an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Section 44.407, Florida Statutes, is created to
38 read:

39 44.407 Elder-focused dispute resolution process.-

40 (1) LEGISLATIVE FINDINGS.-The Legislature finds that:

41 (a) Denying an elder a voice in decisions regarding himself
42 or herself may negatively affect the elder's health and well-
43 being, as well as deprive the elder of his or her legal rights.
44 Even if an elder is losing capacity to make major decisions for
45 himself or herself, the elder is still entitled to the dignity
46 of having his or her voice heard.

47 (b) As an alternative to proceedings in court, it is in the
48 best interest of an elder, their family members, and legally
49 recognized decisionmakers to have access to a nonadversarial
50 process to resolve disputes relating to an elder which focuses
51 on the elder's wants, needs, and best interests. Such a process
52 will protect and preserve the elder's exercisable rights.

53 (c) By recognizing that every elder, including those whose
54 capacity is being questioned, has unique needs, interests, and
55 differing abilities, the Legislature intends for this section to
56 promote the public welfare by establishing a unique dispute
57 resolution option to complement and enhance, not replace, other
58 services, such as the provision of legal information or legal

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59 representation; financial advice; individual or family therapy;
60 medical, psychological, or psychiatric evaluation; or mediation,
61 specifically for issues related to the care and needs of elders.
62 The Legislature intends that this section be liberally construed
63 to accomplish these goals.

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

65 (a) "Action" means a proceeding in which a party sought or
66 seeks a judgment or an order from the court to:

67 1. Determine if someone is or is not incapacitated pursuant
68 to s. 744.331.

69 2. Appoint or remove a guardian.

70 3. Undertake an investigation pursuant to s. 415.104.

71 4. Audit an annual guardianship report.

72 5. Review a proxy's decision pursuant to s. 765.105.

73 6. Appoint a guardian advocate pursuant to s. 393.12.

74 7. Enter an injunction for the protection of an elder under
75 s. 825.1035.

76 8. Follow up on a complaint made to the Office of Public
77 and Professional Guardians pursuant to s. 744.2004.

78 9. Address advice received by the court from the clerk of
79 the court pursuant to s. 744.368(5).

80 10. At the discretion of the presiding judge, address other
81 matters pending before the court which involve the care or
82 safety of an elder or the security of an elder's property.

83 (b) "Elder" means a person 60 years of age or older who is
84 alleged to be suffering from the infirmities of aging as
85 manifested by a physical, a mental, or an emotional dysfunction
86 to the extent that the elder's ability to provide adequately for
87 the protection or care of his or her own person or property is

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88 impaired.

89 (c) "Eldercaring coordination" means an elder-focused
90 dispute resolution process during which an eldercaring
91 coordinator assists an elder, legally authorized decisionmakers,
92 and others who participate by court order or by invitation of
93 the eldercaring coordinator, in resolving disputes regarding the
94 care and safety of an elder by:

95 1. Facilitating more effective communication and
96 negotiation and the development of problem-solving skills.

97 2. Providing education about eldercare resources.

98 3. Facilitating the creation, modification, or
99 implementation of an eldercaring plan and reassessing it as
100 necessary to reach a resolution of ongoing disputes concerning
101 the care and safety of the elder.

102 4. Making recommendations for the resolution of disputes
103 concerning the care and safety of the elder.

104 5. With the prior approval of the parties to an action or
105 of the court, making limited decisions within the scope of the
106 court's order of referral.

107 (d) "Eldercaring coordination communication" means an oral
108 or a written statement or nonverbal conduct intended to make an
109 assertion by or to an eldercaring coordinator or individuals
110 involved in eldercaring coordination made during an eldercaring
111 coordination activity, or before the activity if made in
112 furtherance of eldercaring coordination. The term does not
113 include statements made during eldercaring coordination which
114 involve the commission of a crime, the intent to commit a crime,
115 or ongoing abuse, exploitation, or neglect of a child or
116 vulnerable adult.

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117 (e) "Eldercaring coordinator" means an impartial third
118 person who is appointed by the court or designated by the
119 parties and who meets the requirements of subsection (5). The
120 role of the eldercaring coordinator is to assist parties through
121 eldercaring coordination in a manner that respects the elder's
122 need for autonomy and safety.

123 (f) "Eldercaring plan" means a continually reassessed plan
124 for the items, tasks, or responsibilities needed to provide for
125 the care and safety of an elder which is modified throughout
126 eldercaring coordination to meet the changing needs of the elder
127 and which takes into consideration the preferences and wishes of
128 the elder. The plan is not a legally enforceable document, but
129 is meant for use by the parties and participants.

130 (g) "Good cause" means a finding that the eldercaring
131 coordinator:

132 1. Is not fulfilling the duties and obligations of the
133 position;

134 2. Has failed to comply with any order of the court, unless
135 the order has been superseded on appeal;

136 3. Has conflicting or adverse interests that affect his or
137 her impartiality;

138 4. Has engaged in circumstances that compromise the
139 integrity of eldercaring coordination; or

140 5. Has had a disqualifying event occur.

141

142 The term does not include a party's disagreement with the
143 eldercaring coordinator's methods or procedures.

144 (h) "Legally authorized decisionmaker" means an individual
145 designated, either by the elder or by the court, pursuant to

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146 chapter 709, chapter 744, chapter 747, or chapter 765 who has
147 the authority to make specific decisions on behalf of the elder
148 who is the subject of an action.

149 (i) "Participant" means an individual who joins eldercaring
150 coordination by invitation of or with the consent of the
151 eldercaring coordinator but who has not filed a pleading in the
152 action from which the case was referred to eldercaring
153 coordination.

154 (j) "Party" includes the elder who is the subject of an
155 action and any other individual over whom the court has
156 jurisdiction.

157 (3) REFERRAL.—

158 (a) Upon agreement of the parties to the action, the
159 court's own motion, or the motion of a party to the action, the
160 court may appoint an eldercaring coordinator and refer the
161 parties to eldercaring coordination to assist in the resolution
162 of disputes concerning the care and safety of the elder who is
163 the subject of an action.

164 (b) The court may not refer a party who has a history of
165 domestic violence or exploitation of an elderly person to
166 eldercaring coordination unless the elder and other parties in
167 the action consent to such referral.

168 1. The court shall offer each party an opportunity to
169 consult with an attorney or a domestic violence advocate before
170 accepting consent to such referral. The court shall determine
171 whether each party has given his or her consent freely and
172 voluntarily.

173 2. The court shall consider whether a party has committed
174 an act of exploitation as defined in s. 415.102(8) or s.

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175 825.103(1) or domestic violence as defined in s. 741.28 against
176 another party or any member of another party's family; engaged
177 in a pattern of behaviors that exert power and control over
178 another party and that may compromise another party's ability to
179 negotiate a fair result; or engaged in behavior that leads
180 another party to have reasonable cause to believe that he or she
181 is in imminent danger of becoming a victim of domestic violence.
182 The court shall consider and evaluate all relevant factors,
183 including, but not limited to, the factors specified in s.
184 741.30(6)(b).

185 3. If a party has a history of domestic violence or
186 exploitation of an elderly person, the court must order
187 safeguards to protect the safety of the participants and the
188 elder and the elder's property, including, but not limited to,
189 adherence to all provisions of an injunction for protection or
190 conditions of bail, probation, or a sentence arising from
191 criminal proceedings.

192 (4) COURT APPOINTMENT.—A court appointment of an
193 eldercaring coordinator is for a term of up to 2 years and the
194 court shall conduct review hearings intermittently to determine
195 whether the term should be concluded or extended. Appointments
196 conclude upon expiration of the term or upon discharge by the
197 court, whichever occurs earlier.

198 (5) QUALIFICATIONS FOR ELDERCARE COORDINATORS.—

199 (a) The court shall appoint qualified eldercaring
200 coordinators who meet the requirements of each of the following:

201 1. Meet one of the following professional requirements:

202 a. Be licensed as a mental health professional under
203 chapter 491 and hold at least a master's degree in the

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204 professional field of practice;
205 b. Be licensed as a psychologist under chapter 490;
206 c. Be licensed as a physician under chapter 458;
207 d. Be licensed as a nurse under chapter 464 and hold at
208 least a master's degree;
209 e. Be certified by the Florida Supreme Court as a family
210 mediator and hold at least a master's degree;
211 f. Be a member in good standing of The Florida Bar; or
212 g. Be a professional guardian as defined in s. 744.102(17)
213 and hold at least a master's degree.
214 2. Complete all of the following:
215 a. Three years of post-licensure or post-certification
216 practice;
217 b. A family mediation training program certified by the
218 Florida Supreme Court;
219 c. An elder mediation training program that meets standards
220 approved and adopted by the Florida Supreme Court. If the
221 Florida Supreme Court has not yet adopted such standards, the
222 standards for elder mediation training approved and adopted by
223 the Association for Conflict Resolution apply; and
224 d. Eldercaring coordinator training. The training must
225 total at least 28 hours and must include eldercaring
226 coordination; elder, guardianship, and incapacity law and
227 procedures and less restrictive alternatives to guardianship as
228 it pertains to eldercaring coordination; at least 4 hours on the
229 implications of elder abuse, neglect, and exploitation and other
230 safety issues in eldercaring coordination; the elder's role
231 within eldercaring coordination; family dynamics related to
232 eldercaring coordination; eldercaring coordination skills and

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233 techniques; multicultural competence and its use in eldercaring
234 coordination; at least 2 hours of ethical considerations
235 pertaining to eldercaring coordination; use of technology within
236 eldercaring coordination; and court-specific eldercaring
237 coordination procedures.

238 3. Successfully pass a Level 2 background screening as
239 provided in s. 435.04(2) and (3) or be exempt from
240 disqualification under s. 435.07.

241 4. Have not been a respondent in a final order granting an
242 injunction for protection against domestic, dating, sexual, or
243 repeat violence or stalking or exploitation of an elder or a
244 disabled person.

245 5. Meet any additional qualifications the court may require
246 to address issues specific to the parties.

247 (b) A qualified eldercaring coordinator must be in good
248 standing or in clear and active status with all professional
249 licensing authorities or certification boards.

250 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
251 COORDINATORS.—

252 (a) An eldercaring coordinator must resign and immediately
253 report to the court if he or she no longer meets the minimum
254 qualifications or if any of the disqualifying circumstances
255 occurs.

256 (b) The court shall remove an eldercaring coordinator upon
257 the eldercaring coordinator's resignation or disqualification or
258 a finding of good cause shown based on the court's own motion or
259 a party's motion.

260 (c) Upon the court's own motion or upon a party's motion,
261 the court may suspend the authority of an eldercaring

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262 coordinator pending a hearing on the motion for removal. Notice
263 of hearing on removal must be timely served on the eldercaring
264 coordinator and all parties.

265 (d) If a motion was made in bad faith, a court may, in
266 addition to any other remedy authorized by law, award reasonable
267 attorney fees and costs to a party or an eldercaring coordinator
268 who successfully challenges a motion for removal.

269 (7) SUCCESSOR ELDERCARING COORDINATOR.—If an eldercaring
270 coordinator resigns, is removed, or is suspended from an
271 appointment, the court shall appoint a successor qualified
272 eldercaring coordinator who is agreed to by all parties or, if
273 the parties do not reach agreement on a successor, another
274 qualified eldercaring coordinator to serve for the remainder of
275 the original term.

276 (8) FEES AND COSTS.—The court may not order the parties to
277 eldercaring coordination without their consent unless the court
278 determines that the parties have the financial ability to pay
279 the eldercaring coordination fees and costs. The court shall
280 determine the allocation among the parties of fees and costs for
281 eldercaring coordination and may make an unequal allocation
282 based on the financial circumstances of each party, including
283 the elder.

284 (a) A party who is asserting that he or she is unable to
285 pay the eldercaring coordination fees and costs must complete a
286 financial affidavit form approved by the presiding court. The
287 court shall consider the party's financial circumstances,
288 including income; assets; liabilities; financial obligations;
289 and resources, including, but not limited to, whether the party
290 can receive or is receiving trust benefits, whether the party is

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291 represented by and paying a lawyer, and whether paying the fees
292 and costs of eldercaring coordination would create a substantial
293 hardship.

294 (b) If a court finds that a party is indigent based upon
295 the criteria prescribed in s. 57.082, the court may not order
296 the party to eldercaring coordination unless funds are available
297 to pay the indigent party's allocated portion of the eldercaring
298 coordination fees and costs, which may include funds provided
299 for that purpose by one or more nonindigent parties who consent
300 to paying such fees and costs, or unless insurance coverage or
301 reduced or pro bono services are available to pay all or a
302 portion of such fees and costs. If financial assistance, such as
303 health insurance or eldercaring coordination grants, is
304 available, such assistance must be taken into consideration by
305 the court in determining the financial abilities of the parties.

306 (9) CONFIDENTIALITY.—

307 (a) Except as otherwise provided in this section, all
308 communications made by, between, or among any parties,
309 participants, or eldercaring coordinator during eldercaring
310 coordination shall be kept confidential.

311 (b) The eldercaring coordinator, participants, and each
312 party designated in the order appointing the eldercaring
313 coordinator may not testify or otherwise offer evidence about
314 communications made by, between, or among the parties,
315 participants, and the eldercaring coordinator during eldercaring
316 coordination, unless one of the following applies:

317 1. Such communications are necessary to identify,
318 authenticate, confirm, or deny a written and signed agreement
319 entered into by the parties during eldercaring coordination.

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320 2. Such communications are necessary to identify an issue
321 for resolution by the court without otherwise disclosing
322 communications made by any party or the eldercaring coordinator.

323 3. Such communications are limited to the subject of a
324 party's compliance with the order of referral to eldercaring
325 coordination, orders for psychological evaluation, court orders
326 or health care provider recommendations for counseling, or court
327 orders for substance abuse testing or treatment.

328 4. The communications are necessary to determine the
329 qualifications of an eldercaring coordinator or to determine the
330 immunity and liability of an eldercaring coordinator who has
331 acted in bad faith or with malicious purpose or in a manner
332 exhibiting wanton and willful disregard for the rights, safety,
333 or property of the parties pursuant to subsection (11).

334 5. The parties agree that the communications be disclosed.

335 6. The communications are necessary to protect any person
336 from future acts that would constitute domestic violence under
337 chapter 741; child abuse, neglect, or abandonment under chapter
338 39; or abuse, neglect, or exploitation of an elderly or disabled
339 adult under chapter 415 or chapter 825, or are necessary in an
340 investigation conducted under s. 744.2004 or a review conducted
341 under s. 744.368(5).

342 7. The communications are offered to report, prove, or
343 disprove professional misconduct alleged to have occurred during
344 eldercaring coordination, solely for the internal use of the
345 body conducting the investigation of such misconduct.

346 8. The communications are offered to report, prove, or
347 disprove professional malpractice alleged to have occurred
348 during eldercaring coordination, solely for the professional

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349 malpractice proceeding.

350 9. The communications were willfully used to plan a crime,
351 commit or attempt to commit a crime, conceal ongoing criminal
352 activity, or threaten violence.

353 (c) Notwithstanding paragraphs (a) and (b), confidentiality
354 or privilege does not attach to a signed written agreement
355 reached during eldercaring coordination, unless the parties
356 agree otherwise, or to any eldercaring coordination
357 communication:

358 1. For which the confidentiality or privilege against
359 disclosure has been waived by all parties;

360 2. That is willfully used to plan a crime, commit or
361 attempt to commit a crime, conceal ongoing criminal activity, or
362 threaten violence; or

363 3. That requires a mandatory report pursuant to chapter 39
364 or chapter 415 solely for the purpose of making the mandatory
365 report to the entity requiring the report.

366 (10) EMERGENCY REPORTING TO THE COURT.—

367 (a) An eldercaring coordinator must immediately inform the
368 court by affidavit or verified report, without notice to the
369 parties, if:

370 1. The eldercaring coordinator has or will be making a
371 report pursuant to chapter 39 or chapter 415; or

372 2. A party, including someone acting on a party's behalf,
373 is threatening or is believed to be planning to commit the
374 offense of kidnapping upon an elder as defined in s. 787.01, or
375 wrongfully removes or is removing the elder from the
376 jurisdiction of the court without prior court approval or
377 compliance with the requirements of s. 744.1098. If the

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378 eldercaring coordinator suspects that a party or family member
379 has relocated an elder within this state to protect the elder
380 from a domestic violence situation, the eldercaring coordinator
381 may not disclose the location of the elder unless required by
382 court order.

383 (b) An eldercaring coordinator shall immediately inform the
384 court by affidavit or verified report and serve a copy of such
385 affidavit or report on each party upon learning that a party is
386 the subject of a final order or injunction of protection against
387 domestic violence or exploitation of an elderly person or has
388 been arrested for an act of domestic violence or exploitation of
389 an elderly person.

390 (11) IMMUNITY AND LIMITATION ON LIABILITY.-

391 (a) A person who is appointed or employed to assist the
392 body designated to perform duties relating to disciplinary
393 proceedings involving eldercaring coordinators has absolute
394 immunity from liability arising from the performance of his or
395 her duties while acting within the scope of his or her appointed
396 functions or duties of employment.

397 (b) An eldercaring coordinator who is appointed by the
398 court is not liable for civil damages for any act or omission
399 within the scope of his or her duties under an order of referral
400 unless such person acted in bad faith or with malicious purpose
401 or in a manner exhibiting wanton and willful disregard for the
402 rights, safety, or property of the parties.

403 (12) MINIMUM STANDARDS AND PROCEDURES.-The Florida Supreme
404 Court shall establish minimum standards and procedures for the
405 qualification, ethical conduct, discipline, and training and
406 education of eldercaring coordinators who serve under this

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407 section. The Florida Supreme Court may appoint or employ such
408 personnel as are necessary to assist the court in exercising its
409 powers and performing its duties under this section.

410 Section 2. This act shall take effect July 1, 2021.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 368
FINAL ACTION: Favorable
MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: 37 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brodeur						
X		Garcia						
X		Harrell						
X		Rouson						
X		Torres						
X		Wright						
X		Albritton, VICE CHAIR						
X		Book, CHAIR						
8	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting



2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB 368
BILL TITLE:	Elder-focused Dispute Resolution Process
BILL SPONSOR:	Senator Baxley
EFFECTIVE DATE:	July 1, 2021

COMMITTEES OF REFERENCE
1) Children, Families, and Elder Affairs
2) Judiciary
3) Appropriations
4)
5)

CURRENT COMMITTEE
Children, Families, and Elder Affairs

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

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

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 21, 2021
LEAD AGENCY ANALYST:	Charles Schaeffer
ADDITIONAL ANALYST(S):	Tracy Townsend, Becky Bezemek
LEGAL ANALYST:	Jim Martin, Wes Petkosvek
FISCAL ANALYST:	Cynthia Barr

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Authorizing the courts to appoint an eldercaring coordinator and refer certain parties and elders to eldercaring coordination; prohibiting the courts from referring certain parties to eldercaring coordination without the consent of the elder and other parties to the action; requiring the courts to conduct intermittent review hearings regarding the conclusion or extension of such appointments; requiring that notice of hearing on removal of a coordinator be timely served; requiring the court to appoint successor eldercaring coordinators under certain circumstances.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Currently, there are no formal regulations for the appointment and screening of eldercaring coordinators nor for the handling of eldercaring coordination services.
2. **EFFECT OF THE BILL:** Authorizes the courts to appoint eldercaring coordinators to oversee eldercaring coordination services. Appointment will rely on Level 2 background screening (“state and national criminal history record checks”).
3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y N

If yes, explain:	
What is the expected impact to the agency’s core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

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

List any known proponents and opponents:	
Provide a summary of the proponents’ and opponents’ positions:	

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

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

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

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	

Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

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

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

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

Revenues:	<ul style="list-style-type: none"> The Office of the State Courts Administrator (OSCA) advised the department that a pilot project involving eight judicial circuits resulted in approximately 75 eldercaring coordination cases since 2015. As such, the overall revenue impact is expected to be negligible. The total fiscal revenue for the state portion of a state and national criminal history record check is \$24, which goes into the FDLE's Operating Trust Fund. The first year of retention is included in the cost of the criminal history record check. The cost to retain fingerprints at the state level is \$6 annually, per set of applicant fingerprints. This fee also goes into the FDLE's Operating Trust Fund. Revenues for state criminal history checks and fingerprint retention are subject to a general revenue service charge of 8 percent pursuant to Chapter 215, F.S.
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

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

Revenues:	
Expenditures:	<ul style="list-style-type: none"> OSCA advised the department a pilot project involving eight judicial circuits resulted in approximately 75 eldercaring coordination cases since 2015. As such, the overall fiscal impact is expected to be negligible. The total fiscal impact to the private sector for a state and national criminal history record check is \$37.25. Of this total amount, the cost for the national portion of the criminal history record check is \$13.25 and the cost for the state portion is \$24, which goes into FDLE's Operating Trust Fund. The first year of state retention is included in the cost of the criminal history record check. The cost to retain fingerprints at the state level is \$6 annually, per set of applicant fingerprints. This fee also goes into FDLE's Operating Trust Fund. When FDLE begins

	participation in the federal retention program, there will be no fees required by the Federal Bureau of Investigation (FBI) for federal fingerprint retention.
Other:	

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

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.	
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LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments and recommended action:	Even if all of FDLE’s suggestions are adopted in full, access to Level 2 background checks specified in the bill are contingent upon receiving subsequent approval of the Attorney General of the United States by way of the FBI.
--	--

ADDITIONAL COMMENTS

- Lines 238 – 240: The proposed language does not meet Public Law 92-544’s criteria for state and national criminal history record checks. If the intent of the bill is to require the courts to have eldercaring coordinator applicants undergo state and national criminal history record checks as a condition of appointment, the department recommends using the following language:

3. An applicant must submit a full set of fingerprints to the court or to a vendor, entity, or agency authorized by s. 943.053(13). The court, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. To be eligible for appointment, applicants must meet qualifications set forth in s. 435.04(2) and (3) or be exempt from disqualification under s. 435.07.

Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein.

Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained fingerprint arrest notification program, as provided in s. 943.05(4). Any arrest record identified shall be reported to the department.

- FDLE recommends participation in the state and federal fingerprint retention programs to ensure all arrests occurring after the initial criminal history record check are reported to the appropriate state agency. Both FDLE and the FBI (when the FDLE begins participation in the federal program) will retain the fingerprints, search the fingerprints against incoming arrests and FDLE will notify the agency if the retained fingerprints match an incoming arrest.
- While the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional criminal history record check bills could rise to the level requiring additional staffing and other resources.

24 No. 3 Experience 29

Experience

Fall/Winter, 2015

Feature

Sue Bronson^{a1} Linda Fieldstone^{a2}

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FROM FRICTION TO FIREWORKS TO FOCUS

Eldercaring Coordination Sheds Light in High-Conflict Cases

When there is friction regarding specific issues about an elder's care, mediation is a good option. The results can be transformative, as problem-solving leads to solutions and new insights. Yet, when it comes to dispute resolution, *one size does not fit all*. When the friction leads to fireworks, a new option for elders and their families will soon be available.

Tony and Maria were older adults who were vibrantly health until lately. As they began to face changes, they asked for help, and their families and friends came through when they could make themselves available. At first it was just little tasks around the house, such as climbing a ladder or providing transportation to a doctor's appointment. However, health and behavioral considerations gradually infringed on Tony's and Maria's independence and ability to care for themselves. Family members started to take on more responsibility for day-to-day care. Tony and Maria were grateful to have help to understand the complex medical decisions that needed to be made and the options for treatment and their consequences. After Maria had several falls, safety was a concern and greater oversight was needed. Maria's role had always been to manage the daily upkeep of their home and preparation of their meals, and Tony was losing weight and the home was deteriorating. Would they need to move or could someone assist them at home? How was the extra help going to be paid for on their limited income?

It is important that everyone be on the same page in determining an eldercare ***30** plan. Tony and Maria discussed their wishes with family members often. They had their legal papers in order, and the family talked through challenging issues around the kitchen table. But not all families fit this collaborative family ideal!

Elder Mediation as an Option for Low-Level or Moderate Disputes

More typically, as differences of opinion surface over the care of an elder or someone feels unappreciated or ignored, strong emotions arise. Those feelings may trigger frictions dating back to childhood grievances. Or the inclusion into the discussion of unwanted family members, blended family members, and new relationships leaves some feeling excluded. Or financial struggles begin an avalanche of new issues. When those around the table are not able to work out differences on their own, help may be available through elder mediation.

An elder mediator may be requested to clarify a parent's wishes before any friction begins. Other families may voluntarily seek out, or be court ordered to participate in, elder mediation to work out ways of resolving disagreements. The elder mediator clarifies the needs and specific concerns of those involved in the elder mediation process, and together, participants explore resources and develop options to meet the needs of the elder. The elder mediator helps people have the necessary conversations and reach a satisfactory resolution.

Eldercaring Coordination: An Option for Higher Levels of Conflict

Some family frictions erupt in fireworks! In those situations, the issues have gone beyond the ability of the mediator or the mediation process itself. Maybe allegations of abuse or financial exploitation are made. Maybe it is the frequency of disputes that becomes intolerable, or the issues are about unmeasurable or unsubstantiated items. Some may have difficulty separating the elder's needs and desires from their own. Personalities with a high degree of rigid thinking or a win/lose mentality can make compromise difficult. The elder may be denied access to family members and/or significant others. The fireworks become an ongoing spectacle as childhood and family conflicts are relived. At that point, the elder's safety, well-being, or financial resources may be at risk.

Many courts provide high-conflict families with young children an option for parenting coordination to assist parents in working together for their children's sake. A new "coordination" process is now being developed as an option for high-conflict families caring for an elder: "eldercaring coordination."

Eldercaring coordination focuses on improving relationship dynamics so that the elder, family members, and others in supportive roles can better collaborate with professionals able to help them make the onslaught of tough decisions ahead and support each other during times of transition. It is a dispute resolution option specifically designed for high-conflict cases involving issues related to the care and needs of elders in order to complement, not replace, other services such as provision of legal information or legal representation; individual and/or family therapy; and medical, psychological, or psychiatric evaluation or mediation.

More specifically, the process of eldercaring coordination has been developed to help manage high-conflict family dynamics so that the elder, family members, and stakeholders can:

- address their non-legal issues independently from the court;

- work with others in their support network to address the care and needs of the elder, avoiding delays and resulting in better decisions;

- foster the elder's and the family members' capacity for self-determination;

- promote safety by monitoring situations at high risk for abuse or neglect;

- provide a support system for the elder and family members during times of transition; and

- reduce the need for protracted court intervention and free precious judicial time by addressing matters in high-conflict cases involving elders for whom dispute resolution processes have been unavailable or have proven ineffective.

***31** See Ass'n for Conflict Resolution, Guidelines for Eldercaring Coordination (Oct. 2014), *available at* <http://aceldersection.weebly.com>.

In her role as supervisor for Family Court Services in the Eleventh Judicial Circuit, Miami-Dade County, Florida, Linda Fieldstone, Family Court Services Administrator and former president of the Association of Family and Conciliation Courts

(AFCC), brought together representatives from many organizations to find ways of helping high-conflict parents and children throughout the lifecycle of the family through the mechanism of eldercaring coordination. The result was the Task Force on Eldercaring Coordination of the Association for Conflict Resolution (ACR), chaired jointly with Sue Bronson, mediator and former co-chair of the ACR Elder Section. The following national organizations were mobilized in support of the Task Force.

- American Association for Marriage and Family Therapy

- American Bar Association Commission on Law and Aging

- American Bar Association Dispute Resolution Section

- American Psychological Association

- Association of American Retired Persons

- Association of Conflict Resolution

- Association of Family and Conciliation Courts

- Elder Justice Coalition

- Florida Chapter of the Association of Family and Conciliation Courts

- National Academy of Elder Law Attorneys

- National Adult Protective Services Association

- National Association of Area Agencies on Aging

- National Association of Professional Geriatric Care Managers

- National Association of Social Workers

- National Center for State Courts

- National College of Probate Judges

- National Committee on the Prevention of Elder Abuse

- National Council of Juvenile and Family Court Judges

- National Guardianship Association

- National Guardianship Network

A task force of the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC), composed of statewide entities, worked concurrently and collaboratively with the representatives of the national organizations.

The ACR Task Force went on to develop recommendations and procedures to guide the practice of eldercaring coordination and its implementation in court-ordered cases. In the process, the ACR Task Force created ethical guidelines for eldercaring coordinators, training protocols, and an Eldercaring Pilot Project proposal template with a project assessment tool to help circuit courts and programs provide eldercaring coordination as a dispute resolution option for high-conflict cases regarding elders. On October 5, 2014, the *Guidelines for Eldercaring Coordination* were adopted by the ACR and are now posted on its website, <http://acrelldersection.weebly.com>, and the website of the National Center for State Courts, <http://www.eldersand-courts.org/~media/Microsites/Files/cec/ACR%20Guidelines%20for%20Elder%20Caring%20Coordination%2014.ashx>.

Definition of Eldercaring Coordination: A Closer Look

Eldercaring coordination is a dispute resolution process in which an eldercaring coordinator assists elders, legally authorized decision makers, and others who participate by court order or invitation, to resolve high-conflict disputes impacting the elder's autonomy and safety. The goals are to:

- enhance communication, negotiation, and problem-solving skills;

- offer education about eldercare resources;

- facilitate the creation and implementation of an eldercare plan;
- make recommendations for resolutions; and
- make decisions within the scope of a court order or with the parties' prior agreement.

Since the role of the eldercaring coordinator may include decision-making ^{*32} authority, it is crucial that the court appoint only those professionals who are qualified. Eldercaring coordinators come from varied professional backgrounds, including jurisprudence, social work, psychology, marriage and family therapy, mediation, parenting coordination, geriatric care management, and medical personnel, but all who are ultimately involved should have extensive experience relating to high-conflict family disputes. These professionals should also have training to maintain best practices, which include ongoing screening for the elder's safety and the possibility of abuse, neglect, coercion, fraud, and exploitation.

Types of Cases Referred for Eldercaring Coordination

According to Judge Michelle Morley, cochair of the FLAFCC Task Force, some cases need to be determined by a judge. “If every case that is filed has to be tried, I'm here to try them. It's wonderful that all of them do not need to be. But if they are filed with integrity, and not solely for spite, intimidation or vengeance, I don't resent anyone for filing it, or for asking me to decide it.” Eldercaring coordination can help with those cases where spite, intimidation, or vengeance comes into play. The following are examples of three types of court proceedings during which certain kinds of high-conflict cases might be referred by courts for eldercaring mediation.

General Magistrate's Report of Recommendations for Cases in which:

- one sibling won't give other siblings and their spouses access to a parent;
- the current wife moved the husband/father and won't tell his sons where he is; or
- a sibling with greater financial resources, represented by an attorney, wants to pay for a corporate professional guardian instead of a better-suited family member.

Determination of Incapacity Proceedings When:

- the elder married a person 20 or 30 years younger, and his or her children want to vacate or set aside the marriage;

- the elder's children are split over whether to remove the elder's independence with respect to taking medication, participating in treatment, driving, voting, and marrying, and the elder's fiancée believes capacity is not an issue; or
- the elder made the stepson a medical surrogate and the biological children disagree.

Guardianship Proceedings in which:

- the current wife and her children don't want the former wife and children from a prior marriage to have access to the elder;
- the elder's siblings disapprove of the guardian's decisions and interfere with and frustrate the guardianship process; or
- the guardian has formed an alliance with one of the elder's children and does not give access or information to the others.

How the Eldercaring Coordinator Works

Imagine a scenario of a high-conflict family disrupting court proceedings regarding the decision-making capacity of an elder. These family members are not arguing specifically about issues; their disputes are conflict-driven, involving entrenched hostility from years of discord. A standardized order of referral to an elder coordinator would be issued by the judge, who would specify the definition of eldercaring coordination; the role and limitations of the eldercaring coordinator; the parties required to participate in the process, who would include the elder (by name) and all other legally authorized decision makers; the preferred language; whether elder abuse, neglect, or exploitation has been or is currently an issue; and who holds the responsibility for fee payment for the eldercaring coordinator's services.

The eldercaring coordinator will begin working with the group after a brief intake with each person to ensure that all participants understand the process. As the process continues, others in the elder's support system or experts in the community may be invited into the eldercaring coordination process in order to assist. During the process, the eldercaring coordinator's tasks may include:

- *33** • educating the parties on the effects of their conflict on the elder and each other;
- helping the parties identify the sources of their conflict with each other and working individually and/or jointly to minimize conflict and lessen its deleterious effects on the elder;
- helping the parties more effectively communicate and negotiate with each other to ensure focus on the needs and care of the elder;

- contacting the proper authorities when necessary if there is reason to suspect abuse, neglect, or exploitation; and
- assisting the elder and all parties in identifying and utilizing resources that may assist them in resolving issues regarding the care, safety, and well-being of the elder.

Fireworks to Focus

The aim of the eldercaring coordinator is to help the elder and other eldercaring coordination participants work collaboratively in a way that respects the autonomy of the elder so that the elder may live out his or her life free from the threat of being caught in the middle of disputes that jeopardize care, needs, and safety. The eldercaring coordinator may serve for a term of up to two years. The goal is to put out the sparks of conflict that can set off fireworks. Through this process, family members facing the ultimate loss of their loved one may become more supportive of one another and even model for the youngsters in the family skills they may later use to break the cycle of ingrained conflict once and for all. Achieving this goal would amount to the biggest success story of all. It would also certainly create a proud legacy for any person to contemplate in the course of growing older.

Footnotes

^{a1} **Sue Bronson** (sbronson@wi.rr.com), a licensed clinical social worker, is designated as an advanced practitioner in family mediation by the Association for Conflict Resolution (ACR) and is co-chair of the ACR Task Force on Eldercaring Coordination. She has over 30 years of experience mediating family and workplace disputes, has trained other professionals nationally and internationally in conflict resolution, and is the lead author of the Self-Assessment Tool for Mediators.

^{a2} **Linda Fieldstone** (lfieldstone@jud11.flcourts.org) is supervisor of Family Court Services of the Eleventh Judicial Circuit of Florida and co-chair of the ACR Task Force on Eldercaring Coordination. She is a Florida Supreme Court Certified Family Mediator and has served as parenting coordinator since 1990. She is a past president of the Association of Family and Conciliation Courts and its Florida chapter.

24 No. 3 EXPER 29

OFFICE OF THE STATE COURTS ADMINISTRATOR
2021 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 368

DATE: February 1, 2021

SPONSOR(S): Senator Dennis K. Baxley

STATUTE(S) AFFECTED: Chapter 44, F.S.

COMPANION BILL(S): HB 441

AGENCY CONTACT: Sean Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: SM/JC

I. SUMMARY:

The bill creates a new section in ch. 44, F.S., that establishes eldercaring coordination, an elder-focused dispute resolution process. The bill addresses applicable definitions; authorizes the court to appoint an eldercaring coordinator and refer certain parties to eldercaring coordination; prescribes aspects of the process and the qualifications and disqualifications for eldercaring coordinators; provides immunity from liability for eldercaring coordinators and persons appointed or employed to assist in disciplinary proceedings against them; and requires the Florida Supreme Court to establish certain minimum standards and procedures for eldercaring coordinators.

II. EFFECT OF PROPOSED CHANGES:

Present Situation

With the surge of baby boomers turning 65 starting in 2011, it is anticipated that the elder population will double from the year 2008 to 2030.¹ Moreover, since life expectancy continues to rise, the number of incapacitated elders will also increase as they succumb to the risks of diseases, disorders, and cognitive disabilities such as Alzheimer's disease and dementia.² This trend will produce an increasing demand to invoke guardianship on behalf of incapacitated seniors. The burden on caregivers and on the court to address elder issues will, therefore, also rise exponentially in the years to come (United States Senate Special Committee on Aging).³

¹ Older Americans 2010 Key Indicators of Well-Being (2010_ Federal Interagency Forum on Aging-Related Statistics. Washington, DC: U.S. Government Printing Office.

² Older Americans 2010 Indicator of Well-being, <http://www.cdc.gov/nchs/HUS.htm> (revised 1/14/11).

³ Senator Gordon H. Smith, Chairman, United States Senate Special Committee on Aging: *Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity* (2007).

Presently, Florida has eight pilot project sites offering eldercaring coordination services in the Fifth, Seventh, Ninth, Twelfth, Thirteenth, Fifteenth, Seventeenth, and Eighteenth judicial circuits. To date, approximately 75 cases have been referred to eldercaring coordination in these pilot sites.

Effect of Proposed Changes

Senate Bill 368 establishes eldercaring coordination in statute as a dispute resolution option specifically for high conflict cases involving issues related to elders. The judicial branch is currently not statutorily authorized to establish minimum standards and procedures for the training, ethical conduct, and discipline of eldercaring coordinators. This legislation is necessary to authorize such action. There are currently eight circuit courts serving as pilot sites for eldercaring coordination. However, some judges do not think they have sufficient jurisdictional authority under the guardianship law (e.g., s.744.1012, F.S, which provides legislative intent) for the court to compel parties to engage in eldercaring coordination services. A statutory framework for eldercaring coordination would help facilitate use of this alternative dispute resolution process for families and aging persons across the state.

III. ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:

It is anticipated that the proposed statute will reduce judicial workload because cases with eldercaring coordinators: 1) have significantly fewer motions to the court; shorter, streamlined hearings; and almost no emergency hearings; 2) are less likely to need a final determination of capacity; 3) and reduce the need for guardianships.

The judicial circuits may eventually need funding for staff required to qualify, roster, and disqualify eldercaring coordinators who would be court appointed to cases. These are the same tasks the trial court staff currently complete for parenting coordinators. However, the proposed legislation would not require eldercaring coordination in specified cases but would rather authorize it as an additional form of alternative dispute resolution that could be ordered by a judge. In addition, there have been only 75 cases in Florida in which eldercaring coordination was used since the pilots began in 2015. Therefore, any fiscal impact to the courts may be mitigated by the frequency with which eldercaring coordination is used.

The Dispute Resolution Center (DRC) of the Office of the State Court Administrator would assume the tasks of developing minimum standards and procedures for the qualification, ethical conduct, discipline, and training and education of eldercaring coordinators.

IV. IMPACT TO COURT RULES/JURY INSTRUCTIONS:

The Florida Probate Rules would be amended to include this dispute resolution option.

V. ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:

A. Revenues: None.

B. Expenditures: The precise fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the effect on judicial time and workload resulting from eldercare coordination, as discussed in Section III, above. There is anticipated costs associated with workload impact to court administration staff due to the implementation of eldercare coordination programs statewide; however, the amount is indeterminate at this time.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

February 3, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 368

Bill Number (if applicable)

Topic Elder-focused Dispute Resolution Process

Amendment Barcode (if applicable)

Name Michelle Morley

Job Title Circuit Judge

Address 215 E. McCollum Avenue

Phone 352-569-6960

Street

Bushnell

Florida

33513

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL Supreme Court Committee on Alternative Dispute Resolution Rules and Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 380
 INTRODUCER: Senator Perry
 SUBJECT: Child Restraint Requirements
 DATE: February 2, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Favorable
2.	_____	_____	TR	_____
3.	_____	_____	RC	_____

I. Summary:

SB 380 amends current law relating to child restraint requirements while transporting a child in a motor vehicle. The bill increases the age of children which must use a crash-tested, federally-approved child restraint device from age five years or younger to age six years or younger. The bill also increases the age of a child for which use of a separate carrier, an integrated child seat, or a child booster seat is authorized from age four through five years to age four through six years.

The fiscal impact on private sector sales of child restraint devices is indeterminate. The bill will likely have an indeterminate but insignificant fiscal impact on local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Child Passenger Safety

According to the Center for Disease Control and Prevention (CDC), motor vehicle injuries are a leading cause of death among children in the U.S.¹ The CDC data for 2017 indicates that 49% of children eight to 12 years old killed in automobile crashes were not buckled in, compared with 36% of children four to seven years old and 22% of children under four.²

The CDC reports that the:

¹ The CDC, *Child Passenger Safety: Get the Facts – The Scope of the Problem*, available at http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html, (last viewed January 27, 2021).

² The CDC, *Risk Factors for Children and Teens*, available at https://www.cdc.gov/transportationsafety/child_passenger_safety/cps-factsheet.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fmotorvehiclesafety%2Fchild_passenger_safety%2Fps-factsheet.html (last visited February 1, 2021).

- Use of a car seat reduces the risk for death to infants (aged less than one year) by 71 to 84 percent in passenger vehicles.
- Use of a booster seat reduces the risk for serious injury by 45 percent for children aged four to eight years when compared with seat belt use alone).
- For older children and adults, use of a seat belt reduces the risk for death and serious injury by approximately one-half.³

A study of five states that increased the age requirement to seven or eight years for car seat or booster seat use found that the rate of children using car seats and booster seats increased nearly three times. Further, the rate of children who sustained fatal or incapacitating injuries was reduced by 17 percent.⁴

The CDC has produced guidelines for parents and caregivers that are based on stages, including the use of a:

- Rear-facing car seat, for children birth to age two.
- Forward-facing car seat in the back seat, until at least age five or when they reach the upper weight or height limit of seat.⁵
- Booster seat, until a seat belts fit properly.⁶

A child no longer needs to use a booster seat once seat belts fit them properly. The seat belt fits properly when the lap belt lays across the upper thighs (not the stomach) and the shoulder belt lays across the chest (not the neck). The recommended height for proper seat belt fit is 57 inches tall.⁷

Child Restraint Devices or “Car Seats” and U.S.D.O.T. Recommendations

Car seats available on the market offer a variety of choices. The best choice, according to the National Highway Traffic Safety Administration (NHTSA), is a selection based on a given child’s age and size, which complies with the specific car seat manufacturer’s instructions for height and weight limits, and is properly installed in accordance with the vehicle’s owner’s manual. Further, for maximum safety, the NHTSA recommends keeping a child in a car seat for as long as possible, provided the child does not exceed the manufacturer’s height and weight limitations. The NHTSA also recommends keeping a child in the back seat at least through the age of 12.⁸

³ The CDC, *Child Passenger Safety: Get the Facts – Risk Reduction for Every Age*, available at https://www.cdc.gov/transportationsafety/child_passenger_safety/cps-factsheet.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fmotorvehiclesafety%2Fchild_passenger_safety%2Fcps-factsheet.html (last visited February 1, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ The NHTSA, *Car Seats and Booster Seats*, available at <https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#age-size-rec> (last viewed January 27, 2021).

Car seats are generally available in four types, with variations in each type, including:

- Rear-facing car seats have a harness that, in a crash, cradles and moves with a child to reduce the stress to the child's neck and spinal cord.
- Forward-facing car seats have a harness and tether that limits a child's forward movement during a crash.
- Booster seats position the seat belt so that it fits properly over the stronger parts of a child's body.
- Seat belts.⁹

The NHTSA recommends that a child from birth through 12 months should always ride in a rear-facing car seat, noting that convertible and all-in-one versions of these seats usually have higher height and weight limits for the rear-facing position, which facilitates keeping a child in a rear-facing position for a longer period of time.¹⁰

For children one through three years old, the NHTSA suggests keeping a child in a rear-facing seat until the child reaches the top height or weight limit indicated by the car seat's manufacturer. Once either limit is exceeded, the NHTSA recommends a forward-facing seat with a harness and tether.¹¹

For children four through seven years, the NHTSA advises a child should be kept in a forward-facing car seat with a harness and tether until the child reaches the top height or weight limit set by the car seat's manufacturer. Again, once either limit is exceeded, the child should be transported in a booster seat, but the NHTSA recommends the booster seat still be installed properly in the back seat of the vehicle.¹²

For children eight through 12 years, the NHTSA recommends keeping a child in a booster seat until the child is big enough to fit in a seat belt properly. Proper fit in a seat belt for the NHTSA means that the lap belt lies snugly across the upper thighs, not the stomach, and the shoulder belt lies snugly across the shoulder and chest, not across the neck or face. The NHTSA notes the child should still ride in the back seat of the vehicle "because it's safer there."¹³

⁹ The NHTSA, *Car Seat Types*, available at <https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-right-car-seat-car-seat-types> (last viewed February 1, 2021).

¹⁰ The NHTSA, *Car Seat Recommendations*, available at <https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-right-car-seat-car-seat-recommendations> (last viewed February 1, 2021).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Florida Law

Safety Belt Use Under 18

Section 316.614(4)(a), F.S., prohibits a person from operating a motor vehicle¹⁴ or autocycle¹⁵ in this state unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by a safety belt or by a child restraint device, if applicable. As used in s. 316.613, F.S., the term “motor vehicle” does not include:

- A school bus as defined in s. 316.003, F.S.
- A bus used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in s. 316.615(1)(b), F.S., or in conjunction with school activities.
- A farm tractor or implement of husbandry.
- A truck having a gross vehicle weight rating of more than 26,000 pounds.
- A motorcycle, moped, or bicycle.¹⁶

Child Restraint Requirements

Section 316.613, F.S., requires every operator of a motor vehicle operated on the roadways, streets, or highways of this state to provide for protection of a child who is five years of age or younger by properly using a crash-tested, federally approved child restraint device. The device must be a separate carrier or a vehicle manufacturer’s integrated child seat for children through three years of age.¹⁷ A separate carrier, an integrated child seat, or a child booster seat may be used for children aged four through five years. However, the requirement does not apply in certain circumstances, including when a safety belt is used and the child:

- Is being transported gratuitously by an operator who is not a member of the child’s immediate family;
- Is being transported in a medical emergency situation involving the child; or
- Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.¹⁸

A violation of s. 316.613, F.S., is a moving violation punishable by a penalty of \$60 plus any applicable local court costs.¹⁹ In addition, the violator will have three points assessed against his or her driver license. In lieu of the monetary penalty and the assessment of points, a violator may elect to participate in a child restraint safety program, with the approval of the court with

¹⁴ Section 316.003(42), F.S., defines “motor vehicle,” except for purposes of the payment of tolls, as “a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.”

¹⁵ Section 316.003(2), F.S., defines “autocycle” as “a three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.”

¹⁶ Section 316.614(3)(a), F.S.

¹⁷ Section 316.613(1)(a)1., F.S.

¹⁸ Section 316.613(1)(a)2., F.S.

¹⁹ Section 316.613(5), F.S.

jurisdiction over the violation. After completing the program, the court may waive the monetary penalty, and must waive the assessment of points.²⁰

School Buses

Section 316.6145, F.S., requires each school bus²¹ purchased new after December 31, 2000, and used to transport students in grades pre-K through 12 be equipped with safety belts or with any other federally approved restraint system in a number sufficient to allow each student being transported to use a separate safety belt or restraint system.²² Each school district is required to prioritize the allocation of buses equipped with safety belts or restraint systems to children in elementary schools.²³ However, the provisions of s. 316.613, F.S., relating to child safety restraints, do not apply to school buses, as they are excluded from the definition of “motor vehicle” for purposes of that section.²⁴

Child Care Facility Vehicles

Section 402.305(1), F.S., requires the Department of Children and Families (DCF) to establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served. Section 402.305(10), F.S., requires the minimum standards, among other items, to include requirements for child restraints or seat belts in vehicles used by child care facilities²⁵ and large family child care homes²⁶ to transport children.

²⁰ Section 316.613(5), F.S.,

²¹ Section 316.6145(1)(b), F.S., defines a “school bus” to mean “one that is owned, leased, operated, or contracted by a school district.”

²² Section 316.6145(1), F.S.

²³ Section 316.6145(4), F.S. Section 1006.25(2), F.S., requires each school bus regularly used for the transportation of prekindergarten disability program and K-12 public school students to and from school or to and from school activities, and owned, operated, rented, contracted, or leased by any district school board to comply with the applicable federal motor vehicle safety standards. Subsection (4) of that section requires students be transported only in designated seating positions, except in specified emergency situations, and use the occupant crash protection system provided by the manufacturer. The Department of Education posts on its website guidelines providing “clarification and interpretation of the NHTSA Guidelines, and additional background and the Department of Education recommendations regarding technical and operational issues associated with transporting pre-school age students.” See The Department of Education, *Florida Guidelines for Seating of Pre-school Age Children in School Buses*, available at <http://www.fl DOE.org/schools/healthy-schools/transportation/> (last viewed January 27, 2021).

²⁴ Section 316.613(2)(a), F.S.

²⁵ Section 402.302(1), F.S., defines “child care” to mean “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.” Subsection (2) of that section defines “child care facility” to include “any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.”

²⁶ Section 402.302(11), F.S., defines “large family child care home” to mean “an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation, with one of the two personnel being the owner or occupant of the residence.”

Pursuant to that direction, each child transported in a child care facility vehicle or a large family child care home vehicle is required to be in an individual, factory-installed seat belt or a federally approved child restraint.²⁷

III. Effect of Proposed Changes:

The bill amends s. 316.613, F.S., increasing the age of children which must use a crash-tested, federally-approved child restraint device from age five years or younger to age six years or younger. The bill also increases the age of a child for which use of a separate carrier, an integrated child seat, or a child booster seat is authorized from age four through five years to age four through six years.

Children being transported in a child restraint device in compliance with the current provisions of s. 316.613(1)(a) and (1)(a)2., F.S., must be kept in that (or another) compliant device for one additional year. Because Florida's child restraint requirements are based solely on the child's age, the result may or may not always be consistent with the NHTSA's recommendations, which instead focus on the actual weight and height of the child being transported.

The requirement to protect children aged through three years with a separate carrier or a vehicle manufacturer's integrated child seat remains unchanged.

The bill is effective July 1, 2021.

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.

²⁷ See 65C-22.001(6)(e), F.A.C.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Currently, compliant child restraint devices may have to be replaced due to a defect occurring within the additional year of use required by the bill, or new devices may be purchased, for example, to replace a worn restraint device. However, the fiscal impact on private sector sales of child restraint devices is indeterminate.

C. Government Sector Impact:

SB 158 (2020) was identical to this bill. The Department of Highway Safety and Motor Vehicles prepared an agency analysis on that bill and estimated that increasing the age a child must be in a child restraint from age five to age six will result in an increase in moving violations issued to drivers, which would likely yield a positive, insignificant increase in county revenues.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.613 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

²⁸ The Department of Highway Safety and Motor Vehicles, Agency Analysis of Senate Bill 158 (2020), p. 4. (August 21, 2020)(On file with the Senate Committee on Children, Families, and Elder Affairs).

By Senator Perry

8-00209-21

2021380__

1 A bill to be entitled
2 An act relating to child restraint requirements;
3 amending s. 316.613, F.S.; increasing the age of
4 children for whom operators of motor vehicles must
5 provide protection by using a crash-tested, federally
6 approved child restraint device; increasing the age of
7 children for whom a separate carrier, an integrated
8 child seat, or a child booster seat may be used;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Paragraph (a) of subsection (1) of section
14 316.613, Florida Statutes, is amended to read:

15 316.613 Child restraint requirements.—

16 (1)(a) Every operator of a motor vehicle as defined in this
17 section, while transporting a child in a motor vehicle operated
18 on the roadways, streets, or highways of this state, shall, if
19 the child is 6 ~~5~~ years of age or younger, provide for protection
20 of the child by properly using a crash-tested, federally
21 approved child restraint device.

22 1. For children aged through 3 years, such restraint device
23 must be a separate carrier or a vehicle manufacturer's
24 integrated child seat.

25 2. For children aged 4 through 6 ~~5~~ years, a separate
26 carrier, an integrated child seat, or a child booster seat may
27 be used. However, the requirement to use a child restraint
28 device under this subparagraph does not apply when a safety belt
29 is used as required in s. 316.614(4)(a) and the child:

8-00209-21

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30 a. Is being transported gratuitously by an operator who is
31 not a member of the child's immediate family;

32 b. Is being transported in a medical emergency situation
33 involving the child; or

34 c. Has a medical condition that necessitates an exception
35 as evidenced by appropriate documentation from a health care
36 professional.

37 Section 2. This act shall take effect July 1, 2021.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 380
FINAL ACTION: Favorable
MEETING DATE: Wednesday, February 3, 2021
TIME: 9:00—11:30 a.m.
PLACE: 37 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brodeur						
X		Garcia						
X		Harrell						
X		Rouson						
X		Torres						
X		Wright						
X		Albritton, VICE CHAIR						
X		Book, CHAIR						
8	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Highway Safety and Motor Vehicles

BILL INFORMATION

BILL NUMBER:	SB 158
BILL TITLE:	Child Restraint Requirements
BILL SPONSOR:	Perry
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE

1)	Children, Families, and Elder Affairs
2)	
3)	
4)	
5)	

CURRENT COMMITTEE

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	SB 476
SPONSOR:	2019
YEAR:	Perry, Taddeo, Stewart, Book, Gruters, Hooper, Flores
LAST ACTION:	May 3, 2019: Died in Rules

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	August 21, 2019: Richie Frederick, Gail Singletary-Bureau of Records
Division Director/Designee MS	<i>RAH</i> 10/8/19
Division Director/Designee FHP	
ADDITIONAL ANALYST(S):	August 20, 2019: Kenny Zimmerman, Stan Kirkland – Strategic Management Office
LEGAL ANALYST:	October 7, 2019: Mark Mason/Gregory Pitt - OGC
FISCAL ANALYST:	October 7, 2019: Suzie Carey, Budget
	10/10/19 <i>gc with changes.</i>

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill raises the age of children for whom operators of motor vehicles must provide protection by using a crash-tested, federally approved child restraint device, and raises the age of children for whom a separate carrier, integrated child seat, or child booster seat may be used.

If passed, the act shall take effect July 1, 2020.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Pursuant to s. 316.613(1), F.S., every operator of a motor vehicle as defined in s. 316.613(2), F.S., while transporting a child five years of age or younger must have the child secured in a crash-tested, federally approved child restraint device. For children ages four through five years, a separate carrier, integrated child seat, or child booster seat may be used. § 316.613(1)(a)2., Fla. Stat. Pursuant to s. 316.613(1)(b), F.S., the Department of Highway Safety and Motor Vehicles (Department) is required to provide notice of these child restraint requirements when delivering a motor vehicle license tag.

Pursuant to s. 316.613(5), a person who violates s. 316.613, F.S., commits a moving violation punishable under Chapter 318, F.S., and will have three points assessed against his or her driver license. In lieu of the penalty, a person may elect, with the court's approval, to participate in a child restraint safety program approved by the chief judge. The child restraint safety program must use a course approved by the Department. In calendar year 2018, there were 8,738 moving violations for a child restraint violation (2018 UTC Report, Conviction Code 404).

2. **EFFECT OF THE BILL:**

The bill amends s. 316.613(1), F.S., to require that every operator of a motor vehicle while transporting a child of six years of age or younger must have the child secured in a crash-tested, federally approved child restraint device. For children ages four through six years, a separate carrier, integrated child seat, or child booster seat may be used.

The Financial Responsibility Law (Chapter 324) requires owners and operators of motor vehicles to be financially responsible for damages and/or injuries they may have caused to others when a motor vehicle crash occurs. The Department categorizes financial responsibility into 9 "cases" or events that initiate the financial responsibility process. This change could potentially increase Financial Responsibility (FR) Case 1 (Injury in the crash) case generation. The citation issued for a child restraint violation under s. 316.613, F.S., is a moving violation and a moving violation in a crash will generate the FR Case 1. Increasing the age range from 5 to 6 may contribute to a potential increase in FR Cases.

If the bill passes, the Department will have to update its Driver Handbook, driver license knowledge test question bank, educational material, and driver improvement course curriculums to reflect these changes.

Additionally, the Florida Highway Patrol will have to educate its Troopers on the changes to ensure proper enforcement of traffic laws. The Division of Motorist Services will have to modify the Uniform Traffic Guide, Appendix C, to reflect the changes.

If the bill passes, the Department will have to update the motor vehicle registration file verbiage. The registration has pre-printed text on the back referencing s. 316.613(1), F.S., that must be updated to reflect the provisions of this bill.

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

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

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

Proponents and summary of position:	There are no known proponents.
Opponents and summary of position:	There are no known opponents.

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

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

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

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

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

Y N

Revenues:	Increasing the age a child must be in a child restraint from 5 to 6, will increase the number of moving violations. Counties would see a positive, insignificant increase in revenues from the increase.
Expenditures:	NA
Does the legislation increase local taxes or fees? If yes, explain.	NA
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	NA

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

Y N

Revenues:	Increasing the age limit from 5 to 6 will cause an increase in the number of FR cases created. If the moving violation results in the driver having their license suspended, this could result in a \$15 reinstatement penalty per s. 324.071, F.S. The Florida Department of Highway Safety Operating Trust Fund would see an insignificant, positive increase due to this bill.
Expenditures:	Indeterminate.
Does the legislation contain a State Government appropriation?	NA
If yes, was this appropriated last year?	NA

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

Y N

Revenues:	None
Expenditures:	Indeterminate
Other:	NA

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

Y N

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	This legislation does not appear to have any impact on the Department's technology systems.
---	---

FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.	None
---	------

ADDITIONAL COMMENTS

None

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	None.
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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

2/3/21 (CFEA A2 9:00)

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

380

Bill Number (if applicable)

Topic Child Restraint Requirements

Name David Cullen

Amendment Barcode (if applicable)

Job Title _____

Address 1934 Shelby Ct

Street

Tallahassee

City

FL

State

32308

Zip

Phone 941-323-2404

Email cullenasea@gmail.com

Speaking: For Against Information

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

Representing Advocacy Institute for Children

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/21

Meeting Date

SB 380
Bill Number (if applicable)

Topic Child Restraint Requirements

Amendment Barcode (if applicable)

Name Edeline Joseph-Theophile

Job Title _____

Address 413 Old Village Way
Street

Phone 727-469-3082

Oldsmar FL 34677
City State Zip

Email EdelineJT.PTA@gmail.com

Speaking: For Against Information

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

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

02/03/21
Meeting Date

SB 380
Bill Number (if applicable)

Topic Child Restraint Requirements

Amendment Barcode (if applicable)

Name John Wm Barger

Job Title Owner

Address 4388 Windmill Palm Ter NE
Street

Phone 7274238118

St Petersburg Florida 33703
City State Zip

Email jwb@bargerbuilders.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

02-03-21

Meeting Date

380

Bill Number (if applicable)

Topic Child Restraint Requirements

Amendment Barcode (if applicable)

Name Fely Curva, Ph.D.

Job Title Coordinator

Address 804 Middlewood Drive

Street

Phone 850-508-2256

Tallahassee

FL

32312

City

State

Zip

Email fely.curva@gmail.com

Speaking: For Against Information

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

Representing Budd Bell Clearinghouse on Human Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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02/03/2021
Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

SB 380
Bill Number (if applicable)

Topic Child Restraint Requirement

Amendment Barcode (if applicable)

Name Amy Whitaker

Job Title -

Address 4613 SW 105th Drive

Phone 813-431-3209

Gainesville FL 32608
City State Zip

Email amy@amywhitaker.

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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02/03/2021

Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

SB 380

Bill Number (if applicable)

Topic Child Restraint Requirements

Name Becker Holland

Amendment Barcode (if applicable)

Job Title Development Director, Pace Center foorf Girls, Alachua

Address 13141 NW 19th Place

Street

Phone 352-359-2859

Gainesville

FL

32606

City

State

Zip

Email beckerh@cox.net

Speaking: For Against Information

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

Representing Jr. :League of Gainesville State Public Affairs Committee/Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/3/2021

Meeting Date

SB 380

Bill Number (if applicable)

Topic SB 380: Child Restraint Requirements

Name Karen Morgan

Amendment Barcode (if applicable)

Job Title Government Relations

Address 213 W. Crest Ave .

Street

Tampa

City

FL

State

33603

Zip

Phone 813 842 3003

Email kvmorgan@acg.aaa.com

Speaking: For Against Information

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

Representing AAA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/3/2021

Meeting Date

380

Bill Number (if applicable)

Topic Child Restraint Requirements

Amendment Barcode (if applicable)

Name Doug Bell

Job Title Lobbyist

Address 119 S. Monroe Street, Suite 200

Phone 850-205-9000

Street

Tallahassee

FL

32301

Email doug.bell@mhdfirm.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chapter of the American Academy of Pediatrics (FCAAP)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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