

<b>Tab 1</b> SB 714 by Taddeo; (Similar to CS/H 00117) Resource Information for Individuals with Disabilities						
<del>464086</del>	D	S	WD	CF, Taddeo	Delete everything after	03/08 03:26 PM
410138	D	S	RCS	CF, Taddeo	Delete everything after	03/10 12:46 PM

<b>Tab 2</b> SB 826 by Baxley (CO-INTRODUCERS) Harrell; (Identical to H 00871) Child Protection Teams						
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<b>Tab 3</b> SB 1096 by Book; (Similar to H 00307) Screening of Summer Camp Personnel						
870840	A	S	RCS	CF, Book	Delete L.36 - 67:	03/11 08:36 AM

<b>Tab 4</b> SB 1136 by Rodrigues; (Identical to H 00861) Board of Directors of Florida ABLE, Inc.						
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<b>Tab 5</b> SB 1344 by Burgess; (Identical to H 01041) Protection of Elderly Persons and Disabled Adults						
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<b>Tab 6</b> SB 1526 by Garcia; (Identical to H 01071) Medicaid Coverage for Former Foster Youth						
<del>509270</del>	A	S	WD	CF, Garcia	Delete L.56 - 70:	03/08 01:25 PM
928816	A	S	RCS	CF, Garcia	Delete L.56 - 70:	03/11 07:50 AM

<b>Tab 7</b> SB 1532 by Book; (Similar to CS/H 01089) Child Support						
191352	A	S	RCS	CF, Book	Delete L.73 - 280:	03/10 12:30 PM

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

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

**MEETING DATE:** Tuesday, March 9, 2021  
**TIME:** 3:30—6:00 p.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	<b>SB 714</b> Taddeo (Similar H 117)	Resource Information for Individuals with Disabilities; Requiring the Agency for Persons with Disabilities to provide specified written information to persons applying for certain waiver services; requiring the agency to provide a certain disclosure statement along with such information, etc.  CF      03/09/2021 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
2	<b>SB 826</b> Baxley (Identical H 871)	Child Protection Teams; Revising the definition of the term "officer, employee, or agent" as it applies to immunity from personal liability in certain actions to include any member of a Child Protection Team established by the Department of Health in certain circumstances, etc.  CF      03/09/2021 Favorable JU RC	Favorable Yeas 8 Nays 0
3	<b>SB 1096</b> Book (Similar H 307)	Screening of Summer Camp Personnel; Providing applicability of certain requirements to summer day camps and summer 24-hour camps; providing an exception; requiring such camps to meet specified minimum requirements relating to health, sanitation, and safety and specified child care personnel screening requirements; providing that failure of a camp to comply with such requirements results in the loss of the camp's ability to operate; authorizing the Department of Children and Families or local licensing agency to perform specified enforcement actions, etc.  CF      03/09/2021 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Tuesday, March 9, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1136</b> Rodrigues (Identical H 861)	Board of Directors of Florida ABLE, Inc.; Revising the composition of the membership of the Florida ABLE, Inc., board of directors; removing a limit on the number of terms that certain reappointed members may serve, etc.  CF 03/09/2021 Favorable GO RC	Favorable Yeas 8 Nays 0
5	<b>SB 1344</b> Burgess (Identical H 1041)	Protection of Elderly Persons and Disabled Adults; Adding offenses concerning elderly persons and disabled adults to the authority of the Office of Statewide Prosecution; providing that a person who has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult is not qualified to act as a personal representative; providing for forfeiture of specified benefits of persons who have been convicted of certain offenses involving elderly persons or disabled adults; specifying additional conduct that constitutes exploitation of an elderly person or a disabled adult, etc.  CF 03/09/2021 Favorable CJ RC	Favorable Yeas 8 Nays 0
6	<b>SB 1526</b> Garcia (Identical H 1071)	Medicaid Coverage for Former Foster Youth; Requiring the Department of Children and Families to develop a program to facilitate enrollment of certain young adults in Medicaid; authorizing the department to coordinate with a community-based care lead agency in implementing the program; revising eligibility for Medicaid coverage for certain young adults formerly eligible for foster care; providing for presumptive eligibility for Medicaid for certain young adults, etc.  CF 03/09/2021 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Tuesday, March 9, 2021, 3:30—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 1532</b> Book (Similar H 1089)	Child Support; Revising requirements for child support depositories in Title IV-D cases; requiring the depositories to create a case in the Clerk of Court Child Support Enforcement Collection System and set up appropriate payment accounts upon certain notice from the Department of Revenue; prohibiting the treatment of incarceration as voluntary employment for purposes of establishing or modifying child support orders, with exceptions; authorizing the department to include confidential and exempt information in electronic mail communications with parents, caregivers, or other authorized persons under certain circumstances, with exceptions, etc.  CF 03/09/2021 Fav/CS JU AP	Fav/CS Yeas 8 Nays 0
8	Introduction of Shevaun Harris, Secretary of the Department of Children and Families		Presented

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Other Related Meeting Documents

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# CourtSmart Tag Report

**Room:** SB 37  
**Case No.:**  
**Caption:** Senate Children, Families, and Elder Affairs

**Type:**  
**Judge:**

**Started:** 3/9/2021 3:31:17 PM  
**Ends:** 3/9/2021 4:37:53 PM **Length:** 01:06:37

3:31:20 PM Children, Families comes to order  
3:31:43 PM  
3:31:44 PM a quorum is present  
3:31:59 PM  
3:32:23 PM  
3:32:30 PM tab 5, SB 1344 by Sen. Burgess  
3:32:46 PM Sen. Burgess to explain bill  
3:35:19 PM Sen. Harrell asks a question re: abuse & neglect of elderly person  
3:36:14 PM follow-up re: competency hearings  
3:37:26 PM Dan Olson w/ Attn'y Gen. waives in support  
3:37:51 PM Barney Bishop w/ Fla. Smart Justice Alliance waives in support  
3:38:21 PM debate  
3:38:35 PM Sen. Burgess closes  
3:39:35 PM Sen. Harrell has a follow-up on competency hearing  
3:40:15 PM roll call taken - 1344 reported favorably  
3:40:43 PM tab 6, SB 1526 by Sen. Garcia, Medicaid Coverage for Former Foster Youth  
3:41:48 PM no questions  
3:41:58 PM amendment barcode 928816 explained  
3:42:18 PM no questions on amendment  
3:42:34 PM no debate - amendment adopted  
3:42:42 PM back on bill as amended  
3:42:56 PM Barney Bishop waives in support  
3:43:01 PM Elizabeth Berglin of United Way of Miami-Dade waives in support  
3:43:19 PM  
3:43:20 PM Sen. Garcia closes  
3:43:38 PM roll call on 1526 - reported favorably  
3:43:57 PM  
3:44:21 PM tab 2, SB 826 by Baxley, Child Protection Teams, is taken up  
3:44:26 PM Sen. Harrell presents bill on behalf of Sen. Baxley  
3:46:40 PM no questions on SB 826  
3:46:51 PM Aimee Diaz Lyon, Fla. Chapter of Amer. Academy of Pediatrics, waives in support  
3:47:08 PM Barney Bishop waives in support  
3:47:38 PM Sen. Harrell closes  
3:48:11 PM roll call on 826 - reported favorably  
3:48:18 PM  
3:48:42 PM tab 4, SB 1136 by Sen. Rodrigues, Bd. of Dirs. of Fla. ABLE, Inc.  
3:50:43 PM no comments or testimony  
3:50:54 PM SB 1136 reported favorably  
3:51:21 PM tab 1, SB 714 by Sen. Taddeo, Resource Info. for Individuals w/ Disabilities  
3:53:04 PM amend. barcode 410138 by Taddeo explained  
3:53:34 PM no questions, no debate  
3:53:38 PM amendment adopted

3:54:17 PM Sen. Harrell had a question on bill as amended  
3:55:07 PM Dr. Nancy Lawther, Fla. PTA, waives in support  
3:55:24 PM no debate on bill  
3:55:30 PM Sen. Taddeo closes on bill as amended  
3:56:46 PM SB 714 reported favorably  
3:57:03 PM Vice-Chair Albritton takes over  
3:57:21 PM tab 3, Sen. 1096 by Sen. Book, Screening of Summer Camp Personnel  
3:58:52 PM amendment barcode 870840 taken up  
3:59:35 PM Sen. Harrell has a question on the amendment  
4:00:25 PM Michelle Watson, Fla. Children's Council, waives in support  
4:00:48 PM amendment adopted  
4:01:09 PM back on bill as amended  
4:01:22 PM Barney Bishop waives in support  
4:01:29 PM Edward Briggs, Brandon Sports & Aquatic Center, waives in support  
4:01:59 PM debate  
4:02:45 PM comments  
4:03:21 PM Sen. Book closes  
4:03:26 PM roll call on SB 1096  
4:03:33 PM 1096 reported favorably  
4:03:57 PM tab 7, SB 1532 by Sen. Book, Child Support  
4:04:42 PM barcode 191352 technical amendment taken up  
4:05:15 PM no questions on amendment  
4:05:24 PM no testimony on amendment  
4:05:34 PM no debate  
4:05:46 PM amendment adopted after sponsor waived close  
4:05:59 PM Barney Bishop waives in support  
4:06:17 PM debate on bill  
4:07:24 PM Sen. Book waives close  
4:07:33 PM SB 1532 reported favorably  
4:07:59 PM Sen. Book takes back chairmanship  
4:08:10 PM Intro of Shevaun Harris, Sec'y of Dept. of Children & Families  
4:12:17 PM questions  
4:12:20 PM Sen. Harrell asks a question  
4:13:32 PM Sen. Harrell then asks that Sec'y Harris explain expertise further  
4:16:02 PM Sen. Harrell - follow-up question  
4:18:49 PM Sen. Harrell asks question about funding within the system  
4:20:32 PM Sen. Rouson has a question  
4:22:49 PM follow-up from Sen. Rouson  
4:23:25 PM Sen. Torres recognized to speak  
4:27:10 PM Sen. Book asks a question  
4:33:03 PM Sen. Albritton makes comments  
4:36:10 PM Sen. Book closes introduction  
4:36:49 PM Sen. Wright affirmative on SBs 826, 1136, 714, & 1096 affirmative  
4:37:18 PM Sen. Albritton affirmative for SB 1344  
4:37:33 PM meeting adjourned



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/08/2021	.	
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The Committee on Children, Families, and Elder Affairs (Taddeo) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (10) of section 393.065, Florida Statutes, is redesignated as subsection (11), and a new subsection (10) is added to that section to read:

393.065 Application and eligibility determination.—

(10) (a) Regardless of whether an applicant is eligible to receive waiver services, the agency shall provide the following



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11 information to the applicant or his or her parent, legal  
12 guardian, or family member:

13 1. A brief overview of the vocational rehabilitation  
14 services offered through the Florida Division of Vocational  
15 Rehabilitation, including a hyperlink or website address that  
16 provides access to the applicable application for such services.

17 2. A brief overview of the Florida ABLE program as  
18 established under s. 1009.986, including a hyperlink or website  
19 address that provides access to the application for establishing  
20 an ABLE account as defined in s. 1009.986(2).

21 3. A brief overview of the supplemental security income  
22 benefits and social security disability income benefits  
23 available under Title XVI of the Social Security Act, as  
24 amended, including a hyperlink or website address that provides  
25 access to the applicable application for such benefits.

26 4. A statement indicating that the applicant's local public  
27 school district may provide specialized instructional services,  
28 including transition programs, for students with special  
29 education needs.

30 5. A brief overview of programs and services funded through  
31 the Center for Students with Unique Abilities, including contact  
32 information for each state approved Florida Postsecondary  
33 Comprehensive Transition Program.

34 6. A brief overview of decision-making options for  
35 individuals with disabilities, which may include contact  
36 information for organizations that the agency bieleves helpful  
37 in assisting with such decisions.

38 7. A brief overview of the referral tools made available  
39 through the agency, including a hyperlink or website address





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40 that provides access to such tools.

41 8. A statement indicating that some waiver providers may  
42 serve private pay individuals.

43 (b) The agency must provide the information required in  
44 paragraph (a) in writing to an applicant or his or her parent,  
45 legal guardian, or family member along with a written disclosure  
46 statement in substantially the following form:

47  
48 DISCLOSURE STATEMENT

49  
50 Each program and service has its own eligibility requirements.  
51 By providing the information specified in s. 393.065(10)(a), the  
52 agency does not guarantee an applicant's eligibility for or  
53 enrollment in any program or service.

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

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

56 And the title is amended as follows:

57 Delete everything before the enacting clause  
58 and insert:

59 A bill to be entitled  
60 An act relating to resource information for  
61 individuals with disabilities; amending s. 393.065,  
62 F.S.; requiring the Agency for Persons with  
63 Disabilities to provide specified written information  
64 to persons applying for certain waiver services;  
65 requiring the agency to provide a certain disclosure  
66 statement along with such information; providing an  
67 effective date.



410138

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2021	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (10) of section 393.065, Florida Statutes, is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

393.065 Application and eligibility determination.—

(10) (a) The agency shall provide the following information to all applicants or their parents, legal guardians, or family



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11 members:

12 1. A brief overview of the vocational rehabilitation  
13 services offered through the Division of Vocational  
14 Rehabilitation of the Florida Department of Education, including  
15 a hyperlink or website address that provides access to the  
16 application for such services;

17 2. A brief overview of the Florida ABLE program established  
18 under s. 1009.986, including a hyperlink or website address that  
19 provides access to the application for establishing an ABLE  
20 account as defined in s. 1009.986(2);

21 3. A brief overview of the supplemental security income  
22 benefits and social security disability income benefits  
23 available under Title XVI of the Social Security Act, as  
24 amended, including a hyperlink or website address that provides  
25 access to the application for such benefits;

26 4. A statement indicating that the applicant's local public  
27 school district may provide specialized instructional services,  
28 including transition programs, for students with special  
29 education needs;

30 5. A brief overview of programs and services funded through  
31 the Center for Students with Unique Abilities, including contact  
32 information for each state approved Florida Postsecondary  
33 Comprehensive Transition Program;

34 6. A brief overview of decision-making options for  
35 individuals with disabilities, guardianship under ch. 744, and  
36 alternatives to guardianship as defined in s. 744.334(1), which  
37 may include contact information for organizations that the  
38 agency believes helpful in assisting with such decisions;

39 7. A brief overview of the referral tools made available



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40 through the agency, including a hyperlink or website address  
41 that provides access to such tools; and

42 8. A statement indicating that some waiver providers may  
43 serve private pay individuals.

44 (b) The agency must provide the information required in  
45 paragraph (a) in writing to an applicant or the applicant's  
46 parent, legal guardian, or family member along with a written  
47 disclosure statement in substantially the following form:

48  
49 DISCLOSURE STATEMENT

50  
51 Each program and service has its own eligibility requirements.  
52 By providing the information specified in s. 393.065(10)(a), the  
53 agency does not guarantee an applicant's eligibility for or  
54 enrollment in any program or service.

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

56

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

58 And the title is amended as follows:

59 Delete everything before the enacting clause  
60 and insert:

61 A bill to be entitled  
62 An act relating to resource information for  
63 individuals with disabilities; amending s. 393.065,  
64 F.S.; requiring the Agency for Persons with  
65 Disabilities to provide specified written information  
66 to persons applying for certain waiver services;  
67 requiring the agency to provide a certain disclosure  
68 statement along with such information; providing an



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69

effective date.

By Senator Taddeo

40-01002-21

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1                   A bill to be entitled  
2       An act relating to resource information for  
3       individuals with disabilities; amending s. 393.065,  
4       F.S.; requiring the Agency for Persons with  
5       Disabilities to provide specified written information  
6       to persons applying for certain waiver services;  
7       requiring the agency to provide a certain disclosure  
8       statement along with such information; providing an  
9       effective date.

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

12  
13       Section 1. Present subsection (10) of section 393.065,  
14       Florida Statutes, is redesignated as subsection (11), and a new  
15       subsection (10) is added to that section, to read:

16       393.065 Application and eligibility determination.—

17       (10) (a) Regardless of whether an applicant is eligible to  
18       receive waiver services, the agency shall provide all of the  
19       following information to the applicant or his or her parent,  
20       legal guardian, or family member:

21       1. Eligibility criteria and application procedures for  
22       receiving vocational rehabilitation services, including a  
23       hyperlink or website address that provides direct access to the  
24       applicable application for such services.

25       2. Eligibility criteria and application procedures for  
26       participation in the Florida ABLE program under s. 1009.986,  
27       including a hyperlink or website address that provides direct  
28       access to the application for establishing an ABLE account as  
29       defined in s. 1009.986(2).

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30 3. Eligibility criteria and application procedures for  
31 receiving supplemental security income benefits and social  
32 security disability income benefits under Title XVI of the  
33 Social Security Act, as amended, including a hyperlink or  
34 website address that provides direct access to the applicable  
35 application for such benefits.

36 4. For an applicant who is 22 years of age or younger,  
37 contact information for the local school district for enrollment  
38 in school.

39 5. For an applicant who is between 16 and 22 years of age,  
40 eligibility criteria and application procedures for transition  
41 programs and services available in local schools, including  
42 access to job coaches providing transition services to students  
43 with disabilities who are enrolled in such programs.

44 6. For an applicant who is 22 years of age or older,  
45 eligibility criteria and application procedures for all of the  
46 following:

47 a. Private-pay adult day training programs located in the  
48 applicable service area.

49 b. Postsecondary and vocational training programs funded  
50 through the Florida Center for Students with Unique Abilities  
51 established under s. 1004.6495(5).

52 c. Any other programs that may be funded through the  
53 Division of Vocational Rehabilitation or the Division of Blind  
54 Services of the Department of Education which may be of  
55 assistance to the applicant.

56 7. Eligibility criteria and application procedures for  
57 guardianship programs for individuals with disabilities.

58 8. A list of available independent living skills coaches,

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59 job coaches, and personal supports located in the applicable  
60 service area which may be obtained through private pay.

61 (b) The agency must provide the information required in  
62 paragraph (a) in writing to an applicant or his or her parent,  
63 legal guardian, or family member along with a written disclosure  
64 statement in substantially the following form:

65  
66 DISCLOSURE STATEMENT  
67

68 Each program and service has its own eligibility requirements.  
69 By providing the information specified in Section  
70 393.065(10)(a), Florida Statutes, the agency does not guarantee  
71 an applicant's eligibility for or enrollment in any program or  
72 service.

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





THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/9/2021  
Meeting Date

SB 714  
Bill Number (if applicable)

Topic Resource Information for Individuals Amendment Barcode (if applicable)  
Name Dr. Nancy Lawther with Disabilities

Job Title legislation Committee member

Address 1747 Orlando Central Parkway Phone 407 855-7604  
Street City State Zip Email  
Orlando FL 32809 legislator@flordepta.org

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.

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

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

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

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BILL: CS/SB 714

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

SUBJECT: Resource Information for Individuals with Disabilities

DATE: March 9, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Fav/CS
2.			AHS	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CSSB 714 directs the Agency for Persons with Disabilities (the APD) to provide individuals applying for Medicaid Home and Community-Based Services (HCBS) Waiver services, regardless of eligibility for such services, with the following information:

- A brief overview of vocational rehabilitation services offered through the Florida Division of Vocational Rehabilitation;
- A brief overview of the Florida ABLE program;
- A brief overview of supplemental social security and social security disability benefits;
- A statement indicating that an applicant’s local public school district may provide specialized instructional services, including transition programs, for students with special education needs;
- A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contact information for each state approved Florida Postsecondary Comprehensive Transition Program
- A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
- A brief overview of referral tools made available through the APD; and
- A statement indicating that some waiver providers may serve private pay individuals.

The bill requires that the APD provide the information in writing to the applicant, their parent, legal guardian, or a family member. The bill also requires the APD to provide a written

disclosure stating that each program and service has its own eligibility requirements and that the APD does not guarantee eligibility or enrollment for the applicant in any program or service.

The APD states that the bill will likely not create a fiscal impact to state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

**II. Present Situation:**

**Agency for Persons with Disabilities**

The APD is responsible for the provision of services to individuals with developmental disabilities<sup>1</sup> and for administering the Home and Community-Based Services (HCBS) Waiver.<sup>2</sup> Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.<sup>3</sup> The HCBS Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.<sup>4</sup> Eligible individuals must meet institutional level of care requirements.<sup>5</sup> The overarching goal for the APD is to prevent or reduce the severity of a developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.<sup>6</sup>

**Regional Offices**

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:<sup>7</sup>

<u>Region</u>	<u>Counties</u>
Northwest	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington; Fields 1 and 2.
Northeast	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam,

<sup>1</sup> Section 393.063(12), F.S., defines “developmental disability” to mean “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”

<sup>2</sup> See Section 20.197(3), F.S.

<sup>3</sup> Rule 59G-13.080(1), F.A.C.

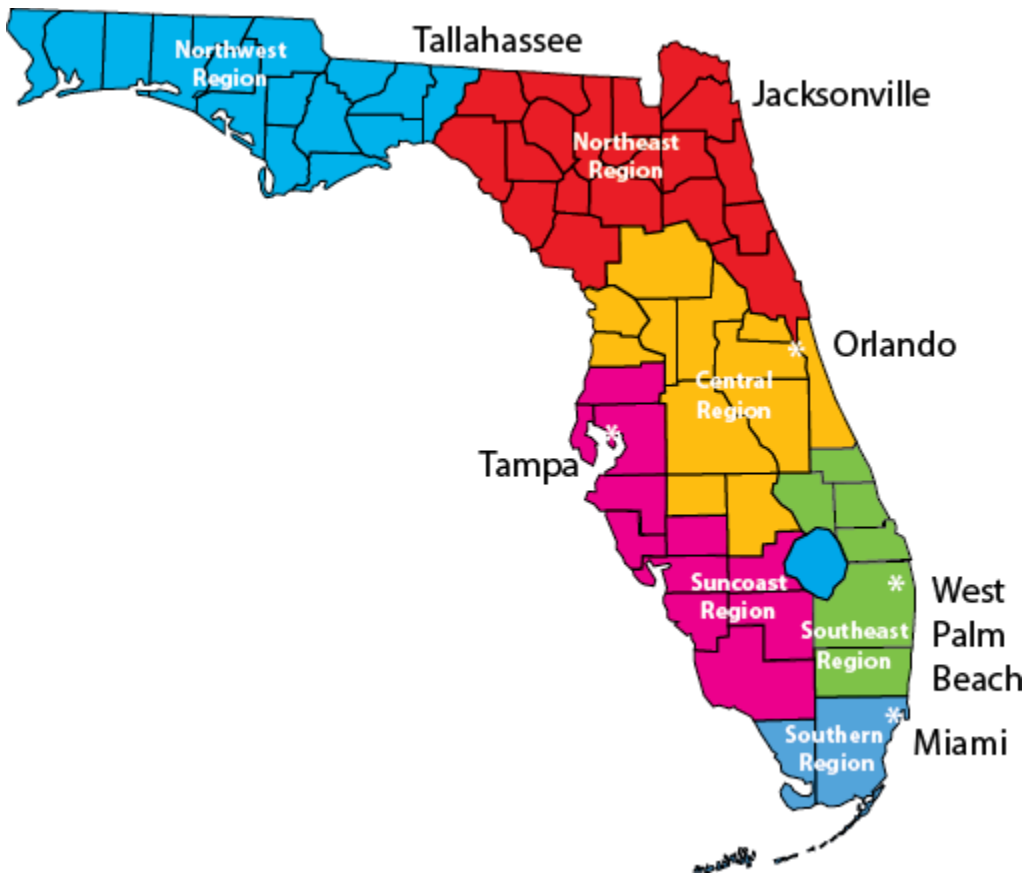
<sup>4</sup> The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicare.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited March 5, 2021).

<sup>5</sup> *Id.*; Rule 59G-13.080(1), F.A.C.

<sup>6</sup> See s. 393.062, F.S.

<sup>7</sup> The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited March 5, 2021).

	St. Johns, Suwannee, Taylor, Union, and Volusia; Fields 3, 4, and 12.
Central	Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter; Fields 7, 13, and 14.
Suncoast	Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota; Suncoast Field and Field 8.
Southeast	Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie; Fields 9 and 10.
Southern	Miami-Dade and Monroe; Field 11.



**iBudget Florida Program**

The APD administers Florida’s individual budget-based HCBS waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida; alternatively, they may choose to live in an institutional setting known as an

Intermediate Care Facility for the Developmentally Disabled (ICF/DD)<sup>8</sup> through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).<sup>9</sup>

The APD initiated implementation of iBudget Florida on May 1, 2011<sup>10</sup> with the final areas transitioned from the previous tiered waiver system on July 1, 2013.<sup>11</sup> The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.<sup>12</sup> The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 35,100 individuals through iBudget Florida,<sup>13</sup> contracting with service providers to offer 27 supports and services to assist individuals to live in their community.<sup>14</sup> Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.<sup>15</sup>

### ***Eligibility for iBudget Services***

The application process for individuals wishing to receive services through the iBudget program are detailed in section 393.065, F.S. The APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.<sup>16</sup> Individuals who are determined to be eligible for the waiver program are either given a slot in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis.<sup>17</sup> As of February 2021, approximately 22,700 individuals were on the HCBS Waiver wait list.<sup>18</sup>

The needs of APD clients are classified into seven categories<sup>19</sup> and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.<sup>20</sup>
- Category 3 – Includes, but is not limited to, clients:
  - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;

<sup>8</sup> Section 393.063(25), F.S., defines “intermediate care facility for the developmentally disabled” to mean “a residential facility licensed and certified under part VIII of chapter 400.”

<sup>9</sup> Section 393.0662, F.S.

<sup>10</sup> The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Second Quarter Fiscal Year 2020-21*, at p. 2, February 1, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee) (hereinafter cited as, “The Quarterly Report”).

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

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

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

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

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

<sup>16</sup> Section 393.065(1), F.S.

<sup>17</sup> Section 393.065, F.S.; *See* Rule 65G-1.047, F.A.C. for crisis status criteria.

<sup>18</sup> The Quarterly Report at p. 2.

<sup>19</sup> Section 393.065(5), F.S.

<sup>20</sup> *See* s. 393.065(5)(b) for specific criteria.

- Who are at substantial risk of incarceration or court commitment without supports;
- Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
- Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.<sup>21</sup>

### **The APD and Applications for Services**

The APD receives and processed roughly 1,000 applications for HCBS Waiver services and enrollment annually.<sup>22</sup> The APD provides each applicant with a notice regarding their eligibility, along with information specific to each applicant and their geographic location.<sup>23</sup> If an applicant is deemed ineligible, the APD must notify the applicant of the right to appeal the decision in accordance with chapter 120, F.S. within 5 days,<sup>24</sup> and offer suggestions regarding other programs, agencies, or services for which the applicant may be eligible.<sup>25</sup>

The APD maintains a web-based resource directory where individuals can search for resourced based on specific needs, preferences, and locations.<sup>26</sup> The APD also maintains the Florida Navigator, which is an online tool designed to empower and inform individuals with developmental disabilities, caregivers, and professionals about specific services available through state agencies and programs.<sup>27</sup>

The APD does not currently maintain information pertaining to the eligibility criteria and application procedures for specific governmental and non-governmental organizations.<sup>28</sup> The APD also does not currently have a mechanism for tracking private sector or non-governmental organizations with sufficient capacity to accept private-pay individuals.<sup>29</sup>

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<sup>21</sup> Section 393.065(5), F.S.

<sup>22</sup> The APD, *Agency Analysis for SB 714*, p. 2, February 8, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The APD Analysis”).

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

<sup>24</sup> Rule 65G-4.16(4), F.A.C.

<sup>25</sup> Rule 65G-4.16(5), F.A.C.

<sup>26</sup> The APD, *Resource Directory*, available at <https://resourcedirectory.apd.myflorida.com/> (last visited March 5, 2021).

<sup>27</sup> The APD, *Florida Navigator*, available at <https://navigator.apd.myflorida.com/> (last visited March 45 2021).

<sup>28</sup> The APD Analysis at p. 3.

<sup>29</sup> *Id.*

## The Florida Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (VR) within the Department of Education (DOE) administers the vocational rehabilitation program in Florida.<sup>30</sup> The VR provides services to help individuals with a disability find, advance in, or retain employment, and provides services to youth and students with a disability to aid in the transition from high school to a meaningful career path.<sup>31</sup> In FY 2018-19, VR served 48,439 individuals, including 26,086 customers who were between the ages of 14 through 21.<sup>32</sup>

An individual with a disability<sup>33</sup> is presumed eligible for vocational rehabilitation services if the person requires rehabilitation services to prepare for, enter, engage in, or retain gainful employment.<sup>34</sup> After determining eligibility, the VR must complete an assessment to determine rehabilitation needs and ensure that an individualized plan for employment (IPE)<sup>35</sup> is prepared.<sup>36</sup> The IPE must be designed to achieve the specific employment outcome of the individual and may include services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.<sup>37</sup>

The VR is only required to provide services to the extent they are funded by the Legislature.<sup>38</sup> All individuals eligible for services are placed in categories on a prioritized waiting list based on the significance of their disability, and the categories include:

- Category 1, comprised of individuals with the most significant disabilities;
- Category 2, comprised of individuals with a significant disability; and
- Category 3, comprised of individuals with a disability.<sup>39</sup>

In the 2018-2019 fiscal year, the VR served 26,744 individuals in category 1, and, as of June 30, 2019, had a waiting list of 300 individuals in category 3.<sup>40</sup>

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<sup>30</sup> The Department of Education (The DOE), Division of Vocational Rehabilitation (VR), *2018-2019 Annual Report* (2019), p. 6, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf> (last visited March 5, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Section 413.20(7), F.S. defines “disability” to mean “a physical or mental impairment that constitutes or results in a substantial impediment to employment.”

<sup>34</sup> Section 413.30(1), F.S.

<sup>35</sup> An individualized plan for employment includes a “comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services.” Section 413.20(3), F.S.

<sup>36</sup> *See* s. 413.30(4) and (5), F.S.

<sup>37</sup> The DOE, VR, *Frequently Asked Questions*, available at <http://www.rehabworks.org/faq.shtml> (last visited March 5, 2021).

<sup>38</sup> Section 413.731(1), F.S.

<sup>39</sup> The DOE, VR *2018-2019 Annual Report* (2019), at p. 7, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf?id=1> (last visited March 5, 2021).

<sup>40</sup> *Id.* at p. 10.



## Supplemental Security Income and Social Security Disability Income

Individuals with disabilities may qualify for certain federal assistance programs, including, in part, the Social Security Disability Insurance (SSDI)<sup>41</sup> and Supplemental Security Income<sup>42</sup> (SSI) are two such programs, administered by the federal Social Security Administration. Under these programs, disability is defined as the inability to engage in substantial gainful activity due to a medically determinable physical or mental impairment expected to result in death or last at least 12 months.<sup>43</sup>

The SSDI program provides cash payments to individuals who have contributed to the Social Security system and meet certain minimum work requirements.<sup>44</sup> The amount of assistance under the SSDI program varies depending on age and average earnings.<sup>45</sup> SSI is a means-tested program for aged, blind, or disabled individuals who meet certain income and resource limitations.<sup>46</sup> There are no contribution or minimum work requirements.<sup>47</sup> The SSI program provides cash payments assuring a minimum income for aged, blind, or disabled individuals who have very limited income and assets.<sup>48</sup> Effective January 1, 2021, the maximum monthly SSI benefit rate is \$794 for an eligible individual and \$1,191 for an eligible individual with an eligible spouse.<sup>49</sup>

## ABLE Programs

### *Federal ABLE Act*

Congress enacted the ABLE Act (Achieving a Better Life Experience Act) in 2014.<sup>50</sup> The ABLE Act permits a state to implement an ABLE Program and establish ABLE accounts for eligible individuals with disabilities<sup>51</sup> to spend distributions on “qualified disability expenses.”<sup>52</sup> The

<sup>41</sup> 42 U.S.C. §§ 401-433.

<sup>42</sup> 42 U.S.C. §§ 1381-1385.

<sup>43</sup> The Social Security Administration (The SSA), *Disability Evaluation Under Social Security*, available at <http://www.socialsecurity.gov/disability/professionals/bluebook/general-info.htm> (last visited March 5, 2021).

<sup>44</sup> *Id.*

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

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

<sup>47</sup> The definition of disability for disabled children receiving SSI benefits is slightly different from the definition for adults. See The SSA, Social Security Income (SSI) Eligibility Requirements, available at <http://www.ssa.gov/ssi/text-eligibility-ussi.htm#disabled-child> (last visited March 4, 2021).

<sup>48</sup> *Id.*

<sup>49</sup> Generally, the maximum monthly payment changes yearly due to changes in the Consumer Price Index. The SSA, *SSI Federal Payment Amounts for 2021*, available at <http://www.socialsecurity.gov/OACT/COLA/SSI.html> (last visited March 5, 2021).

<sup>50</sup> Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

<sup>51</sup> 26 U.S.C. § 529(e). An individual is an eligible individual for a taxable year if during such taxable year: (1) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year.

<sup>52</sup> 26 U.S.C. § 529(e)(5). “Qualified disability expense” is defined as “any expense related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.”

purposes of the ABLE Act are to encourage individuals and families to save money to support individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities to supplement benefits provided through other sources.<sup>53</sup>

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

The Florida ABLE Program was created in 2015 to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.<sup>54</sup> The Florida Prepaid College Board was required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program.<sup>55</sup>

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.<sup>56</sup> Among the individuals in the program, 44 percent have a developmental disability.<sup>57</sup> As of May 15, 2020, 4,724 individuals have an ABLE United account.<sup>58</sup> The average account balance is \$5,474.<sup>59</sup>

### **Preemployment Transition Services**

The Workforce Innovation and Opportunity Act of 2014 (WIOA)<sup>60</sup> aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.<sup>61</sup> The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide preemployment transition services to eligible individuals with a disability who:

- Are between 14 and 21 years of age; and
- Have a current individual education plan (IEP); or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.<sup>62</sup>

Section 504 of the Rehabilitation Act of 1973<sup>63</sup> prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. State and local agencies that administer federally funded

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<sup>53</sup> 26 U.S.C. § 529(b).

<sup>54</sup> Section 2, ch. 2015-56, L.O.F.

<sup>55</sup> Section 1009.986(3), F.S.

<sup>56</sup> ABLE United, *Direct Support Organization Disclosures* p. 1, (July 8, 2020), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2020-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> (last visited March 5, 2021).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

<sup>61</sup> See U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, available at <https://www.doleta.gov/wioa/about/overview/> (last visited March 1, 2021).

<sup>62</sup> Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, available at <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited March 1, 2021).

<sup>63</sup> Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. § 794.

programs or activities may devise an accommodation plan for someone with a disability to allow the disabled person's participation in the program.<sup>64</sup>

All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education.<sup>65</sup> The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability.<sup>66</sup> An IEP team begins the process of identifying the need for transition services before a student with a disability attains the age of 14 years, in order to ensure quality planning for a successful transition of the student to postsecondary education and career opportunities. When the student attains the age of 16, the IEP must include an annually updated statement addressing the intent for the student to pursue a standard high school diploma and other appropriate measurable long-term postsecondary education and career goals.<sup>67</sup>

### **The Florida Center for Students with Unique Abilities**

In 2015, the Legislature created the Florida Center for Students with Unique Abilities (FCSUA) within the University of Central Florida as a means of, among other things, disseminating information to students with disabilities and their parents regarding available education programs, services, resources, and employment opportunities for such students.<sup>68</sup> The information provided by the FCSUA includes:

- Education programs, services, and resources that are available at eligible institutions.
- Supports, accommodations, technical assistance, or training provided by eligible institutions, and certain regional autism centers; and
- Mentoring, networking, and employment opportunities.<sup>69</sup>

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

The bill requires the APD to provide information on programs and services which may benefit a developmentally disabled individual. Under the bill, the APD must provide such information to any individual applying for HCBS Waiver services, their parent, their legal guardian, or another family member, regardless of whether the individual is eligible to receive HCBS Waiver services and is ultimately enrolled in iBudget Florida.

Specifically, the APD must provide each applicant their parent, their legal guardian, or another family member with the following information:

- A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation of the DOE, along with a hyperlink or website address that provides direct access to the application for such services;

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<sup>64</sup> See *Alexander v. Choate*, 469 U.S. 287 (1985).

<sup>65</sup> Section 1003.5716, F.S.

<sup>66</sup> The DOE, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at p. 9. (last visited March 1, 2021).

<sup>67</sup> Section 1003.5716(2), F.S.

<sup>68</sup> Section 5, ch. 2016-2, L.O.F.

<sup>69</sup> Section 1004.6495(5)(a), F.S.

- A brief overview of the Florida ABLE program, along with a hyperlink or website address that provides direct access to the application for establishing an ABLE account as defines in s.1009.986(2), F.S.;
- A brief overview of supplemental social security income benefits and social security disability income benefits, along with a hyperlink or website address that provides direct access to the application for such benefits;
- A statement indicating that the applicant’s local school district may provide specialized instructional services, including transition programs, for students with special education needs;
- A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contact information for each state approved Florida Postsecondary Comprehensive Transition Program
- A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
- A brief overview of referral tools made available through the APD; and
- A statement informing the applicant that some waiver providers may serve private pay individuals.

The bill requires that the APD provide the information in writing to the applicant, their parent, legal guardian, or another family member. The bill also requires the APD to provide a written disclosure statement as follows:

“Each program and service has its own eligibility requirements. By providing the information specified in Section 393.065(10)(a), Florida Statutes, the agency does not guarantee an applicant’s eligibility for or enrollment in any program or service.”

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.

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The APD anticipates that the bill will not have a fiscal impact on state government.<sup>70</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 393.065 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 March 9, 2021:**

The Committee Substitute:

- Requires the APD to provide to provide individuals applying for Medicaid Home and Community-Based Services (HCBS) Waiver services, regardless of eligibility for such services, with the following information:
  - A brief overview of vocational rehabilitation services offered through the Florida Division of Vocational Rehabilitation;
  - A brief overview of the Florida ABLE program;
  - A brief overview of supplemental social security and social security disability benefits;

<sup>70</sup> The APD, Email from the APD Legislative Affairs Director J.P. Bell, March 10, 2021. (On file with the Senate Committee on Children, Families, and Elder Affairs).

- A statement indicating that an applicant's local public school district may provide specialized instructional services, including transition programs, for students with special education needs;
- A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contact information for each state approved Florida Postsecondary Comprehensive Transition Program
- A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
- A brief overview of referral tools made available through the APD; and
- A statement indicating that some waiver providers may serve private pay individuals.
- Removes the requirement that the APD provide waiver applicants with the following information:
  - Eligibility criteria and application procedures for vocational rehabilitation services;
  - Eligibility criteria and application procedures for the Florida ABLE program;
  - Eligibility criteria and application procedures for receiving supplemental social security and social security disability benefits;
  - Contact information for the local school district for applicants age 22 or younger;
  - If the applicant is between 16 and 22 years old, eligibility criteria and application procedures for transition programs and services available in local schools, including access to job coaches providing transition services to students with disabilities who are enrolled in such programs;
  - If the applicant is age 22 or older, eligibility criteria and application procedures for:
    - Certain adult day training programs;
    - Certain training programs; and
    - Other specified programs that may be of assistance.
  - Eligibility criteria and application procedures for certain guardianship programs; and
  - A list of certain local independent living skills coaches, job coaches, and personal supports.

**B. Amendments:**

None.

By Senator Baxley

12-00719-21

2021826\_\_

1                                   A bill to be entitled  
 2           An act relating to Child Protection Teams; amending s.  
 3           768.28, F.S.; revising the definition of the term  
 4           "officer, employee, or agent" as it applies to  
 5           immunity from personal liability in certain actions to  
 6           include any member of a Child Protection Team  
 7           established by the Department of Health in certain  
 8           circumstances; providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1. Paragraphs (a) and (b) of subsection (9) of  
 13 section 768.28, Florida Statutes, are amended to read:

14           768.28 Waiver of sovereign immunity in tort actions;  
 15 recovery limits; limitation on attorney fees; statute of  
 16 limitations; exclusions; indemnification; risk management  
 17 programs.—

18           (9) (a) An ~~No~~ officer, employee, or agent of the state or of  
 19 any of its subdivisions may not ~~shall~~ be held personally liable  
 20 in tort or named as a party defendant in any action for any  
 21 injury or damage suffered as a result of any act, event, or  
 22 omission of action in the scope of her or his employment or  
 23 function, unless such officer, employee, or agent acted in bad  
 24 faith or with malicious purpose or in a manner exhibiting wanton  
 25 and willful disregard of human rights, safety, or property.  
 26 However, such officer, employee, or agent shall be considered an  
 27 adverse witness in a tort action for any injury or damage  
 28 suffered as a result of any act, event, or omission of action in  
 29 the scope of her or his employment or function. The exclusive

12-00719-21

2021826\_\_

30 remedy for injury or damage suffered as a result of an act,  
31 event, or omission of an officer, employee, or agent of the  
32 state or any of its subdivisions or constitutional officers is  
33 ~~shall be~~ by action against the governmental entity, or the head  
34 of such entity in her or his official capacity, or the  
35 constitutional officer of which the officer, employee, or agent  
36 is an employee, unless such act or omission was committed in bad  
37 faith or with malicious purpose or in a manner exhibiting wanton  
38 and willful disregard of human rights, safety, or property. The  
39 state or its subdivisions are ~~shall~~ not be liable in tort for  
40 the acts or omissions of an officer, employee, or agent  
41 committed while acting outside the course and scope of her or  
42 his employment or committed in bad faith or with malicious  
43 purpose or in a manner exhibiting wanton and willful disregard  
44 of human rights, safety, or property.

45 (b) As used in this subsection, the term:

- 46 1. "Employee" includes any volunteer firefighter.
- 47 2. "Officer, employee, or agent" includes, but is not  
48 limited to, any health care provider when providing services  
49 pursuant to s. 766.1115; any nonprofit independent college or  
50 university located and chartered in this state which owns or  
51 operates an accredited medical school, and its employees or  
52 agents, when providing patient services pursuant to paragraph  
53 (10) (f); ~~and~~ any public defender or her or his employee or  
54 agent, including, ~~among others,~~ an assistant public defender or  
55 and an investigator; and any member of a Child Protection Team,  
56 as defined in s. 39.01(13), when carrying out her or his duties  
57 as a team member under the control, direction, and supervision  
58 of the state or any of its agencies or subdivisions.



12-00719-21

2021826\_\_

59

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



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

Duplicate

March 9, 2021  
Meeting Date

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

826  
Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email Barney@BarneyBishop.com

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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.**

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

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/9/2021

*Meeting Date*

SB 826

*Bill Number (if applicable)*

Topic Child Protection Teams

*Amendment Barcode (if applicable)*

Name Aimee Diaz Lyon

Job Title Lobbyist

Address 119 S. Monroe Street Suite 200

Phone 850-205-9000

*Street*

Tallahassee

FL

32301

Email adl@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 - American Academy of Pediatrics

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.)

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

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BILL: SB 826

INTRODUCER: Senator Baxley

SUBJECT: Child Protection Teams

DATE: March 8, 2021

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

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

### I. Summary:

SB 826 extends sovereign immunity protections to any member of a child protection team when the team member is carrying out her or his duties under the control, direction, and supervision of the state or any of its agencies or subdivisions. A child protection team is a group of professionals who receive referrals, primarily from child protective investigators and sheriff's offices, when child abuse, abandonment, or neglect is alleged. The team, directed by a physician, evaluates the allegations, assesses risks, and provides recommendations for child safety and support services.

The bill may have an indeterminate effect on state revenues and expenditures. See section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

### II. Present Situation:

#### Waiver of Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>1</sup> Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Section 768.28(1), F.S., is a limited statutory waiver of the immunity conferred under art. X, s. 13, of the Florida Constitution. Section 768.28(1), F.S., allows for suits in tort against Florida and its agencies and subdivisions for damages resulting from the negligence of a government officer, employee, or agent acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct.<sup>2</sup> The waiver of sovereign immunity applies only to "injury or loss of property, personal injury, or death caused by the

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<sup>1</sup> *Sovereign immunity*, Legal Information Institute, available at [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited March 8, 2021).

<sup>2</sup> Section 768.28(1), F.S.

negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment ...."<sup>3</sup>

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard from human rights, safety, or property.<sup>4</sup> A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment or for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>5</sup> A tortious claim that arises under the waiver of sovereign immunity must be brought against the relevant government entity or official in his or her capacity, unless it arises from such conduct.<sup>6</sup>

An "officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115, F.S., any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.<sup>7</sup>

Florida Appeal Courts have equated "bad faith" with the "actual malice standard."<sup>8</sup> "Malicious purpose," has been interpreted as meaning the conduct was committed with "ill will, hatred, spite, [or] an evil intent."<sup>9</sup> "Wanton and willful disregard of human rights [or] safety," has been described as "conduct much more reprehensible and unacceptable than mere intentional conduct," and "conduct that is worse than gross negligence."<sup>10</sup> These cases have not interpreted what "wanton and willful disregard of human rights [or] safety" *actually means* as used in s. 768.28(9)(a), F.S.<sup>11</sup> However, according to the Florida Standard Jury Instructions, "wanton" means "with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to be done to persons or property" and "willful" means "intentionally, knowingly and purposely."<sup>12</sup>

<sup>3</sup> *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

<sup>4</sup> Section 768.28(9)(a), F.S.

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

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

<sup>7</sup> Section 768.28(9)(b)2., F.S.

<sup>8</sup> *Peterson v. Pollack*, 290 So.3d 102, 109(Fla. 4th DCA 2020) (quoting *Parker v. State of Fla. Bd. of Regents ex rel. Fla. State Univ.*, 724 So. 2d 163, 167 (Fla. 1st DCA 1998) (citation omitted)).

<sup>9</sup> *Id.* (quoting *Eiras v. Florida*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017)).

<sup>10</sup> *Id.* (quoting *Richardson v. City of Pompano Beach*, 511 So. 2d 1121, 1123 (Fla. 4th DCA 1987); *Sierra v. Associated Marine Insts., Inc.*, 850 So. 2d 582, 593 (Fla. 2d DCA 2003)).

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

<sup>12</sup> *Id.* (citing Fla. Std. Jury Instr. (Crim.) 7.9 (Vehicular or Vessel Homicide); Fla. Std. Jury Instr. (Crim.) 28.5 (Reckless Driving); Fla. Std. Jury Instr. (Crim.) 28.19 (Reckless Operation of a Vessel)).

### ***Damages***

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident. The caps in s. 768.28(5), F.S., apply to all of the elements of the monetary award to a plaintiff against a sovereignly immune entity.<sup>13</sup> In other words, a plaintiff's entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S. The limited waiver of immunity does not apply to punitive damages or interest for the period before judgment.<sup>14</sup> Additionally, an attorney may not charge in excess of 25 percent of any judgment or settlement.<sup>15</sup>

### ***Claim Bills***

Although an 'excess' judgment may be entered, the statutory caps make it impossible, absent a special claim bill passed by the Legislature, for a claimant to collect more than the caps discussed above.<sup>16</sup> A claim bill, also known as a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.<sup>17</sup> It is not an action at law, but rather is a legislative measure that directs a relevant government entity or officer to pay a specific sum of money to a claimant to satisfy an obligation.<sup>18</sup> A claim bill may be obtained solely from the Legislature or after obtaining a judgment from a Florida court.<sup>19</sup> The Legislature may pass a claim bill<sup>20</sup> and does so based on a principle of fair treatment to compensate a person who is injured or damaged without compensation.<sup>21</sup>

Once a legislative claim bill is formally introduced, a special master conducts a quasi-judicial hearing.<sup>22</sup> This hearing may be conducted in a manner similar to a trial during which the claimant may offer testimony or other evidence relevant to establish the claim.<sup>23</sup> A responding agency may present a defense to contest the claim, and the special master must then prepare a report with an advisory recommendation to the Legislature.<sup>24</sup>

A government entity may, without a claim bill, settle a claim against it for an amount above the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.<sup>25</sup>

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<sup>13</sup> *Gallagher v. Manatee Cty.* 927 So. 2d 914, 918 (Fla. 2d DCA 2006).

<sup>14</sup> Section 768.28(5), F.S.

<sup>15</sup> Section 768.28(8), F.S.

<sup>16</sup> Section 768.28(5), F.S. *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

<sup>17</sup> The Florida Senate, The Florida House of Representatives Civil Justice Subcommittee, *Legislative Claim Bill Manual, Policies, Procedures, and Information Concerning Introduction and Passage*, p. , August 2019, available at <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf> (last visited March 8, 2021).

<sup>18</sup> *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)

<sup>19</sup> *City of Miami v. Valdez*, 847 So. 2d 1005, 1006-1007 (Fla. 3d DCA 2003).

<sup>20</sup> *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

<sup>21</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

<sup>22</sup> *Wagner*, 960 So. 2d at 788-789 (citing Kahn, at 26).

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

<sup>24</sup> *Id.*

<sup>25</sup> Section 768.28(5), F.S.

## Child Protection Teams

### *Description*

The Florida Department of Health (DOH) currently contracts with 22 independent, community-based organizations that serve as child protection teams.<sup>26</sup> “Child Protective Team” (CPT) means a team of professionals established by the DOH to receive referrals from the protective investigators and protective supervision staff of the Department of Children and Families (DCF) and to provide specialized and supportive services to the program in processing child abuse,<sup>27</sup> abandonment,<sup>28</sup> or neglect case.<sup>29, 30</sup> The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.<sup>31</sup>

### *Composition and Responsibilities*

The CPT is one of six programs that make up the Division of Children’s Medical Services (CMS) of the DOH. The CPTs, within the CMS, have 22 district offices.<sup>32</sup> Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services.<sup>33</sup>

### *Services*

When a CPT accepts a referral from the DCF or law enforcement, the team must be able to provide, in part, the following services:

- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;

<sup>26</sup> The DOH, *Agency Analysis for SB 826*, p. 2, March 2, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The DOH Analysis”).

<sup>27</sup> Section 39.01(2), F.S., defines “abuse” as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

<sup>28</sup> Section 39.01(1), F.S., defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. “Establish or maintain a substantial and positive relationship” means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

<sup>29</sup> Section 39.01(50), F.S., states “neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

<sup>30</sup> Section 39.01(13), F.S.

<sup>31</sup> The DCF, *CFOP 170-5*, Chapter 9, p. 1, available at

<https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-05%20%20Child%20Protective%20Investigations/CFOP%20170-05.%20%20Chapter%2009.%20Coordination%20with%20Child%20Protection%20Team.pdf> (last visited March 8, 2021).

<sup>32</sup> The DOH, *Children’s Medical Services Child Protection Teams*, 2020, available at <http://www.cms-kids.com/home/contact/cpt.pdf> (last visited March 8, 2021) (hereinafter cited as “CMS CPT”).

<sup>33</sup> The DOH, Children’s Medical Services, *Child Protection Team Program Handbook*, p. 4 (June 28, 2019), available at [http://www.cms-kids.com/providers/prevention/documents/handbook\\_cpt.pdf](http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf) (last visited March 8, 2021) (hereinafter cited as “CPT Handbook”).



- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.<sup>34</sup>

### ***Cases that must be referred to a Child Protection Team***

The following cases involving child abuse, abandonment, or neglect that are reported to the Central Abuse Hotline must be referred to a child protection team:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is five years old or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child.<sup>35</sup>

### ***Employees and Sovereign Immunity***

The teams operate under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect.<sup>36</sup> According to the DOH, Florida's CPTs have approximately 364 team members, excluding medical directors, who are employed by private, non-profit entities.<sup>37</sup> Each team includes a medical director, other physicians, advanced practice registered nurses, physician assistants, registered nurses, team coordinators, case coordinators, and support staff.<sup>38</sup> State universities and county governmental entities employ approximately 126 of the team members.<sup>39</sup> The remaining members, approximately 238 members, are independent contractors who are not employees or agents of the DOH, and are therefore personally liable for their actions.<sup>40</sup>

### ***Lawsuits Filed Against Child Protection Teams***

The DOH Legal Counsel in collaboration with the Department of Financial Services, Division of Risk Management (DRM) represent state employees in tortious actions.<sup>41</sup> The DRM within the Chief Financial Officer's office queried its files for recent lawsuits involving CPTs. For FYs 2016-17, 2017-18, and data from 2018-February 2019, the Division of Risk Management was

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<sup>34</sup> Section 39.303(3), F.S. Further, a CPT that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child is required to consult with a physician who has experience in treating children with the same condition.

<sup>35</sup> Section 39.303(4), F.S.

<sup>36</sup> CMS CPT and s. 39.303(2)(a), F.S.

<sup>37</sup> The DOH Analysis at p. 2.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> The DOH Analysis at p. 3.

<sup>41</sup> The DOH Analysis at p. 2.

not able to identify a lawsuit filed against a government employed CPT.<sup>42</sup> The DRM conducted an updated review of approximately 42 claims against the DCF and the DOH related to child abuse, failure to protect wrongful death, etc., which have been filed since February 2019. No new claims which contain allegations of any wrongdoing against a CPT member have been identified.<sup>43</sup>

### **Sovereign Immunity and Child Protection Team Physicians**

It is not definitively settled whether all CPT *physicians* are covered under sovereign immunity. Whether sovereign immunity applies depends on the degree of control that the state maintains over the agent. In *Stoll v. Noel*,<sup>44</sup> the Florida Supreme Court explained that, under the appropriate circumstances, independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.<sup>45</sup>

The *Stoll* Court examined the employment contract between the CMS physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did. The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons. Furthermore, the Court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The Court noted that the state's interpretation of its manual is entitled to judicial deference and great weight.<sup>46</sup>

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

The bill amends s. 768.28(9)(b), F.S., expanding the definition of "officer, employee, or agent" to include "any member of a child protection team, as defined in s. 39.01, when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions". As a result, a member of a CPT will receive sovereign immunity

<sup>42</sup> Email prepared by Meredith Brock Stanfield, Director of Legislative and Cabinet Affairs, and forwarded by Chase Mitchell, Office of Legislative Affairs, Office of the Chief Financial Officer, Feb. 21, 2019, (on file with the Senate Committee on Children, Families, and Elder Affairs). Risk Management noted that it did not have a specific code in its system that identified CPTs that were involved in lawsuits. In updating a 2016 report, the workers queried all cases against DCF since July 1, 2012, and used cause codes such as child abuse, failure to protect, wrongful death by a foster parent, or similar category. The liability adjusters found no reported cases related to child protection teams in fiscal years 2016-2017. In fiscal years 2013-2014 through 2015-2016 notices were filed that litigation might ensue, but no lawsuits have been filed based upon those notices. The email shows that earlier lawsuits were filed dating back to fiscal year 2013-2014 and 2015-2016, but it is not readily apparent the extent to which CPTs were named in the litigation.

<sup>43</sup> Email prepared by Chase Mitchell, Office of Legislative Affairs, Office of the Chief Financial Officer, March 5, 2021, (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>44</sup> *Stoll v. Noel*, 694 So. 2d 701 (Fla. 1997).

<sup>45</sup> *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

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

protection in a tort action only when the team member is determined to have acted under the control, direction, and supervision of the state or one of its entities. If the CPT member is found to be acting outside of that control, then sovereign immunity will not protect the team member in a tort lawsuit.

This amendatory language appears to focus on the agency role of the team member in a manner similar to the Supreme Court's *Stoll* decision discussed above. To receive sovereign immunity, the team member cannot be acting independently and separate from the supervision of the state or one of its entities. In the *Stoll* decision, the Court held that physician consultants were agents of the state and entitled to sovereign immunity because the state had to authorize the physician's services in advance and maintained supervisory authority over the physician. Additionally, final authority for the treatment of the patients did not reside with the physician consultants, but with the employing state entity.

The bill takes effect 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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the need for child protection teams to purchase liability insurance.

**C. Government Sector Impact:**

The DOH estimates that the fiscal impact of extending sovereign immunity coverage to approximately 238 additional CPT members cannot be determined but might be significant. Potential costs to the Department could include legal representation, the cost to settle a suit, and related litigation expenses.<sup>47</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 768.28 Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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

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<sup>47</sup>The DOH Analysis at p. 4.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2021	.	
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The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

**Senate Amendment**

Delete lines 36 - 67

and insert:

Section 2. Section 402.3132, Florida Statutes, is created to read:

402.3132 Summer day camps and summer 24-hour camps.-

(1) The provisions of ss. 402.301-402.319, with the exception of the requirements regarding the screening of child care personnel, do not apply to a summer day camp or a summer



11 24-hour camp. However, a summer day camp or a summer 24-hour  
12 camp shall meet the minimum requirements of the local governing  
13 body as to health, sanitation, and safety, if applicable, and  
14 shall meet the child care personnel screening requirements in  
15 ss. 402.305 and 402.3055.

16 (2) Failure by a summer day camp or a summer 24-hour camp  
17 to comply with such screening requirements shall result in the  
18 loss of the camp's ability to operate.

19 (3) The department may not license summer day camps or  
20 summer 24-hours camps. However, the department shall have access  
21 to the personnel records of such facilities to ensure compliance  
22 with the screening requirements. The department may adopt rules  
23 relating to the screening requirements for summer day camps and  
24 summer 24-hour camps.

25 (4) The department or local licensing agency may commence  
26 and maintain all proper and necessary actions and proceedings  
27 for any of the following purposes:

28 (a) To protect the health, sanitation, safety, and well-  
29 being of all children under care.

30 (b) To enforce its rules and regulations.

31 (c) To apply for injunction to the proper circuit court.

32 The judge of such court shall have jurisdiction upon hearing and  
33 for cause shown to grant a temporary or permanent injunction  
34 restraining any person or entity from willfully and knowingly  
35 violating or continuing to violate any of the child care  
36 personnel screening requirements in ss. 402.305 and 402.3055,  
37 including refusing to terminate the employment of personnel  
38 found to be in noncompliance.

39 (d) To impose an administrative fine, not to exceed \$100



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40 per violation per day, for each violation of the child care  
41 personnel screening requirements in ss. 402.305 and 402.3055.

42 (5) To be in compliance with the requirements of this  
43 section, all summer camps or 24-hour summer camps must register  
44 with the department for inclusion in the department's summer  
45 camp listing.

By Senator Book

32-01098-21

20211096\_\_

1                   A bill to be entitled  
2       An act relating to the screening of summer camp  
3       personnel; amending s. 402.302, F.S.; defining terms;  
4       creating s. 402.3132, F.S.; providing applicability of  
5       certain requirements to summer day camps and summer  
6       24-hour camps; providing an exception; requiring such  
7       camps to meet specified minimum requirements relating  
8       to health, sanitation, and safety and specified child  
9       care personnel screening requirements; providing that  
10      failure of a camp to comply with such requirements  
11      results in the loss of the camp's ability to operate;  
12      authorizing the Department of Children and Families or  
13      local licensing agency to perform specified  
14      enforcement actions; requiring camps to register with  
15      the department for inclusion in the department's  
16      summer camp listing to be in compliance with specified  
17      requirements; amending s. 409.175, F.S.; conforming  
18      provisions to changes made by the act; providing an  
19      effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23       Section 1. Present subsection (18) of section 402.302,  
24       Florida Statutes, is redesignated as subsection (20), and new  
25       subsection (18) and subsection (19) are added to that section,  
26       to read:

27       402.302 Definitions.—As used in this chapter, the term:  
28       (18) "Summer day camp" means recreational, educational, and  
29       other enrichment programs operated during summer vacation for



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30 children who are 5 years of age or older on or before September  
31 1.

32 (19) "Summer 24-hour camp" means recreational, educational,  
33 and other enrichment programs operated on a 24-hour basis during  
34 summer vacation for children who are 5 years of age or older on  
35 or before September 1 which are not exclusively educational.

36 Section 2. Section 402.3132, Florida Statutes, is created  
37 to read:

38 402.3132 Summer day camps and summer 24-hour camps.-

39 (1) The provisions of ss. 402.301-402.319, with the  
40 exception of the requirements regarding the screening of child  
41 care personnel, do not apply to a summer day camp or a summer  
42 24-hour camp. However, a summer day camp or a summer 24-hour  
43 camp shall meet the minimum requirements of the local governing  
44 body as to health, sanitation, and safety, if applicable, and  
45 shall meet the child care personnel screening requirements in  
46 ss. 402.305 and 402.3055. Failure by a summer day camp or a  
47 summer 24-hour camp to comply with such screening requirements  
48 shall result in the loss of the camp's ability to operate.

49 (2) The department or local licensing agency may commence  
50 and maintain all proper and necessary actions and proceedings  
51 for any of the following purposes:

52 (a) To protect the health, sanitation, safety, and well-  
53 being of all children under care.

54 (b) To enforce its rules and regulations.

55 (c) To apply for injunction to the proper circuit court.

56 The judge of such court shall have jurisdiction upon hearing and  
57 for cause shown to grant a temporary or permanent injunction  
58 restraining any person or entity from violating or continuing to

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59 violate any of the child care personnel screening requirements  
60 in ss. 402.305 and 402.3055.

61 (d) To impose an administrative fine, not to exceed \$100  
62 per violation per day, for each violation of the child care  
63 personnel screening requirements in ss. 402.305 and 402.3055.

64 (3) To be in compliance with the requirements of this  
65 section, all summer camps or 24-hour summer camps must register  
66 with the department for inclusion in the department's summer  
67 camp listing.

68 Section 3. Paragraphs (j), (l), (o), and (p) of subsection  
69 (2), paragraph (d) of subsection (4), paragraphs (e) and (l) of  
70 subsection (6), paragraphs (a) and (b) of subsection (10), and  
71 paragraphs (b) and (c) of subsection (12) of section 409.175,  
72 Florida Statutes, are amended to read:

73 409.175 Licensure of family foster homes, residential  
74 child-caring agencies, and child-placing agencies; public  
75 records exemption.—

76 (2) As used in this section, the term:

77 (j) "Personnel" means all owners, operators, employees, and  
78 volunteers working in a child-placing agency or residential  
79 child-caring agency who may be employed by or do volunteer work  
80 for a person, corporation, or agency that holds a license as a  
81 child-placing agency or a residential child-caring agency, but  
82 the term does not include those who do not work on the premises  
83 where child care is furnished and have no direct contact with a  
84 child or have no contact with a child outside of the presence of  
85 the child's parent or guardian. For purposes of screening, the  
86 term includes any member, over the age of 12 years, of the  
87 family of the owner or operator or any person other than a

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88 client, over the age of 12 years, residing with the owner or  
89 operator if the agency is located in or adjacent to the home of  
90 the owner or operator or if the family member of, or person  
91 residing with, the owner or operator has any direct contact with  
92 the children. Members of the family of the owner or operator, or  
93 persons residing with the owner or operator, who are between the  
94 ages of 12 years and 18 years are not required to be  
95 fingerprinted, but must be screened for delinquency records. ~~For~~  
96 ~~purposes of screening, the term also includes owners, operators,~~  
97 ~~employees, and volunteers working in summer day camps, or summer~~  
98 ~~24-hour camps providing care for children.~~ A volunteer who  
99 assists on an intermittent basis for less than 10 hours per  
100 month shall not be included in the term "personnel" for the  
101 purposes of screening if a person who meets the screening  
102 requirement of this section is always present and has the  
103 volunteer in his or her line of sight.

104 (1) "Residential child-caring agency" means any person,  
105 corporation, or agency, public or private, other than the  
106 child's parent or legal guardian, that provides staffed 24-hour  
107 care for children in facilities maintained for that purpose,  
108 regardless of whether operated for profit or whether a fee is  
109 charged. Such residential child-caring agencies include, but are  
110 not limited to, maternity homes, runaway shelters, group homes  
111 that are administered by an agency, emergency shelters that are  
112 not in private residences, and wilderness camps. Residential  
113 child-caring agencies do not include hospitals, boarding  
114 schools, ~~summer or recreation camps,~~ nursing homes, or  
115 facilities operated by a governmental agency for the training,  
116 treatment, or secure care of delinquent youth, or facilities

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117 licensed under s. 393.067 or s. 394.875 or chapter 397.

118 ~~(o) "Summer day camp" means recreational, educational, and~~  
119 ~~other enrichment programs operated during summer vacations for~~  
120 ~~children who are 5 years of age on or before September 1 and~~  
121 ~~older.~~

122 ~~(p) "Summer 24-hour camp" means recreational, educational,~~  
123 ~~and other enrichment programs operated on a 24-hour basis during~~  
124 ~~summer vacation for children who are 5 years of age on or before~~  
125 ~~September 1 and older, that are not exclusively educational.~~

126 (4)

127 (d) This license requirement does not apply to boarding  
128 schools, ~~recreation and summer camps~~, nursing homes, hospitals,  
129 or to persons who care for children of friends or neighbors in  
130 their homes for periods not to exceed 90 days or to persons who  
131 have received a child for adoption from a licensed child-placing  
132 agency.

133 (6)

134 (e)1. The department may pursue other remedies provided in  
135 this section in addition to denial or revocation of a license  
136 for failure to comply with the screening requirements. The  
137 disciplinary actions determination to be made by the department  
138 and the procedure for hearing for applicants and licensees shall  
139 be in accordance with chapter 120.

140 2. When the department has reasonable cause to believe that  
141 grounds for denial or termination of employment exist, it shall  
142 notify, in writing, the applicant or, licensee, ~~or summer or~~  
143 ~~recreation camp~~, and the personnel affected, stating the  
144 specific record that indicates noncompliance with the screening  
145 requirements.

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146 3. Procedures established for hearing under chapter 120  
147 shall be available to the applicant or, licensee, ~~summer day~~  
148 ~~camp, or summer 24-hour camp~~, and affected personnel, in order  
149 to present evidence relating either to the accuracy of the basis  
150 for exclusion or to the denial of an exemption from  
151 disqualification. Such procedures may also be used to challenge  
152 a decision by a community-based care lead agency's refusal to  
153 issue a letter supporting an application for licensure. If the  
154 challenge is to the actions of the community-based care lead  
155 agency, the respondent to the challenge shall be the lead agency  
156 and the department shall be notified of the proceedings.

157 4. Refusal on the part of an applicant to dismiss personnel  
158 who have been found not to be in compliance with the  
159 requirements for good moral character of personnel shall result  
160 in automatic denial or revocation of license in addition to any  
161 other remedies provided in this section which may be pursued by  
162 the department.

163 ~~(1) The department may not license summer day camps or~~  
164 ~~summer 24-hour camps. However, the department shall have access~~  
165 ~~to the personnel records of such facilities to ensure compliance~~  
166 ~~with the screening requirements. The department may adopt rules~~  
167 ~~relating to the screening requirements for summer day camps and~~  
168 ~~summer 24-hour camps.~~

169 (10) (a) The department may institute injunctive proceedings  
170 in a court of competent jurisdiction to:

171 1. Enforce the provisions of this section or any license  
172 requirement, rule, or order issued or entered into pursuant  
173 thereto; or

174 2. Terminate the operation of an agency in which any of the

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175 following conditions exist:

176 a. The licensee has failed to take preventive or corrective  
177 measures in accordance with any order of the department to  
178 maintain conformity with licensing requirements.

179 b. There is a violation of any of the provisions of this  
180 section, or of any licensing requirement promulgated pursuant to  
181 this section, which violation threatens harm to any child or  
182 which constitutes an emergency requiring immediate action.

183 ~~3. Terminate the operation of a summer day camp or summer  
184 24-hour camp providing care for children when such camp has  
185 willfully and knowingly refused to comply with the screening  
186 requirements for personnel or has refused to terminate the  
187 employment of personnel found to be in noncompliance with the  
188 requirements for good moral character as determined in paragraph  
189 (5)(b).~~

190 (b) If the department finds, within 30 days after written  
191 notification by registered mail of the requirement for  
192 licensure, that a person or agency continues to care for or to  
193 place children without a license or, within 30 days after  
194 written notification by registered mail of the requirement for  
195 screening of personnel and compliance with paragraph (5)(b) for  
196 the hiring and continued employment of personnel, ~~that a summer  
197 day camp or summer 24-hour camp continues to provide care for  
198 children without complying,~~ the department shall notify the  
199 appropriate state attorney of the violation of law and, if  
200 necessary, shall institute a civil suit to enjoin the person or  
201 agency from continuing the placement or care of children ~~or to  
202 enjoin the summer day camp or summer 24-hour camp from  
203 continuing the care of children.~~

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204 (12)

205 (b) It is unlawful for any person, agency, or family foster  
206 home, ~~summer day camp, or summer 24-hour camp~~ providing care for  
207 children to:

208 1. Willfully or intentionally fail to comply with the  
209 requirements for the screening of personnel and family foster  
210 homes or the dismissal of personnel or removal of household  
211 members found not to be in compliance with the requirements for  
212 good moral character as specified in paragraph (5) (b).

213 2. Use information from the criminal records obtained under  
214 this section for any purpose other than screening a person for  
215 employment as specified in this section or to release such  
216 information to any other person for any purpose other than  
217 screening for employment as specified in this section.

218 (c) It is unlawful for any person, agency, or family foster  
219 home, ~~summer day camp, or summer 24-hour camp~~ providing care for  
220 children to use information from the juvenile records of any  
221 person obtained under this section for any purpose other than  
222 screening for employment as specified in this section or to  
223 release information from such records to any other person for  
224 any purpose other than screening for employment as specified in  
225 this section.

226 Section 4. This act shall take effect July 1, 2021.





# APPEARANCE RECORD

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

3/9/21

Meeting Date

1096

Bill Number (if applicable)

Topic Screening of Summer Camp Personal

Name Edward Briggs

Job Title Dir. of Gov't & Community Affairs

Address 235 W. Brandon Blvd. Ste. 640

Street

Phone 850-933-5994

Brandon

City

FL

State

33511

Zip

Email edward@rsaconsulting.com

Speaking:  For  Against  Information

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

Representing Brandon Sports & Aquatics Center

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.**

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

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

March 9, 2021  
*Meeting Date*

1096  
*Bill Number (if applicable)*

Topic Screening of Summer Camp Personnel

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road  
*Street*

Phone 850.510.9922

Tallahassee FL 32308  
*City State Zip*

Email Barney@BarneyBishop.com

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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.***

Room A2 Children, Families, and Elder Affairs

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

1096

Bill Number (if applicable)

870840

Amendment Barcode (if applicable)

Topic Screening of Summer Camp Personnel

Name Michele Watson

Job Title CEO, Florida Children's Council

Address 1126 Lee Avenue Suite B

Street

Tallahassee

City

FL

State

32303

Zip

Phone 8503202388

Email mwatson@floridacsc.org

Speaking:  For  Against  Information

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

Representing Florida Children's Council

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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1096

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

SUBJECT: Screening of Summer Camp Personnel

DATE: March 11, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	<b>Fav/CS</b>
2.			AHS	
3.			AP	

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**I. Summary:**

CS/SB 1096 relocates the definitions of the terms “summer day camp” and “summer 24-hour camp” and provides that requirements for child care facilities so not apply to a summer day camps and summer 24-hour camps and requires camps, with the exception of background screening requirements. However, the camps must meet the minimum requirements of the local governing body for health, sanitation, and safety and the child care facility personnel screening requirements. A camp’s failure to comply with requirements will result in the loss of its ability to operate.

The bill provides that the Department of Children and Families (DCF) may not license summer day camps, provides the DCF access to personnel records of such camps to ensure screening requirements are being met, and authorizes the DCF to adopt rules relating to the screening requirements.

The bill clarifies that the failure of a camp to refuse to terminate the employment of an employee who has not satisfied the screening requirements would be considered a violation of employee screening requirements.

The bill authorizes the DCF or local licensing agency to perform certain specified enforcement actions and requires camps to register with the DCF for inclusion in the summer camp listing posted on the DCF’s website.

The bill is estimated to have a fiscal impact of \$315,658.68, related to technology updates and the need for additional eight total positions for six months. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

## II. Present Situation:

### Definitions

Provisions and requirements relating to summer camps and summer 24-hour camps have historically been included in both chs. 402 and 409, F.S., which has led to some inconsistencies in terminology. For example:

- Chapter 409, F.S., defines the term “summer day camp” to mean “recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.<sup>1</sup>
- Chapter 409, F.S., defines the term “summer 24-hour camp” to mean “recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacation for children who are 5 years of age on or before September 1 and older, that are not exclusively educational.<sup>2</sup>
- “Summer day camps” and “summer camps having children in full-time residence” are specifically excluded from the definition of the term “child care facility” in ch. 402, F.S.<sup>3</sup>
- “Summer or recreation camps” are specifically excluded from the definition of the term “residential child-caring agency in ch. 409, F.S.<sup>4</sup>
- The term “summer recreation camps” while used in both chs. 402 and 409, F.S., is not defined in either chapter.<sup>5</sup>
- Camps that are operated at times of the year other than summer, such as during the December holidays and spring break are not defined or addressed in statute.

### Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees and ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>6</sup> and may include criminal records checks through local law enforcement agencies.<sup>7</sup> A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>8</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>9</sup> Such information for

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<sup>1</sup> Section 409.175(2)(o), F.S.

<sup>2</sup> Section 409.175(2)(p), F.S.

<sup>3</sup> Section 402.302, (2)(b) and (c), F.S.

<sup>4</sup> Section 409.175(2)(l), F.S.

<sup>5</sup> The term “recreational camp” is defined in s. 513.01(9), F.S. These camps are regulated by the Department of Health.

<sup>6</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited March 6, 2021).

<sup>7</sup> Section 435.03, F.S.

<sup>8</sup> Section 435.04, F.S.

<sup>9</sup> Section 435.05(1)(a), F.S.

a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>10</sup>

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>11</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>12</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>13</sup> For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>14</sup> The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>15</sup>

### ***Disqualifying Offenses***

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.<sup>16</sup>

### ***Exemption from Disqualification***

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the head of the appropriate agency (in the case of substance abuse treatment, the Secretary of the DCF) to exempt applicants from disqualification under certain circumstances.<sup>17</sup>

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,<sup>18</sup> career offender,<sup>19</sup> or sexual offender (unless not required to register)<sup>20</sup> cannot ever be exempted from disqualification.<sup>21</sup>

In 1987, the Legislature provided an exemption, any provision of law to the contrary notwithstanding, for "human resource personnel", of summer recreation camps, summer day

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<sup>10</sup> Section 435.04(1)(a), F.S.

<sup>11</sup> Section 435.05(1)(b)-(c), F.S.

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

<sup>13</sup> Section 435.05(1)(b), F.S.

<sup>14</sup> Section 435.05(1)(c), F.S.

<sup>15</sup> Section 435.05(1)(d), F.S.

<sup>16</sup> *See* s. 435.04(2), F.S., for full list.

<sup>17</sup> *See* s. 435.07(1), F.S.

<sup>18</sup> Pursuant to s. 775.261, F.S.

<sup>19</sup> Pursuant to s. 775.261, F.S.

<sup>20</sup> Pursuant to s. 943.0435, F.S.

<sup>21</sup> Section 435.07(4)(b), F.S.

camps and summer 24-hour camps, other than owners and operators, from the requirement to be fingerprinted for employee screening under either ch. 402, F.S.,<sup>22</sup> or ch. 409, F.S.<sup>23</sup> However, these personnel were required to comply with all other screening requirements.<sup>24</sup>

The term “human resource personnel” was not defined in either ch. 402, F.S., or ch. 409, F.S.

- The definition of the term “child care personnel” found in ch. 402, F.S., included the following: “For purposes of screening, the term shall also include persons who work in child care programs which provide care for children 15 hours or more each week in public or nonpublic schools, summer day camps, family day care homes, or those programs otherwise exempted under s. 402.316, F.S.”<sup>25</sup> This definition and the specific language of s. 402.316, F.S., require the screening of the personnel of these facilities despite their being otherwise exempt from licensure requirements.<sup>26</sup> This definition did not include personnel working in summer 24-hour camps. In 2010, the legislature removed the reference to “summer day camps” from the definition.<sup>27</sup>
- The definition of the term “personnel” in ch. 409, F.S., included the following: “For the purposes of screening, the term “personnel” shall include owners, operators, employees, and volunteers working in summer day camps, or summer 24-hour camps providing care for children. A volunteer who assists on an intermittent basis for less than 40 hours per month shall not be included in the term “personnel” for the purposes of screening, provided that the volunteer is under direct and constant supervision by persons who meet the personnel requirements of this section.”<sup>28</sup>

In 2010, the legislature repealed s. 409.1758, F.S., relating to screening for summer camp personnel, which means that all summer camp and summer 24-hour camp owners, operators, employees and volunteers that assist more than 10 hours per month must currently comply with Level 2 background screening.<sup>29</sup>

Concurrent with the repeal of s. 409.1758, F.S., the DCF began a campaign to notify summer day camps and summer 24-hour camps of the new screening requirements through the use of news releases for media outlets throughout Florida, and flyers that were mailed to explain the new screening requirements to numerous summer camps.<sup>30</sup> The DCF worked with community partners, such as Florida’s Office of Early Learning’s Resource and Referral unit and local Early Learning Coalitions, to obtain a listing of summer camps and conducted an internet search to identify summer camps. Identifying the summer camps operating in Florida is difficult because

<sup>22</sup> Chapter 402, F.S., governs child care facilities.

<sup>23</sup> Chapter 409, F.S., governs employees and owner/operators of child-placing agencies, family foster homes, and residential child-caring agencies.

<sup>24</sup> Chapter 87-141, L.O.F., which created s. 409.1758, F.S.

<sup>25</sup> Section 402.316, F.S., relates to child care facilities which are exempt from licensing requirements due to their affiliation with church or parochial schools.

<sup>26</sup> Section 402.302(3), F.S. (2009).

<sup>27</sup> Chapter 2010-114, L.O.F.

<sup>28</sup> Section 409.175(2)(i), F.S. (2009). In 2010, the Legislature revised the criteria for volunteers to read: “A volunteer who assists on an intermittent basis for less than 10 hours per month shall not be included in the term “personnel” for the purposes of the screening requirement of this section is always present and has the volunteer in his or her line of sight.”

<sup>29</sup> Chapter 2010-114, L.O.F.

<sup>30</sup> The DCF, Staff Analysis and Economic Impact, SB 630 (2013), Feb. 11, 2013, p. 2 (on file with the Senate Committee on Children, Families and Elder Affairs).

they are exempt from regulatory oversight, and there is no registration or other self-identification requirement.<sup>31</sup>

The DCF also established a protocol for public reporting and receipt of complaints alleging background screening violations by summer camps. The DCF logs such complaints and investigates within 48 hours. If the allegations are substantiated, the DCF works with the summer camp to expedite the screening of the owners, operators, employees and volunteers.<sup>32</sup>

The DCF makes available the “Summer Camp Voluntary Registration Portal.” The portal provides summer camps with the opportunity for free advertising to parents and the general public through the DCF’s website. To register a summer camp in the portal, the summer camp operator must provide the camp’s assigned identification numbers, which are mandatory for the completion of background screening and can be obtained only when the summer camp establishes an account with the DCF’s Background Screening Unit.<sup>33</sup>

The Office of Child Care Regulation has made available a Summer Camp Listing on the public website. To be featured on the Listing, a summer camp must create a Summer Camp Listing request through the portal made available on the website. This portal will require the camp to provide the name of the program, full address of camp location, contact information including phone, email and contact person, beginning and end dates of the camp, hours of operation, age limits, capacity, staff size, and a background screening OCA number. The OCA number is used to verify background screening compliance in the Agency for Health Care Administration (AHCA) Clearinghouse.<sup>34</sup>

The number of Summer Camp Listing requests vary from year to year.<sup>35</sup> Below is a breakdown of the number of requests received over the last three years.<sup>36</sup>

Year	Number of Requests
2018	108
2019	81
2020	69

These numbers represent summer camp providers who voluntarily requested to be listed on the Summer Camp web page. It is not indicative of how many summer camps are operating in the state each summer. In July of 2020, the DCF’s Office of Background Screening reported that there were over 2,000 “Summer Camp” providers that had an “active” status in the AHCA Clearinghouse. The DCF currently does not track the number of summer day camps or summer 24-hour camps that operate in the state each year.<sup>37</sup>

<sup>31</sup> Section 409.175(4)(d), F.S.

<sup>32</sup> See The DCF, *Background Screening, Frequently Asked Questions Specific to Summer Camps*, available at [https://www.myflfamilies.com/service-programs/background-screening/faqs\\_camps.shtml](https://www.myflfamilies.com/service-programs/background-screening/faqs_camps.shtml) (last visited March 6, 2021).

<sup>33</sup> The DCF, *2021 Agency Legislative Bill Analysis SB 1096*, p. 2 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The DCF Analysis”).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* p 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



### ***DCF Licensure Authority***

Summer camps are not inspected or regulated by the DCF, but all personnel are required to have completed a Level 2 background screening and not been disqualified prior to caring for children.<sup>38</sup> However, the DCF shall have access to the personnel records of such facilities to ensure compliance with the screening requirements. The DCF may adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps.<sup>39</sup>

Section 409.175(6)(e), F.S., outlines the DCF's ability to pursue remedies in addition to a denial or revocation of a license for failure to comply with the screening requirements. The disciplinary actions determination to be made by the DCF and the procedure for hearing for applicants and licensees is required to be in accordance with ch. 120, F.S., and written notice must be given to the applicant if reasonable grounds for denial or termination of employments exist. When this occurs, licensee summer or recreation camp and the personnel are affected. The procedures for a ch. 120, F.S., hearing must be made be available to the applicant, licensee, summer day camp or summer 24-hour camp, and affected personnel, in order to present evidence relating accuracy of the basis for exclusion or to the denial of an exemption from disqualification.

Section 409.175(6)(l), F.S., specifies that the DCF does not license summer day camps or summer 24-hour camps, but may access personnel records to ensure compliance for screening requirements. Additionally, the DCF is authorized to adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps.

The DCF is authorized to institute injunctive proceedings in a court to enforce provisions of any license requirement, rule, or order, and terminate the operation of an agency in which a licensee has failed to take preventive or corrective measures to maintain licensing requirements. The DCF is also authorized to terminate the operation of a summer day camp or summer 24-hour camp if the camp has willfully and knowingly refused to comply with the screening requirements for personnel or has refused to terminate the employment of personnel found to be in noncompliance with the requirements for good moral character. The DCF must notify the state attorney if the summer day camp or summer 24-hour camp continues to provide care for the children without complying with the screening of personnel or hiring and continued employment of personnel after 30 days of written notification by registered mail.<sup>40</sup>

Section 409.173(12), F.S., requires an agency, family foster home, summer day camp, or summer 24-hour camp providing care for the children to comply with the screenings for employment purposes and prohibits the use of information obtained from the criminal records and or from the juvenile records for any purpose other than the purpose of employment. Additionally, it prohibits the releasing of records to any other person for any purpose other than screening for employment.

In March 2012, the Palm Beach Post published a series of articles related to the harm that has

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<sup>38</sup> Section 409.175 (4)(d), F.S.; *See also* the DCF, *Child Care, Summer Camp Requirements*, available at <https://www.myflfamilies.com/service-programs/child-care/summer-camp-requirements.shtml> (last visited March 5, 2021)

<sup>39</sup> Section 409.175(6)(l), F.S.

<sup>40</sup> Section 409.175(10)(a) and (b), F.S.

occurred to children as a result of attending unlicensed summer camps where employees were either not screened or improperly screened. One article in the series reported the following:

- Florida camps are completely unregulated and it is not known how many are in operation or who is checking on the people who run them.
- Florida is one of six states that don't license camps in some form.
- Florida's system of safeguarding kids in child-care centers relies on licensing where regulators inspect day cares and other licensed businesses to ensure employees are thoroughly screened; however, no such requirements exist for camps.
- Children are harmed regularly in Florida summer camps.<sup>41</sup>
- All 50 states consider child molesters and other sex offenders so dangerous that the government tracks their movements, but nothing stops them from working in Florida camps.
- In scores of other cases, rapists, murderers and other violent criminals have led organizations that often run camps. Roughly 170 church or neighborhood youth programs have been operated by felons statewide, including more than two dozen businesses led by child molesters or other sex offenders.
- The groups are disproportionately clustered around the state's poorest neighborhoods.<sup>42</sup>

### III. Effect of Proposed Changes:

The bill relocates the definitions of the terms "summer day camp" and "summer 24-hour camp" discussed above from ch. 409, F.S., to ch. 402, F.S., and removes all references to the terms from ch. 409, F.S.<sup>43</sup>

The bill creates s. 402.3132, F.S., providing provisions specific to summer day camps and summer 24-hour camps that authorize the DCF or local licensing agency to commence and maintain all proper and necessary actions and proceedings for protecting the health, sanitation, safety and well-being of all children under care. Further, the bill requires summer day camps and summer 24-hour camps to meet the child care personnel screening requirements in ss. 402.305 and 402.3055, F.S., and provides that failure by a summer day camp or a summer 24-hour camp to comply with such screening requirements shall result in the loss of the camp's ability to operate.

The bill clarifies that the DCF may not license summer day camps, provides the DCF access to personnel records of such camps to ensure screening requirements are being met, and authorizes the DCF to adopt rules relating to the screening requirements.

The bill clarifies that the failure of a camp to refuse to terminate the employment of an employee who has not satisfied the screening requirements would be considered a violation of employee screening requirements.

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<sup>41</sup> The article further stated that since 2000, at least 50 children had been victimized in summer programs, or abused by workers the kids first encountered at camp organizations. The article further stated that, due to the nature of low reporting rate of child sexual abuse, that figure likely under-represents the number of victims statewide.

<sup>42</sup> Michael LaForgia, the Palm Beach Post, *Weak laws pave way for child sexual abuse*, (Mar. 4, 2012), available at <https://www.palmbeachpost.com/article/20120304/NEWS/812018945> (last visited March 4, 2021).

<sup>43</sup> Section 409.175, F.S.

The bill authorizes the DCF or local licensing agency to commence and maintain all proper and necessary actions and proceedings for any of the above mentioned purposes. The DCF or local licensing agency to apply for injunction to the proper circuit court. The court has jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person or entity from violating or continuing to violate any of the child care personnel screening requirements in ss. 402.305 and 402.3055, F.S.

The DCF and local licensing agency also are authorized to impose an administrative fine, not to exceed \$100 per violation per day, for each violation of the child care personnel screening requirements in ss. 402.305 and 402.3055, F.S.

The bill also requires, rather than permits, all summer camps or 24-hour summer camps to register with the DCF for inclusion in the DCF's summer camp listing.

The bill amends s. 409.175, F.S., removing similar provisions mentioned above related to summer day camps and summer 24-hour camps since such provisions are relocated to ch. 402., F.S.

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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Five counties have elected to regulate licensing of child care facilities and homes through local licensing agencies, as provided in s. 402.306, F.S. Those counties are: Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota. The potential impact to expenditures to the counties is unknown.<sup>44</sup>

The DCF reports that the Office of Child Care will need 2 additional staff positions for 6 months and the Office of Background Screening will need 6 additional staff positions for 6 months for a total expenditure of \$185,658.68. Required technology updates will cost \$130,000. The total fiscal impact will be \$315,658.68.<sup>45</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially sections 402.302 and 409.175 of the Florida Statutes.

This bill creates section 402.3132 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.)

**CS by Children, Families, and Elder Affairs on March 9, 2021:**

The Committee Substitute:

- Clarifies that the DCF may not license summer day camps, provides the DCF access to personnel records of such camps to ensure screening requirements are being met, and authorizes the DCF to adopt rules relating to the screening requirements.
- Clarifies that the failure of a camp to refuse to terminate the employment of an employee who has not satisfied the screening requirements would be considered a violation of employee screening requirements.

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<sup>44</sup> The DCF Analysis, p. 7.

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

B. Amendments:

None.

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

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By Senator Rodrigues

27-01197-21

20211136\_\_

1 A bill to be entitled  
2 An act relating to the board of directors of Florida  
3 ABLE, Inc.; amending s. 1009.986, F.S.; revising the  
4 composition of the membership of the Florida ABLE,  
5 Inc., board of directors; removing a limit on the  
6 number of terms that certain reappointed members may  
7 serve; providing an effective date.  
8

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

11 Section 1. Paragraph (d) of subsection (3) of section  
12 1009.986, Florida Statutes, is amended to read:

13 1009.986 Florida ABLE program.—

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

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

17 a. The chair of the Florida Prepaid College Board, who  
18 shall serve as the chair of the board of directors of Florida  
19 ABLE, Inc.

20 b. Up to three individuals ~~One individual~~ who possess  
21 ~~possesses~~ knowledge, skill, and experience in the areas of  
22 accounting, risk management, or investment management, one of  
23 whom may be a current member of the Florida Prepaid College  
24 Board, who shall be appointed by the Florida Prepaid College  
25 Board. ~~A current member of the Florida Prepaid College Board,~~  
26 ~~other than the chair, may be appointed.~~

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

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30 d. Two individuals who are advocates of persons with  
31 disabilities, one of whom shall be appointed by the President of  
32 the Senate and one of whom shall be appointed by the Speaker of  
33 the House of Representatives. At least one of the individuals  
34 appointed under this sub-subparagraph must be an advocate of  
35 persons with developmental disabilities, as that term is defined  
36 in s. 393.063.

37 2.a. The term of the appointees ~~appointee~~ under sub-  
38 subparagraph 1.b. shall be up to 3 years as determined by the  
39 Florida Prepaid College Board. Such appointees ~~appointee~~ may be  
40 reappointed.

41 b. The term of the appointees under sub-subparagraphs 1.c.  
42 and d. shall be 3 years. Such appointees may be reappointed ~~for~~  
43 ~~up to one consecutive term.~~

44 3. Unless authorized by the board of directors of Florida  
45 ABLE, Inc., an individual director has no authority to control  
46 or direct the operations of Florida ABLE, Inc., or the actions  
47 of its officers and employees.

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

49 a. Shall meet at least quarterly and at other times upon  
50 the call of the chair.

51 b. May use any method of telecommunications to conduct, or  
52 establish a quorum at, its meetings or the meetings of a  
53 subcommittee or other subdivision if the public is given proper  
54 notice of the telecommunications meeting and provided reasonable  
55 access to observe and, if appropriate, to participate.

56 5. A majority of the total current membership of the board  
57 of directors of Florida ABLE, Inc., constitutes a quorum of the  
58 board.

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59           6. Members of the board of directors of Florida ABLE, Inc.,  
60 and the board's subcommittees or other subdivisions shall serve  
61 without compensation; however, the members may be reimbursed for  
62 reasonable, necessary, and actual travel expenses pursuant to s.  
63 112.061.

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





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

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

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

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BILL: SB 1136

INTRODUCER: Senator Rodrigues

SUBJECT: Board of Directors of Florida ABLE, Inc.

DATE: March 8, 2021

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

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

## I. Summary:

SB 1136 revises the member composition of the board of directors of the Florida ABLE program. The bill provides that the board of directors must consist of up to three individuals who possess knowledge, skill, and experience in the area of accounting, risk management, or investment management, one of whom may be a current member of the Florida Prepaid College Board.

The bill also removes a limit on the number of terms for which certain board members may be appointed.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### **ABLE Programs**

#### *Federal ABLE Act*

Congress enacted the ABLE Act (Achieving a Better Life Experience Act) in 2014.<sup>1</sup> The ABLE Act permits a state to implement an ABLE Program and establish ABLE accounts for eligible individuals with disabilities<sup>2</sup> to spend distributions on “qualified disability expenses.”<sup>3</sup> The

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<sup>1</sup> Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

<sup>2</sup> 26 U.S.C. § 529(e). An individual is an eligible individual for a taxable year if during such taxable year: (1) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year.

<sup>3</sup> 26 U.S.C. § 529(e)(5). “Qualified disability expense” is defined as “any expense related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including

purposes of the ABLE Act are to encourage individuals and families to save money to support individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities to supplement benefits provided through other sources.<sup>4</sup>

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

The Florida ABLE Program was created in 2015 to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.<sup>5</sup> The Florida Prepaid College Board (Florida Prepaid) was required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program.<sup>6</sup>

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.<sup>7</sup> Among the individuals in the program, 44 percent have a developmental disability.<sup>8</sup> As of May 15, 2020, 4,724 individuals have an ABLE United account.<sup>9</sup> The average account balance is \$5,474.<sup>10</sup>

### ***Florida ABLE Program - Board of Directors***

Current law requires the board of directors of the Florida ABLE program to consist of:

- The chair of Florida Prepaid, who must serve as the chair of the board;
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who must be appointed by Florida Prepaid. A current member of Florida Prepaid, other than the chair, may be appointed.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who must be appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom must be appointed by the President of the Senate and one of whom must be appointed by the Speaker of the House of Representatives. At least one of the individuals appointed must be an advocate of persons with developmental disabilities, as that term is defined in s. 393.063, F.S.<sup>11</sup>

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the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.”

<sup>4</sup> 26 U.S.C. § 529(b).

<sup>5</sup> Section 2, ch. 2015-56, L.O.F.

<sup>6</sup> Section 1009.986(3), F.S.

<sup>7</sup> ABLE United, *Direct Support Organization Disclosures* p. 1, (July 8, 2020), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2020-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> (last visited March 5, 2021).

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

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

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

<sup>11</sup> Section 1009.986(3)(d)1., F.S.

Currently, the Governor-appointee and the individuals appointed by the President of the Senate and Speaker of the House all serve 3-year terms and each may be reappointed for up to one consecutive term.<sup>12</sup>

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

The bill modifies the makeup of the Florida ABLE program's board of directors. Specifically, the bill allows up to three individuals, rather than the current one, who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management to be appointed to the board by Florida Prepaid. The bill allows for one of the three members to be a current member of Florida Prepaid, and does not prohibit the chair of Florida Prepaid from serving as one of the three appointees.

The bill also eliminates the current term limit for the Governor-appointee board member and the board members appointed by the President of the Senate and Speaker of the House. Under the bill, there is no limit on the number of terms for which these members may be reappointed.

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.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>12</sup> Section 1009.986(3)(d)2.b., F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1009.986 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Burgess

20-00359C-21

20211344\_\_

1                   A bill to be entitled  
2       An act relating to protection of elderly persons and  
3       disabled adults; amending s. 16.56, F.S.; adding  
4       offenses concerning elderly persons and disabled  
5       adults to the authority of the Office of Statewide  
6       Prosecution; amending s. 733.303, F.S.; providing that  
7       a person who has been convicted of abuse, neglect, or  
8       exploitation of an elderly person or a disabled adult  
9       is not qualified to act as a personal representative;  
10      creating s. 732.8031, F.S.; providing for forfeiture  
11      of specified benefits of persons who have been  
12      convicted of certain offenses involving elderly  
13      persons or disabled adults; providing that certain  
14      persons who have been convicted of certain offenses  
15      involving elderly persons or disabled adults may still  
16      retain an inheritance or survivorship interest if the  
17      victim executes a specified instrument; amending s.  
18      736.1104, F.S.; providing that a beneficiary of a  
19      trust may not benefit under the trust if the person  
20      was convicted of certain offenses involving elderly  
21      persons or disabled adults; amending s. 825.101, F.S.;  
22      defining terms; amending s. 825.102, F.S.; specifying  
23      additional conduct that constitutes abuse of an  
24      elderly person or a disabled adult; providing a  
25      defense to certain violations; providing criminal  
26      penalties; amending s. 825.103, F.S.; specifying  
27      additional conduct that constitutes exploitation of an  
28      elderly person or a disabled adult; providing criminal  
29      penalties; amending s. 825.1035, F.S.; revising

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30 provisions concerning injunctions for protection  
31 against exploitation of a vulnerable adult; providing  
32 for extension of ex parte temporary injunctions;  
33 providing an effective date.

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

36  
37 Section 1. Paragraph (a) of subsection (1) of section  
38 16.56, Florida Statutes, is amended to read:

39 16.56 Office of Statewide Prosecution.—

40 (1) There is created in the Department of Legal Affairs an  
41 Office of Statewide Prosecution. The office shall be a separate  
42 "budget entity" as that term is defined in chapter 216. The  
43 office may:

44 (a) Investigate and prosecute the offenses of:

45 1. Bribery, burglary, criminal usury, extortion, gambling,  
46 kidnapping, larceny, murder, prostitution, perjury, robbery,  
47 carjacking, home-invasion robbery, and patient brokering;

48 2. Any crime involving narcotic or other dangerous drugs;

49 3. Any violation of the Florida RICO (Racketeer Influenced  
50 and Corrupt Organization) Act, including any offense listed in  
51 the definition of racketeering activity in s. 895.02(8)(a),  
52 providing such listed offense is investigated in connection with  
53 a violation of s. 895.03 and is charged in a separate count of  
54 an information or indictment containing a count charging a  
55 violation of s. 895.03, the prosecution of which listed offense  
56 may continue independently if the prosecution of the violation  
57 of s. 895.03 is terminated for any reason;

58 4. Any violation of the Florida Anti-Fencing Act;

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59           5. Any violation of the Florida Antitrust Act of 1980, as  
60 amended;

61           6. Any crime involving, or resulting in, fraud or deceit  
62 upon any person;

63           7. Any violation of s. 847.0135, relating to computer  
64 pornography and child exploitation prevention, or any offense  
65 related to a violation of s. 847.0135 or any violation of  
66 chapter 827 where the crime is facilitated by or connected to  
67 the use of the Internet or any device capable of electronic data  
68 storage or transmission;

69           8. Any violation of chapter 815;

70           9. Any violation of chapter 825;

71           ~~10.9.~~ Any criminal violation of part I of chapter 499;

72           ~~11.10.~~ Any violation of the Florida Motor Fuel Tax Relief  
73 Act of 2004;

74           ~~12.11.~~ Any criminal violation of s. 409.920 or s. 409.9201;

75           ~~13.12.~~ Any crime involving voter registration, voting, or  
76 candidate or issue petition activities;

77           ~~14.13.~~ Any criminal violation of the Florida Money  
78 Laundering Act;

79           ~~15.14.~~ Any criminal violation of the Florida Securities and  
80 Investor Protection Act; or

81           ~~16.15.~~ Any violation of chapter 787, as well as any and all  
82 offenses related to a violation of chapter 787;

83

84 or any attempt, solicitation, or conspiracy to commit any of the  
85 crimes specifically enumerated above. The office shall have such  
86 power only when any such offense is occurring, or has occurred,  
87 in two or more judicial circuits as part of a related



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88 transaction, or when any such offense is connected with an  
89 organized criminal conspiracy affecting two or more judicial  
90 circuits. Informations or indictments charging such offenses  
91 shall contain general allegations stating the judicial circuits  
92 and counties in which crimes are alleged to have occurred or the  
93 judicial circuits and counties in which crimes affecting such  
94 circuits or counties are alleged to have been connected with an  
95 organized criminal conspiracy.

96 Section 2. Subsection (1) of section 733.303, Florida  
97 Statutes, is amended to read:

98 733.303 Persons not qualified.—

99 (1) A person is not qualified to act as a personal  
100 representative if the person:

101 (a) Has been convicted of a felony.

102 (b) Has been convicted of abuse, neglect, or exploitation  
103 of an elderly person or a disabled adult.

104 (c) ~~(b)~~ Is mentally or physically unable to perform the  
105 duties.

106 (d) ~~(e)~~ Is under the age of 18 years.

107 Section 3. Section 732.8031, Florida Statutes, is created  
108 to read:

109 732.8031 Forfeiture for abuse, neglect, exploitation, or  
110 aggravated manslaughter of an elderly person or disabled adult.—

111 (1) A surviving person who is convicted of abuse, neglect,  
112 or exploitation under s. 825.102 or s. 825.103 or aggravated  
113 manslaughter under s. 782.07(2) of the decedent or another  
114 person on whose death such beneficiary's interest depends is not  
115 entitled to any benefits under the will of the decedent or the  
116 Florida Probate Code, and the estate of the decedent passes as

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117 if the abuser, neglector, exploiter, or killer had predeceased  
118 the decedent. Property appointed by the will of the decedent to  
119 or for the benefit of the abuser, neglector, exploiter, or  
120 killer passes as if the abuser, neglector, exploiter, or killer  
121 had predeceased the decedent.

122 (a) A final judgment of conviction for abuse, neglect,  
123 exploitation, or aggravated manslaughter of the decedent or  
124 other person creates a rebuttable presumption that this section  
125 applies.

126 (b) In the absence of a qualifying conviction, the court  
127 may determine by the greater weight of the evidence whether the  
128 decedent's or other person's death was caused by or contributed  
129 to by the abuser, neglector, exploiter, or killer for purposes  
130 of this section.

131 (2) A joint tenant who is convicted of abuse, neglect, or  
132 exploitation under s. 825.102 or s. 825.103 or aggravated  
133 manslaughter under s. 782.07(2) of another joint tenant decedent  
134 thereby effects a severance of the interest of the decedent so  
135 that the share of the decedent passes as the decedent's sole  
136 property and as if the abuser, neglector, exploiter, or killer  
137 has no rights by survivorship. This subsection applies to joint  
138 tenancies with right of survivorship and tenancies by the  
139 entirety in real and personal property; joint and multiple-party  
140 accounts in banks, savings and loan associations, credit unions,  
141 and other financial institutions; and any other form of  
142 coownership with survivorship interests.

143 (a) A final judgment of conviction for abuse, neglect,  
144 exploitation, or aggravated manslaughter of the decedent or  
145 other person creates a rebuttable presumption that this section

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146 applies.

147 (b) In the absence of a qualifying conviction, the court  
148 may determine by the greater weight of the evidence whether the  
149 decedent's or other person's death was caused by or contributed  
150 to by the abuser, neglector, exploiter, or killer for purposes  
151 of this section.

152 (3) A named beneficiary of a bond, life insurance policy,  
153 or other contractual arrangement who is convicted of abuse,  
154 neglect, or exploitation under s. 825.102 or s. 825.103 or  
155 aggravated manslaughter under s. 782.07(2) of the owner or  
156 principal obligee of the bond, life insurance policy, or other  
157 contractual arrangement or the person upon whose life such  
158 policy was issued is not entitled to any benefit under the bond,  
159 policy, or other contractual arrangement, and the bond, policy,  
160 or other contractual arrangement becomes payable as though the  
161 abuser, neglector, exploiter, or killer had predeceased the  
162 decedent.

163 (a) A final judgment of conviction for abuse, neglect,  
164 exploitation, or aggravated manslaughter of the decedent or  
165 other person creates a rebuttable presumption that this section  
166 applies.

167 (b) In the absence of a qualifying conviction, the court  
168 may determine by the greater weight of the evidence whether the  
169 decedent's or other person's death was caused by or contributed  
170 to by the abuser, neglector, exploiter, or killer for purposes  
171 of this section.

172 (4) Any other acquisition of property or interest by the  
173 abuser, neglector, exploiter, or killer, including a life estate  
174 in homestead property, shall be treated in accordance with the

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175 principles of this section.

176 (5) (a) This section does not affect the rights of any  
177 person who, before rights under this section have been  
178 adjudicated, purchases from the abuser, neglector, exploiter, or  
179 killer for value and without notice property that the abuser,  
180 neglector, exploiter, or killer would have acquired except for  
181 this section.

182 (b) The abuser, neglector, exploiter, or killer is liable  
183 for the amount of the proceeds or the value of the property  
184 under paragraph (a).

185 (6) Any insurance company, bank, or other obligor making  
186 payment according to the terms of its policy or obligation is  
187 not liable by reason of this section unless before payment it  
188 receives at its home office or principal address written notice  
189 of a claim under this section.

190 (7) This section does not apply if, after the conviction of  
191 abuse, neglect, or exploitation, the victim of the offense, if  
192 capacitated, executes a written instrument, sworn to and  
193 witnessed by two persons who would be competent as witnesses to  
194 a will, which expresses a specific intent to allow the person so  
195 convicted of abuse, neglect, or exploitation to retain his or  
196 her inheritance or survivorship rights.

197 Section 4. Subsection (3) is added to section 736.1104,  
198 Florida Statutes, to read:

199 736.1104 Person ~~Killer~~ not entitled to receive property or  
200 other benefits by reason of victim's death.-

201 (3) A beneficiary of a trust who was convicted of abuse,  
202 neglect, or exploitation under s. 825.102 or s. 825.103 or  
203 aggravated manslaughter under s. 782.07(2) of a settlor or

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204 another person on whose death such beneficiary's interest  
205 depends is not entitled to any trust interest, including a  
206 homestead dependent on the victim's death, and such interest  
207 shall devolve as though the abuser, neglecter, exploiter, or  
208 killer had predeceased the victim.

209 (a) A final judgment of conviction for abuse, neglect,  
210 exploitation, or aggravated manslaughter of the decedent or  
211 other person creates a rebuttable presumption that this section  
212 applies.

213 (b) In the absence of a qualifying conviction, the court  
214 may determine by the greater weight of the evidence whether the  
215 decedent's or other person's death was either caused by or  
216 contributed to by the abuser, neglecter, exploiter, or killer  
217 for purposes of this section.

218 Section 5. Subsections (8) through (14) of section 825.101,  
219 Florida Statutes, are renumbered as subsections (10) through  
220 (16), respectively, and new subsections (8) and (9) are added to  
221 that section, to read:

222 825.101 Definitions.—As used in this chapter:

223 (8) "Improper benefit" means any remuneration or payment,  
224 by or on behalf of any service provider or merchant of goods, to  
225 any person as an incentive or inducement to refer customers or  
226 patrons for past or future services or goods.

227 (9) "Kickback" has the same meaning as in s. 456.054(1).

228 Section 6. Paragraphs (b) and (c) of subsection (1) of  
229 section 825.102, Florida Statutes, are amended, and paragraph  
230 (d) is added to that subsection, to read:

231 825.102 Abuse, aggravated abuse, and neglect of an elderly  
232 person or disabled adult; penalties.—

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233 (1) "Abuse of an elderly person or disabled adult" means:  
234 (b) An intentional act that could reasonably be expected to  
235 result in physical or psychological injury to an elderly person  
236 or disabled adult; ~~or~~  
237 (c) Active encouragement of any person to commit an act  
238 that results or could reasonably be expected to result in  
239 physical or psychological injury to an elderly person or  
240 disabled adult; or  
241 (d) Intentionally, and without lawful authority, isolating  
242 or restricting access of an elderly person or a disabled adult  
243 to family members for any length of time which could reasonably  
244 be expected to result in physical or psychological injury to the  
245 elderly person or disabled adult, or with the intent to promote,  
246 facilitate, conceal, or disguise some form of criminal activity  
247 involving the person or property of the elderly person or  
248 disabled adult. It is a defense to a violation of this paragraph  
249 that the defendant had reasonable cause to believe that his or  
250 her action was necessary to protect the elderly person or  
251 disabled adult from danger to his or her welfare.

252  
253 A person who knowingly or willfully abuses an elderly person or  
254 disabled adult without causing great bodily harm, permanent  
255 disability, or permanent disfigurement to the elderly person or  
256 disabled adult commits a felony of the third degree, punishable  
257 as provided in s. 775.082, s. 775.083, or s. 775.084.

258 Section 7. Paragraphs (c), (d), and (e) of subsection (1)  
259 of section 825.103, Florida Statutes, are amended, and paragraph  
260 (f) is added to that subsection, to read:

261 825.103 Exploitation of an elderly person or disabled

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262 adult; penalties.—

263 (1) "Exploitation of an elderly person or disabled adult"  
264 means:

265 (c) Breach of a fiduciary duty to an elderly person or  
266 disabled adult by the person's guardian, trustee who is an  
267 individual, or agent under a power of attorney which results in  
268 an unauthorized appropriation, sale, ~~or~~ transfer of property,  
269 kickback, or receipt of an improper benefit. An unauthorized  
270 appropriation under this paragraph occurs when the elderly  
271 person or disabled adult does not receive the reasonably  
272 equivalent financial value in goods or services, or when the  
273 fiduciary violates any of these duties:

274 1. For agents appointed under chapter 709:

275 a. Committing fraud in obtaining their appointments;

276 b. Obtaining appointments with the purpose and design of  
277 benefiting someone other than the principal or beneficiary;

278 c.~~b~~. Abusing their powers;

279 d.~~e~~. Wasting, embezzling, or intentionally mismanaging the  
280 assets of the principal or beneficiary; or

281 e.~~d~~. Acting contrary to the principal's sole benefit or  
282 best interest; or

283 2. For guardians and trustees who are individuals and who  
284 are appointed under chapter 736 or chapter 744:

285 a. Committing fraud in obtaining their appointments;

286 b. Obtaining appointments with the purpose and design of  
287 benefiting someone other than the principal or beneficiary;

288 c.~~b~~. Abusing their powers; or

289 d.~~e~~. Wasting, embezzling, or intentionally mismanaging the  
290 assets of the ward or beneficiary of the trust;

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291 (d) Misappropriating, misusing, or transferring without  
292 authorization money belonging to an elderly person or disabled  
293 adult from an account in which the elderly person or disabled  
294 adult placed the funds, owned the funds, and was the sole  
295 contributor or payee of the funds before the misappropriation,  
296 misuse, or unauthorized transfer. This paragraph only applies to  
297 the following types of accounts:

298 1. Personal accounts;

299 2. Joint accounts created with the intent that only the  
300 elderly person or disabled adult enjoys all rights, interests,  
301 and claims to moneys deposited into such account; or

302 3. Convenience accounts created in accordance with s.  
303 655.80; ~~or~~

304 (e) Intentionally or negligently failing to effectively use  
305 an elderly person's or disabled adult's income and assets for  
306 the necessities required for that person's support and  
307 maintenance, by a caregiver or a person who stands in a position  
308 of trust and confidence with the elderly person or disabled  
309 adult; or

310 (f) Knowingly obtaining or using, endeavoring to obtain or  
311 use, or conspiring with another to obtain or use an elderly  
312 person's or a disabled adult's funds, assets, property, or  
313 estate through intentional modification or alteration of a plan  
314 of distribution or disbursement expressed in a will, trust  
315 agreement, or other testamentary devise of the elderly person or  
316 disabled adult without:

317 1. A court order, from a court having jurisdiction over the  
318 elderly person or disabled adult, which authorizes the  
319 modification or alteration;



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320       2. A written instrument executed by the elderly person or  
321 disabled adult, sworn to and witnessed by two persons who would  
322 be competent as witnesses to a will, which authorizes the  
323 modification or alteration; or

324       3. Action of an agent under a valid power of attorney  
325 executed by the elderly person or disabled adult which  
326 authorizes the modification or alteration.

327       Section 8. Paragraph (a) of subsection (2), paragraph (a)  
328 of subsection (3), and paragraph (d) of subsection (5) of  
329 section 825.1035, Florida Statutes, are amended to read:

330       825.1035 Injunction for protection against exploitation of  
331 a vulnerable adult.—

332       (2) WHO MAY FILE; VENUE; RECORDING.—

333       (a) The cause of action may be sought in an adversary  
334 proceeding by:

335       1. A vulnerable adult in imminent danger of being  
336 exploited;

337       2. The guardian of a vulnerable adult in imminent danger of  
338 being exploited;

339       3. A person or organization acting on behalf of the  
340 vulnerable adult with the consent of the vulnerable adult or his  
341 or her guardian; ~~or~~

342       4. An agent under a valid durable power of attorney with  
343 the authority specifically granted in the power of attorney; or

344       ~~5.4.~~ A person who simultaneously files a petition for  
345 determination of incapacity and appointment of an emergency  
346 temporary guardian with respect to the vulnerable adult.

347       (3) FORM OF PETITION.—

348       (a) A sworn petition filed under this section must allege

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349 the existence of exploitation, or the imminent exploitation, of  
 350 the vulnerable adult and must include the specific facts and  
 351 circumstances for which relief is sought. The sworn petition  
 352 must be in substantially the following form:

353  
 354 PETITION FOR INJUNCTION FOR PROTECTION  
 355 AGAINST EXPLOITATION OF A VULNERABLE ADULT  
 356

357 Before me, the undersigned authority, personally appeared  
 358 Petitioner ...(Name)..., who has been sworn and says that the  
 359 following statements are true:

- 360 1. The petitioner's name is:
- 361 2. The petitioner's address is:
- 362 3. The petitioner's relationship to the vulnerable adult  
 363 is:
- 364 4. How long has the petitioner known the vulnerable adult:  
 365 \_\_\_\_\_
- 366 5. The vulnerable adult's name is:
- 367 6. Aliases of the vulnerable adult are:
- 368 7. The vulnerable adult's date of birth is:
- 369 8.1. The vulnerable adult's address is ~~adult resides at:~~  
 370 \_\_\_\_\_ ... (address) ....
- 371 9. Does the vulnerable adult have one or more impairments  
 372 that impact his or her ability to perform normal activities of  
 373 daily living or to provide for his or her own care or  
 374 protection?
- 375 Yes \_\_\_\_\_ No \_\_\_\_\_
- 376 If so, what are this person's impairments? (check all that  
 377 apply)

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378        .... Long-term physical disability  
 379        .... Sensory disability (e.g., hearing or vision impaired)  
 380        .... Cognitive disability  
 381        .... Mental or emotional disability  
 382        .... Developmental disability  
 383        .... Infirmary of aging  
 384        .... Other (explain)  
 385        ~~10.2.~~ The respondent's last known address is ~~respondent~~  
 386 ~~resides at: \_\_\_\_\_ ... (last known address)....~~  
 387        ~~11.3.~~ The respondent's last known place of employment is:  
 388 ~~... (name of business and address)....~~  
 389        ~~12.4.~~ Physical description of the respondent: ....  
 390        Race....  
 391        Sex....  
 392        Date of birth....  
 393        Height....  
 394        Weight....  
 395        Eye color....  
 396        Hair color....  
 397        Distinguishing marks or scars....  
 398        ~~13.5.~~ Aliases of the respondent: ....  
 399        ~~14.6.~~ The respondent is associated with the vulnerable  
 400 adult as follows: ....  
 401        ~~15.7.~~ The following describes any other cause of action  
 402 currently pending between the petitioner and the respondent, any  
 403 proceeding under chapter 744 concerning the vulnerable adult,  
 404 and any previous or pending attempts by the petitioner to obtain  
 405 an injunction for protection against exploitation of the  
 406 vulnerable adult in this or any other circuit; related case

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407 numbers, if available; and the results of any such  
408 attempts:.....  
409 .....

410 16.8. The following describes the petitioner's knowledge of  
411 any reports made to a government agency, including, but not  
412 limited to, the Department of Elderly Affairs, the Department of  
413 Children and Families, and the adult protective services program  
414 relating to the abuse, neglect, or exploitation of the  
415 vulnerable adult; any investigations performed by a government  
416 agency relating to abuse, neglect, or exploitation of the  
417 vulnerable adult; and the results of any such reports or  
418 investigations: ....

419 17.9. The petitioner knows the vulnerable adult is either a  
420 victim of exploitation or the petitioner has reasonable cause to  
421 believe the vulnerable adult is, or is in imminent danger of  
422 becoming, a victim of exploitation because the respondent has:  
423 ...(describe in the spaces below the incidents or threats of  
424 exploitation)....

425 18.10. The following describes the petitioner's knowledge  
426 of the vulnerable adult's dependence on the respondent for care;  
427 alternative provisions for the vulnerable adult's care in the  
428 absence of the respondent, if necessary; available resources the  
429 vulnerable adult has to access such alternative provisions; and  
430 the vulnerable adult's willingness to use such alternative  
431 provisions: ....

432 19.11. The petitioner knows the vulnerable adult maintains  
433 assets, accounts, or lines of credit at the following financial  
434 institution(s): ...(list name, address, and account number of  
435 each)....

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436       ~~20.12.~~ The petitioner believes that the vulnerable adult's  
 437 assets to be frozen are: ... (mark one)....

438           ...Worth less than \$1500;

439           ...Worth between \$1500 and \$5000; or

440           ...Worth more than \$5000.

441       ~~21.13.~~ The petitioner genuinely fears imminent exploitation  
 442 of the vulnerable adult by the respondent.

443       ~~22.14.~~ The petitioner seeks an injunction for the  
 444 protection of the vulnerable adult, including: ... (mark  
 445 appropriate section or sections)....

446           ...Prohibiting the respondent from having any direct or  
 447 indirect contact with the vulnerable adult.

448           ...Immediately restraining the respondent from committing  
 449 any acts of exploitation against the vulnerable adult.

450           ...Freezing the assets of the vulnerable adult held at  
 451 ... (name and address of depository or financial institution)...  
 452 even if titled jointly with the respondent, or in the  
 453 respondent's name only, in the court's discretion.

454           ...Freezing the credit lines of the vulnerable adult at  
 455 ... (name and address of financial institution)... even if  
 456 jointly with the respondent, in the court's discretion.

457           ...Providing any terms the court deems necessary for the  
 458 protection of the vulnerable adult or his or her assets,  
 459 including any injunctions or directives to law enforcement  
 460 agencies.

461       ~~23.15.~~ Should the court enter an injunction freezing assets  
 462 and credit lines, the petitioner believes that the critical  
 463 expenses of the vulnerable adult will be paid for or provided by  
 464 the following persons or entities, or the petitioner requests

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465 that the following expenses be paid notwithstanding the freeze:  
466 ... (for each expense, list the name of the payee, address,  
467 account number if known, amount, and a brief explanation of why  
468 payment is critical)....

469 (5) TEMPORARY INJUNCTION; SERVICE; HEARING.—

470 (d) An ex parte temporary injunction may be effective for a  
471 fixed period not to exceed 15 days unless good cause is shown to  
472 extend the injunction. The ex parte temporary injunction may be  
473 extended one time for up to an additional 30 days. A full  
474 hearing, as provided by this section, must be set for a date no  
475 later than the date when the ex parte temporary injunction  
476 ceases to be effective. ~~The court may grant a continuance of the~~  
477 ~~hearing, before or during the hearing, for good cause shown by~~  
478 ~~any party, which good cause may include a continuance to obtain~~  
479 ~~service of process. An ex parte injunction is not extended~~  
480 ~~beyond the initial 15 days as a result of a continuance.~~

481 Section 9. This act shall take effect July 1, 2021.



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THE FLORIDA SENATE

APPEARANCE RECORD

March 9, 2021

Meeting Date

1344

Bill Number (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Amendment Barcode (if applicable)

Name Will McKinley

Job Title President

Address 106 E. College Ave., Suite 1100

Phone (850) 681-1980

Street

Tallahassee, FL 32301

Email will@poolemckinley.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Dr. Steve Scott, Scott Holdings

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)



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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/9/2021

*Meeting Date*

1344

*Bill Number (if applicable)*

Topic Protection of Elderly Persons and Disabled Adults

*Amendment Barcode (if applicable)*

Name Daniel Olson

Job Title Director of Government Relations

Address 400 S. Monroe St

*Street*

Phone \_\_\_\_\_

Tallahassee

FL

32309

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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.***



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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

March 9, 2021  
*Meeting Date*

1344  
*Bill Number (if applicable)*

Topic Protection of Elderly Persons

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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.*

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

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

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

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BILL: SB 1344

INTRODUCER: Senator Burgess

SUBJECT: Protection of Elderly Persons and Disabled Adults

DATE: March 8, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Favorable</b>
2.			CJ	
3.			RC	

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**I. Summary:**

SB 1344 expands the jurisdiction of the Office of Statewide Prosecution (the OSP) within the Florida Office of the Attorney General (the OAG) to include specified authority over crimes against elderly persons and disabled adults as outlined in Chapter 825, F.S.

The bill also provides additional methods of proving abuse and exploitation of an elderly person or disabled adult by criminalizing the intentional isolation of vulnerable adults from family members for a length of time which could reasonably lead to physical or psychological injury to the elderly person, or with the intent to effect, conceal, or disguise criminal activity involving the elderly person or disabled adult or their property.

The bill criminalizes the previously uncharged conduct of an exploiter who changes the terms of the will or trust of a vulnerable adult in order to benefit the exploiter or a co-conspirator. The bill forfeits inheritances under a will, through a trust, through joint tenancy or contractual arrangements for a person convicted of abuse, neglect, exploitation or aggravated manslaughter. In the absence of a conviction, the bill effects disinheritance if a court finds, by the greater weight of the evidence, that an individual caused or contributed to the death of the decedent. The bill also expands who may file an injunction for protection for exploitation of a vulnerable adult and extends the time of a temporary injunction to up to 45 days.

The OAG anticipates that the bill will have a positive fiscal impact on state government by consolidating the investigation and prosecution of multi-circuit criminal activity related to crimes of elder abuse and exploitation, alleviating some of the burden on local law enforcement and prosecution. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

## III. Effect of Proposed Changes:

### 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 2016<sup>1</sup> to 77 million by 2034.<sup>2</sup> Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.<sup>3</sup> In 2018, individuals age 65 and older represented approximately 20 percent of Florida's total population.<sup>4</sup> 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.<sup>5</sup>

### Vulnerable Adults and Elderly Residents

In 2016, 35.2 percent of individuals nationwide 65 years of age or older were reported to have a disability.<sup>6</sup> Moreover, 19 percent of elders surveyed in a 2016 study conducted by the Department of Elder Affairs (the DOEA) indicated that they required assistance with activities of daily living, such as walking, bathing, and dressing.<sup>7</sup>

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<sup>1</sup> 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 March 7, 2021).

<sup>2</sup> 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 March 7, 2021).

<sup>3</sup> 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 March 7, 2021).

<sup>4</sup> 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 March 7, 2021).

<sup>5</sup> 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](http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf); 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> (all sites last visited March 7, 2021).

<sup>6</sup> University of New Hampshire Institute on Disability/UCED, *2017 Disability Statistics Annual Report*, p. 2, available at [https://disabilitycompendium.org/sites/default/files/user-uploads/2017\\_AnnualReport\\_2017\\_FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf) (last visited March 7, 2021).

<sup>7</sup> Florida Department of Elder Affairs, *2016 Report Assessing the Needs of Elder Floridians*, available at [http://elderaffairs.state.fl.us/doea/pubs/pubs/2016\\_Assessing\\_the\\_Needs\\_of\\_Elder\\_Floridians.pdf](http://elderaffairs.state.fl.us/doea/pubs/pubs/2016_Assessing_the_Needs_of_Elder_Floridians.pdf) (last visited March 7, 2021).

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>8</sup> In Florida, almost 1.3 million senior citizens live in medically underserved areas and 1.4 million suffer from one or more disabilities.<sup>9</sup> According to the Department of Justice, approximately 1 in 10 seniors is abused each year in the United States, though incidents of elder abuse are reported to local authorities in 1 out of every 23 cases.<sup>10</sup> Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.<sup>11</sup> Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.<sup>12</sup>

Elder abuse occurs in community settings, such as private homes, as well as in institutional settings like nursing homes and other long-term care facilities. Prevalent forms of abuse are financial exploitation, neglect, emotional or psychological abuse, and physical abuse; however, an elder abuse victim will often experience multiple forms of abuse at the same time.<sup>13</sup> The most common perpetrators of elder abuse are relatives, such as adult children or a spouse, followed by friends and neighbors, and then home care aides.<sup>14</sup> Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.<sup>15</sup> Elder abuse deaths are more likely to go undetected because an elder death is expected to occur, given age or infirmity, more so than other deaths due to abuse such as a child death or a death involving domestic violence.<sup>16</sup> Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.<sup>17</sup>

True incidences of abuse, neglect, or exploitation of the elderly or disabled adults are often difficult to assess. While abuse, neglect, and exploitation of a vulnerable adult can take various forms, the DOEA has described the “financial or material exploitation” of a vulnerable adult to include improper use of an elder’s funds, property, or assets; cashing checks without permission;

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<sup>8</sup> National Center on Elder Abuse, *What are the Risk Factors?*, available at <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#risk>; U.S. Department of Justice, *Elder Justice Initiative, Older Adults, Families, and Caregivers*, available at <https://www.justice.gov/elderjustice/victims-families-caregivers> (all sites last visited March 7, 2021).

<sup>9</sup> The Department of Elder Affairs, *2018 Profile of Older Floridians*, [http://elderaffairs.state.fl.us/doa/pubs/stats/County\\_2018/Counties/Florida.pdf](http://elderaffairs.state.fl.us/doa/pubs/stats/County_2018/Counties/Florida.pdf) (last visited March 7, 2021).

<sup>10</sup> U.S. Department of Justice, *Elder Justice Initiative*, available at <https://www.justice.gov/elderjustice>; See also, Ron Acerno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100:2 Am. J. Pub. Health, at 292-297 (Feb. 2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/> (all sites last visited March 7, 2021).

<sup>11</sup> U.S. Department of Justice, *Elder Justice Initiative*, available at <https://www.justice.gov/elderjustice>; See also, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 JAMA at 428-432 (1998), available at <https://jamanetwork.com/journals/jama/fullarticle/187817> (all sites last visited March 7, 2021).

<sup>12</sup> U.S. Department of Justice, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited March 7, 2021).

<sup>13</sup> The American Psychological Association, *Elder Abuse*, available at <https://www.apa.org/pi/prevent-violence/resources/elder-abuse#:~:text=The%20majority%20of%20elder%20abuse,other%20family%20members%20and%20spouses> (last visited March 7, 2021).

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

<sup>15</sup> Center for Disease Control and Prevention, *Understanding Elder Abuse, Fact Sheet 2016*, available at <https://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf> (last visited Feb. 13, 2020).

<sup>16</sup> See U.S. Department of Justice, National Institute of Justice, *Elder Justice Roundtable Report: Medical Forensic Issues Concerning Abuse and Neglect*, October 18, 2000, p. 8, available at <https://www.ncjrs.gov/pdffiles1/nij/242221.pdf> (last visited March 8, 2021).

<sup>17</sup> *Id.* at pp. 7-10.

forging signatures; forcing or deceiving an older person into signing a document; and using an ATM/debit card without permission.<sup>18</sup>

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly vulnerable to financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.<sup>19</sup> Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed to pay a bill for care, after reasonable and appropriate notice for residence at the facility.<sup>20</sup> Assisted living facilities and adult family care homes can relocate or terminate the residency of a vulnerable adult with 45 days notice or 30 days notice, respectively.<sup>21</sup>

### Adult Protective Services Act

In 1977, the Legislature enacted the “Adult Protective Services Act” (APSA), ch. 415, F.S., authorizing the Department of Children and Families (The DCF) to investigate reports of abuse, neglect or exploitation of a vulnerable adult. An assessment of an individual’s need for protective services is initiated upon a report of alleged abuse, neglect, or exploitation.

The APSA defines a “vulnerable adult” as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, developmental disability or dysfunction, brain damage, or the infirmities of aging.<sup>22</sup> Under the APSA, abuse, neglect, or exploitation constitutes the following conduct:

- **Abuse:** Any willful act or threatened act by a relative, caregiver,<sup>23</sup> or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health.<sup>24</sup>
- **Neglect:** The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. “Neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.<sup>25</sup>

<sup>18</sup> The Department of Elder Affairs, *The Power to Prevent Elder Abuse*, available at [http://elderaffairs.state.fl.us/does/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English\\_web.pdf](http://elderaffairs.state.fl.us/does/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English_web.pdf) (last visited March 7, 2021).

<sup>19</sup> The Consumer Financial Protection Bureau, *We’re helping long-term care facilities protect older Americans from financial exploitation*, available at <http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/> (last visited March 7, 2021).

<sup>20</sup> Section 400.022(1)(p), F.S.; 42 U.S.C. § 1396r.

<sup>21</sup> Sections 429.28(1)(k) and 429.85(1)(l), F.S.

<sup>22</sup> Section 415.102(28), F.S.

<sup>23</sup> Section 415.102(5), F.S. defines “caregiver” to mean “a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists.” “Caregiver” includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities.

<sup>24</sup> Section 415.102(1), F.S.

<sup>25</sup> Section 415.102(16), F.S.

- **Exploitation:** Obtaining or using, or endeavoring to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult by a person who stands in a position of trust and confidence<sup>26</sup> with a vulnerable adult or by a person who knows or should know that the vulnerable adult lacks the capacity to consent. Exploitation may include breaches of fiduciary relationships, unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.<sup>27</sup>

### **Criminal Penalties Under ch. 825, F.S.**

Current law provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.<sup>28</sup> Under s. 825.103, F.S., a person is guilty of the "exploitation of an elderly person or disabled adult" 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;<sup>29</sup>
- 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;<sup>30</sup>
- 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;<sup>31</sup>
- 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;<sup>32</sup> 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.<sup>33</sup>

<sup>26</sup> Must be done knowingly, by deception, or intimidation. Section 415.102(8), F.S.

<sup>27</sup> Section 415.102(8), F.S.

<sup>28</sup> Sections 825.101-825.106, F.S.

<sup>29</sup> Section 825.103(1)(a), F.S.

<sup>30</sup> Section 825.103(1)(b), F.S.

<sup>31</sup> Section 825.103(1)(c), F.S.

<sup>32</sup> Section 825.103(1)(d), F.S.

<sup>33</sup> Section 825.103(1)(e), F.S.



The term "lacks capacity to consent" means an 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 an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.<sup>34</sup>

An offender commits a first-degree felony<sup>35</sup> if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$50,000 or more.<sup>36</sup> An offender commits a second-degree felony<sup>37</sup> if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued between \$10,000 and \$50,000.<sup>38</sup> An offender commits a third-degree felony<sup>39</sup> if the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$10,000.<sup>40</sup>

The court is required to hold an evidentiary hearing when a person is charged with financial exploitation of an elderly person or disabled adult involving the taking of or loss of property valued at more than \$5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant. The court then determines, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property. The court may order it returned to the victim for restitution purposes before trial if the court finds that the property was unlawfully obtained.<sup>41</sup>

### ***Fiduciary Relationships, and Kickbacks, Improper Benefits***

Current law does not address instances where the fiduciary is either employed by, or has some pecuniary relationship with, a third party involved in the care or provision of services to the elderly person or disabled adult.<sup>42</sup> A relationship between the fiduciary and third-party provider may not always lead to an identifiable financial loss by an elderly person or disabled adult; however, this relationship creates a conflict of interest and breach of fiduciary duty.<sup>43</sup>

Current law also does not specifically address cases where a perpetrator seeks a designation as a specified fiduciary with the intent to benefit someone other than the elderly person or disabled adult.<sup>44</sup> The absence of a specific prohibition on such conduct creates a potential gap for prosecution and enforcement when a perpetrator seeks out appointment as a guardian, trustee, or agent under power of attorney with the intention and design of obtaining control over the victim's assets and person for the benefit of the perpetrator or a third party.<sup>45</sup> Current law also

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<sup>34</sup> Section 825.101(8), F.S.

<sup>35</sup> 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.

<sup>36</sup> Section 825.103(3)(a), F.S.

<sup>37</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>38</sup> Section 825.103(3)(b), F.S.

<sup>39</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>40</sup> Section 825.103(3)(c), F.S.

<sup>41</sup> Section 825.103(4), F.S.

<sup>42</sup> The OAG White Paper at p. 2.

<sup>43</sup> The OAG White Paper at pp. 2-3.

<sup>44</sup> The OAG White Paper at p. 3.

<sup>45</sup> The OAG White Paper at p. 3.

criminalizes conduct which results in a taking or other specified harm while the elderly person or disabled adult victim is alive, but does not specifically prohibit conduct by a perpetrator who intentionally alters a victim's will, trust, or other testamentary devise.<sup>46</sup>

### ***Isolation***

The Department of Legal Affairs (DLA) within the OAG states that in many instances of abuse, neglect, and exploitation, the perpetrator will first isolate the elderly person or disabled adult victim from family and friends who might otherwise intervene to prevent the perpetrator's involvement on the victim's behalf.<sup>47</sup> Isolation is particularly problematic with victims who either lack the mental capacity to fully comprehend or react to the isolation, or with victims who depend upon the perpetrator for their physical care and wellbeing.<sup>48</sup> The perpetrator is often a family member or other individual trusted by the victim in such cases, and will use social isolation to achieve their efforts and exert a level of control and influence over the victim unrelated to, or disproportionately related to, effective caregiving, with the intent of concealing underlying criminal conduct, which may include, but is not limited to; abuse, neglect, or exploitation.<sup>49</sup>

In cases beginning with intentional social isolation, the resulting injury or harm to the victim often could have been avoided with earlier intervention by law enforcement.<sup>50</sup> If ch. 825, F.S., specifically prohibited acts of unreasonable isolation of an elderly or disabled adult from family, irreversible harm to the victim may be avoided.<sup>51</sup>

### ***Effect of the Bill***

#### Definitions

The bill amends s. 825.101, F.S., adding definitions for the terms, 'improper benefit' and 'kickback.' These terms will apply to ch. 825, F.S.

The bill defines "improper benefit" to mean "any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods." The bill defines "kickback" to have the same meaning as s.456.054(1), F.S., which means "a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense."

#### Abuse of an Elderly Person or Disabled Adult

The bill amends s. 825.102, F.S., expanding the definition of "abuse of an elderly person or disabled adult" to include "intentionally, and without lawful authority, isolating or restricting

<sup>46</sup> The OAG White Paper at p. 3.

<sup>47</sup> The OAG, Department of Legal Affairs, *White Paper Related to SB 1344*, at p. 2, March 4, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The OAG White Paper").

<sup>48</sup> The OAG White Paper at p. 2.

<sup>49</sup> The OAG White Paper at p. 2.

<sup>50</sup> The OAG White Paper at p. 2.

<sup>51</sup> The OAG White Paper at p. 2.

access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult.” The effect of this provision is that a person who commits abuse of an elderly person or disabled adult in the newly defined manner will be subject to the criminal penalties mentioned above.

The bill adds that a reasonable cause to believe that a defendant’s action was necessary to protect the elderly person or disabled adult from danger constitutes a valid defense to a potential abuse violation under s. 825.102, F.S.

#### Exploitation of an Elderly Person or Disabled Adult

The bill amends s. 825.103, F.S., adding to the current definition of “exploitation of an elderly person or disabled adult.” Specifically, the bill provides that a breach of a fiduciary duty to an elderly person or disabled adult by their guardian, trustee, or agent under power of attorney that results in a “kickback” or “receipt of improper benefits” constitutes the offense of exploitation (in addition to prohibited breaches of fiduciary duty under current law, which include actions resulting in an unauthorized appropriation, sale, or transfer of property). Where the fiduciary owing a duty to an elderly person or disabled adult is also an agent of such a person appointed under ch. 709,<sup>52</sup> or a guardian or trustee appointed under chs. 736 and 744, respectively, the bill adds that obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary is considered an unauthorized appropriation and therefore constitutes the offense of exploitation.

The bill also adds financial exploitation of an elderly person or disabled adult to the current definition. Any person who knowingly, obtains or uses, or endeavors to obtain or use, the funds, assets, property, or the estate of an elderly person or disabled adult through the intentional modification of a planned distribution in a will or trust commits exploitation under the bill unless they have first obtained any of the following:

- A court order authorizing the modification;
- A written instrument authored by the elderly person or disabled adult, sworn to by the elderly person or disabled adult with two witnesses, authorizing the change; or
- The action of an agent under a valid power of attorney authorized by the elderly person or disabled adult permitting the change.

#### **Florida Office of the Attorney General**

The Florida Attorney General (AG) is recognized as the chief legal officer of the state and, absent express legislative restriction, may exercise such power and authority as the public interest may require.<sup>53</sup> As chief legal officer of the state, the AG must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.<sup>54</sup>

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<sup>52</sup> Chapter 709, F.S., relates to power of attorney and similar instruments.

<sup>53</sup> The Florida Office of the Attorney General (The OAG), *The Role and Function of the Attorney General*, available at <https://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F> (last visited March 7, 2021).

<sup>54</sup> See e.g., s. 736.0110, F.S., relating to charitable trusts.

### ***The Office of Statewide Prosecution***

The Florida Constitution gives the Office of Statewide Prosecution (OSP) concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws that occur in two or more judicial circuits, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law.<sup>55</sup> The Statewide Prosecutor is appointed by the AG and serves a term of four years.<sup>56</sup> The OSP is authorized to investigate and prosecute a number of statutorily enumerated offenses.<sup>57</sup>

### ***Effect of the Bill***

The bill amends s. 16.56, F.S., broadening the investigative and prosecutorial authority of the OSP to cover criminal offenses enumerated in ch. 825, F.S. Specifically, this change would result in the following offenses being under the OSP:

- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult;
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, including;
- Lewd or lascivious battery upon an elderly or disabled person;
- Lewd or lascivious molestation of an elderly or disabled person;
- Lewd or lascivious exhibition in the presence of an elderly or disabled person;
- Exploitation of an elderly person or disabled adult;
- Violation of an injunction for protection against exploitation of a vulnerable adult;

The other jurisdictional requirements must be met for OSP to investigate or prosecute one of these offenses.

### **Elder Exploitation Injunctions**

In 2018, the Legislature created a cause of action for an injunction prohibiting exploitation of a vulnerable adult.<sup>58</sup> Section 825.1035, F.S., specifies who may file for an injunction, including:

- A vulnerable adult in imminent danger of being exploited;
- The guardian of a vulnerable adult in imminent danger of being exploited;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.<sup>59</sup>

Current law also:

- Identifies proper venue and details procedural framework for the parties and court;

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<sup>55</sup> Fla. Const. art. IV, s. 4(a); The OAG, *The Office of Statewide Prosecution*, available at <https://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited March 7, 2021).

<sup>56</sup> Section 16.56(2), F.S.

<sup>57</sup> See s. 16.56(1)(a), F.S., for a list of criminal offenses investigated and prosecuted by the OSP.

<sup>58</sup> Chapter 2018-100, L.O.F.; codified in s. 825.1035, F.S.

<sup>59</sup> Section 825.1035(2)(a)1.-4., F.S.

- Requires the clerk of the circuit court to perform specific duties and limits the amount of the fee for filing a petition;
- Provides a sworn petition form for parties filing an injunction;
- Allows the court to grant a temporary injunction under certain circumstances;
- Provides direction for effecting service of process;
- Lists standards for the court to follow when issuing an injunction;
- Identifies forms of relief the court may grant to a vulnerable adult in issuing an injunction, including temporary and exclusive use of a shared residence and freezing the assets and credit lines of the vulnerable adult and those of an individual accused of exploiting the vulnerable adult;
- Permits the court to order payment of specified living expenses when the vulnerable adult's assets are frozen;
- Requires the sheriff or a law enforcement agency to assist the court and clerks of court with specific tasks in issuing and executing an injunction;
- Provides criminal penalties for violating an injunction and authorizes law enforcement to arrest an individual who has violated the terms of an injunction; and
- Limits the liability of financial institutions for freezing assets or credit lines.<sup>60</sup>

***Petition for Injunction for the Protection of a Vulnerable Adult***

A sworn petition must be filed alleging exploitation, or imminent exploitation, of a vulnerable adult, containing the following information:

- The last known residence of both the vulnerable adult and the respondent;
- The respondent's last known employer, a physical description of the respondent, and any aliases they are known to have;
- The manner in which the respondent is associated with the vulnerable adult and any previous or pending legal actions between the respondent and the vulnerable adult;
- The petitioner's knowledge of any reports made to a state agency regarding exploitation, abuse, or neglect of the vulnerable adult;
- The reasons the petitioner claims to genuinely fear an imminent danger of exploitation, or any facts the petitioner believes show the respondent has already committed exploitation;
- The petitioner's knowledge of reasons why the adult depends on the respondent for care, any alternative provisions for care not involving the respondent, resources allowing the adult to access such provisions, and the willingness of the adult to access such provisions;
- Financial institutions where the petitioner knows the adult maintains assets, accounts, or lines of credit;
- Whether the estimated value of the adult's assets is below \$1500, between \$1500 and \$5000, or greater than \$5000;
- Attestation that the petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent; and
- Remedies sought through the injunction, which may include:
  - Prohibiting any direct or indirect contact between the respondent and the vulnerable adult;
  - Immediately restraining the respondent from committing any acts of exploitation;

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<sup>60</sup> See s. 825.1035, F.S.

- Freezing specified assets of the vulnerable adult, whether solely in the adult's name, jointly named with the respondent, or solely in the respondent's name; and
- Providing any other conditions the court feels necessary to protect the vulnerable adult or their assets.<sup>61</sup>

### ***Effect of the Bill***

The bill amends s. 825.1035, F.S., adding authorized agents acting under a durable power of attorney to the list of individuals authorized to petition for an injunction for protection against exploitation of a vulnerable adult.

The bill also specifies new informational fields for the petition for protective injunction against exploitation of a vulnerable adult. Specifically, the bill requires the following to be included in a petition for injunction under s. 825.1035, F.S.:

- The petitioner's name;
- The petitioner's address;
- The petitioner's relationship to the vulnerable adult;
- The length of time the petitioner has known the vulnerable adult;
- The vulnerable adult's name;
- Any known impairments affecting either the vulnerable adult's normal activities of daily living or ability to provide for their own care or protection, specifically any of the following:
  - Long-term physical disabilities;
  - Sensory disabilities, such as hearing or vision impairments;
  - Cognitive disabilities;
  - Mental or emotional disabilities;
  - Developmental disabilities;
  - Infirmities of again; or
  - Any other known impairments

The bill also allows courts to extend an ex parte temporary injunction from a maximum of 15 days to up to 30 days beyond the initial injunction period (for a total of 45 days) if good cause for an extension is shown. Only one such extension is permitted under the bill.

### **Probate Process in Florida**

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.<sup>62</sup> Probate proceedings are governed by The Florida Probate Code found in chs. 731–735, F.S., and the Florida Probate Rules of court.<sup>63</sup> The probate process ensures that the decedent's debts are paid in an orderly fashion and that the rightful beneficiaries, whether

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<sup>61</sup> Section 825.1035(3)(a)1.-14., F.S.

<sup>62</sup> The Florida Bar, *Consumer Pamphlet: Probate in Florida*, available at <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited March 5, 2021) (hereinafter cited as "Consumer Pamphlet 1").

<sup>63</sup> The Florida Bar, *The Florida Probate Rules*, available at <https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf> (last visited March 7, 2021).

determined according to a will or by default rules of succession, receive the property to which they are entitled.

Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.<sup>64</sup> The following are examples to illustrate common probate and non-probate assets:

- A bank account or investment account in the sole name of a decedent is a probate asset; but a bank account or investment account owned by the decedent and payable on death or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset; but a life insurance policy, annuity contract, or individual retirement account payable to the decedent's estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property); but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by spouses as tenants by the entirety is not a probate asset on the death of the first spouse to die; it goes automatically to the surviving spouse.<sup>65</sup>

### ***Qualified Personal Representatives in Probate Cases***

A personal representative is a person or business entity appointed by a circuit court to administer a decedent's estate. If an individual serves as a personal representative, he or she must be at least 18 years old, have full capacity, and be a resident of Florida<sup>66</sup> at the time of the death of the person whose estate he or she is administering.<sup>67</sup> A person is not qualified to serve as a personal representative if he or she is under 18 years of age, has been convicted of a felony, or is mentally or physically unable to perform the duties of a personal representative.<sup>68</sup>

### ***Slayer Statutes***

All states have enacted "slayer rules" which effectively bar a person who causes a killing from inheriting property from their victims.<sup>69</sup> While the specific criteria and applicability of slayer statutes vary by jurisdiction, these laws are uniformly predicated on the idea that those responsible for a killing should not benefit from their wrongful acts.<sup>70</sup>

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<sup>64</sup> Consumer Pamphlet 1.

<sup>65</sup> *Id.*

<sup>66</sup> A non-resident of the state may qualify if he or she is a legally adopted child or adoptive parent of the decedent, related by lineal consanguinity, one of certain enumerated relatives of the decedent, or the spouse of a person otherwise qualified to be the personal representative. Section 733.304, F.S.

<sup>67</sup> Section 733.302, F.S.

<sup>68</sup> Section 733.303, F.S.

<sup>69</sup> Jennifer Piel, Journal of the American Academy of Psychiatry and the Law Online, *Expanding Slayer Statutes to Elder Abuse*, September 2015, available at <http://jaapl.org/content/43/3/369> (last visited March 7, 2021).

<sup>70</sup> *Id.*

Eight states have expanded their slayer rules to include disqualification of persons from inheriting if they have engaged in the abuse or financial exploitation of a decedent.<sup>71</sup> Six of the eight states with such laws require a criminal conviction in order to disinherit an individual responsible for abuse or exploitation.<sup>72</sup> Moreover, three of the eight states provide for disinheritance only when financial elder abuse occurs.<sup>73</sup> California's slayer rule does not require a criminal conviction to effect disinheritance, and it covers physical abuse, neglect, false imprisonment, or financial abuse of an elder or a dependent adult.<sup>74</sup>

### ***Florida's Slayer Rule - Probate***

Current law provides that a surviving person who unlawfully and intentionally kills or participates in procuring the death of a decedent is not entitled to any benefits under a will or through intestacy under the Florida Probate Code.<sup>75</sup> In such instances, the estate of the decedent passes as if the killer had predeceased the decedent.<sup>76</sup> A joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship.<sup>77</sup> This also applies to tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.<sup>78</sup>

A named beneficiary of a bond, life insurance policy, or other contractual arrangements who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond or policy becomes payable as though the killer had predeceased the decedent.<sup>79</sup> A final judgment of conviction of murder of any degree is conclusive.<sup>80</sup> In the absence of a conviction of murder, the court may determine by the greater weight of the evidence whether the killing of the decedent was unlawful and intentional.<sup>81</sup>

### ***Effect of the Bill***

The bill amends s. 733.303, F.S., prohibiting an individual convicted of abuse, neglect, or exploitation of an elderly person or disabled adult from serving as a personal representative in probate matters.

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<sup>71</sup> *Id.*

<sup>72</sup> Travis Hunt, *Disincentivizing Elder Abuse Through Disinheritance: Revamping California Probate Code § 259 and Using It as a Model*, 2014 BYU L. Rev. 445 at p. 446 (2014), available at <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2922&context=lawreview> (last visited March 7, 2021).

<sup>73</sup> *Id.*

<sup>74</sup> Cal. Prob. Code § 259.

<sup>75</sup> See s. 732.802, F.S.; the Florida Probate Code is contained in chs. 731-735, F.S.

<sup>76</sup> Section 732.802(1), F.S.

<sup>77</sup> Section 732.802(2), F.S.

<sup>78</sup> *Id.*

<sup>79</sup> Section 732.802(3), F.S.

<sup>80</sup> Section 732.802(5), F.S.

<sup>81</sup> *Id.*



The bill creates s. 732.8031, F.S., which expands Florida's slayer rule under the Florida Probate Code by prohibiting the following persons convicted of abuse pursuant to s. 825.102(1), F.S., aggravated abuse pursuant to s. 825.102(2), F.S., neglect pursuant to s. 825.102(3), F.S., exploitation pursuant to 825.103, F.S., or first degree aggravated manslaughter pursuant to s. 784.07(2), F.S., of an elderly person or disabled adult from inheriting assets from a decedent, or other person whose death was necessary for passage of the perpetrator's interest, who was the victim of the disqualifying offense:

- A surviving person whose beneficiary interest depends on the death of the victim;
- Joint tenants with right of survivorship and tenants by the entirety in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other financial institutions, and any other form of coownership with survivorship interests whose survivorship interest depends on the death of the victim;
- A named beneficiary of a bond, life insurance policy, or other contractual arrangement where the victim is the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued.
- Any other acquisition of property or interest by the abuser, neglector, exploiter, or killer, including a life estate in homestead property, whose beneficiary interest depends on the death of the victim.

Under the bill, assets in the will of the decedent which would otherwise pass to the perpetrator of the crime pass instead as if the perpetrator had predeceased the victim.

The bill creates a rebuttable presumption that disinheritance will apply if an individual is convicted of any of the aforementioned offenses. Absent a conviction, the bill allows a court to determine by the greater weight of the evidence whether the actions of the alleged perpetrator contributed to the death of the elderly person, disabled adult, or other person whose death is necessary for passage of the probate assets to the perpetrator.

The bill provides that the rights of any person who, before rights under this section of the bill are adjudicated, purchases from the abuser, neglector, exploiter, or killer for value and without notice property that the perpetrator would have acquired except for this section of the bill. The perpetrator is held liable for the amount of the proceeds or the value of the property owed to such a purchaser.

Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable unless before payment it receives at its home office or principal address written notice of a claim under this section of the bill.

This section of the bill does not apply if, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, executes a written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the person so convicted of abuse, neglect, or exploitation to retain his or her inheritance or survivorship rights.

## **The Florida Trust Code**

The revocable, or “living,” trust is often promoted as a means of avoiding probate and saving taxes at death and is governed by ch. 736, F.S.,<sup>82</sup> referred to as the “Florida Trust Code.” The term “terms of a trust” is defined to mean the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.<sup>83</sup> Under the Code, “settlor” is defined as a person who creates or contributes property to a trust.<sup>84</sup> A “beneficiary” of the trust is a person who has a present or future beneficial interest in the trust.<sup>85</sup> The person responsible for the management of the trust assets is the “trustee.”<sup>86</sup>

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests any beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S. In all, the Code currently provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.<sup>87</sup>

### ***Florida’s Slayer Rule - Trusts***

Under s. 736.1104, F.S., a beneficiary who unlawfully and intentionally kills or participates in procuring the death of the settlor or another person on whose death such beneficiary’s interest depends is precluded from taking that interest. Instead, the interest devolves as if the slayer predeceased the victim. This rule is triggered by a civil evidentiary standard (the greater weight of the evidence) although a final judgment of murder in any degree is conclusive.

### ***Effect of the Bill***

The bill amends s. 736.1104, F.S., similarly expanding Florida’s slayer rule under the Florida Trust Code by prohibiting a beneficiary of a trust convicted of abuse, neglect, or exploitation, or first degree aggravated manslaughter of an elderly person or disabled adult, from receiving trust benefits when the victim is the settlor of a trust, or another person on whose death such beneficiary’s interest depends from inheriting trust interests, including a homestead dependent on the victim’s death.

Under the bill, trust interests which would otherwise pass to the perpetrator of the crime pass instead as if the perpetrator had predeceased the victim.

The bill creates a rebuttable presumption that the trust interest is extinguished if an individual is convicted of any of the aforementioned offenses. Absent a conviction, the bill allows a court to determine by the greater weight of the evidence whether the actions of the alleged perpetrator

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<sup>82</sup> The Florida Bar, *Consumer Pamphlet: The Revocable Trust in Florida*, available at <https://www.floridabar.org/public/consumer/pamphlet028/#WHAT%20IS%20A%20REVOCABLE%20TRUST%3F> (last visited March 7, 2021) (hereinafter cited as, “Consumer Pamphlet 2”).

<sup>83</sup> Section 736.0103(21), F.S.

<sup>84</sup> Section 736.0103(18), F.S.

<sup>85</sup> Section 736.0103(4), F.S.

<sup>86</sup> Consumer Pamphlet 2.

<sup>87</sup> See s. 736.0105(2)(a)-(w), F.S.

contributed to the death of the elderly person, disabled adult, or other person whose death is necessary for passage of the trust interest to the perpetrator.

#### **Effective Date**

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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The OAG estimates that expanding the OSP's authority in s. 16.56, F.S., to investigate and prosecute qualifying cases under ch. 825, F.S., would alleviate some of the financial burden on local law enforcement and prosecution, while consolidating the prosecution of multi-circuit criminal activity related to such crimes into comprehensive statewide prosecution cases.<sup>88</sup>

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<sup>88</sup> The OAG White Paper, at p. 5, March 4, 2021.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.56, 733.303, 736.1104, 825.101, 825.102, 825.103, and 825.1035.

This bill creates the following sections of the Florida Statutes: 732.8031.

**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.



509270

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/08/2021	.	
	.	
	.	
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The Committee on Children, Families, and Elder Affairs (Garcia) recommended the following:

**Senate Amendment**

Delete lines 56 - 70  
and insert:

(a) A young adult who is eligible to receive services under s. 409.1451, until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required.

(b) Notwithstanding paragraph (a), a young adult who as a child was eligible under Title IV-E of the Social Security Act



509270

11 for foster care or state-provided foster care and was living in  
12 out-of-home care in this state on his or her 18th birthday until  
13 the young adult reaches 26 years of age, without regard to any  
14 income, resource, or categorical eligibility test that is  
15 otherwise required ~~A person who as a child was eligible under~~  
16 ~~Title IV-E of the Social Security Act for foster care or the~~  
17 ~~state-provided foster care and who is a participant in the Road-~~  
18 ~~to-Independence Program.~~

19 (c) A child who is eligible for the Guardianship Assistance



928816

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2021	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 56 - 70  
and insert:

(a) A young adult who is eligible to receive services under s. 409.1451, until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required.

(b) Notwithstanding paragraph (a), a young adult who as a child was eligible under Title IV-E of the Social Security Act



928816

11 for foster care or state-provided foster care and was living in  
12 out-of-home care in this state on his or her 18th birthday until  
13 the young adult reaches 26 years of age, without regard to any  
14 income, resource, or categorical eligibility test that is  
15 otherwise required ~~A person who as a child was eligible under~~  
16 ~~Title IV-E of the Social Security Act for foster care or the~~  
17 ~~state-provided foster care and who is a participant in the Road-~~  
18 ~~to-Independence Program.~~

19 (c) A child who is eligible for the Guardianship Assistance

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

21 And the title is amended as follows:

22 Delete lines 12 - 13

23 and insert:

24 for foster care; providing an



By Senator Garcia

37-01326-21

20211526\_\_

1 A bill to be entitled  
2 An act relating to Medicaid coverage for former foster  
3 youth; amending s. 409.1451, F.S.; requiring the  
4 Department of Children and Families to develop a  
5 program to facilitate enrollment of certain young  
6 adults in Medicaid; authorizing the department to  
7 coordinate with a community-based care lead agency in  
8 implementing the program; specifying requirements for  
9 outreach services provided by the program; amending s.  
10 409.903, F.S.; revising eligibility for Medicaid  
11 coverage for certain young adults formerly eligible  
12 for foster care; providing for presumptive eligibility  
13 for Medicaid for certain young adults; providing an  
14 effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Subsection (10) of section 409.1451, Florida  
19 Statutes, is amended to read:

20 409.1451 The Road-to-Independence Program.—

21 (10) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN CARE.—

22 (a) Notwithstanding paragraph (2) (a), the department ~~or~~  
23 ~~community-based care lead agency~~ shall develop a program to  
24 facilitate the enrollment of ~~document that eligible~~ young adults  
25 eligible for ~~are enrolled in~~ Medicaid under s. 409.903(4).

26 (b) The department may coordinate with the community-based  
27 care lead agency in implementing the program.

28 (c) The program must provide outreach services that must  
29 include:

37-01326-21

20211526\_\_

30 1. Notifying eligible or prospectively eligible young  
31 adults, caregivers, group homes, and residential programs about  
32 the eligibility and options for enrollment.

33 2. Providing technical assistance to eligible young adults  
34 in enrolling.

35 3. Publicizing options for Medicaid enrollment for young  
36 adults who have lived in foster care.

37 Section 2. Subsection (4) of section 409.903, Florida  
38 Statutes, is amended to read:

39 409.903 Mandatory payments for eligible persons.—The agency  
40 shall make payments for medical assistance and related services  
41 on behalf of the following persons who the department, or the  
42 Social Security Administration by contract with the Department  
43 of Children and Families, determines to be eligible, subject to  
44 the income, assets, and categorical eligibility tests set forth  
45 in federal and state law. Payment on behalf of these Medicaid  
46 eligible persons is subject to the availability of moneys and  
47 any limitations established by the General Appropriations Act or  
48 chapter 216.

49 (4) A child who is eligible under Title IV-E of the Social  
50 Security Act for subsidized board payments, foster care, or  
51 adoption subsidies, and a child for whom the state has assumed  
52 temporary or permanent responsibility and who does not qualify  
53 for Title IV-E assistance but is in foster care, shelter or  
54 emergency shelter care, or subsidized adoption. This category  
55 includes:

56 (a) A young adult who as a child was eligible under Title  
57 IV-E of the Social Security Act for foster care or state-  
58 provided foster care and was living in licensed care in this

37-01326-21

20211526\_\_

59 state on his or her 18th birthday is eligible to receive  
60 services under s. 409.1451, until the young adult reaches 26 ~~21~~  
61 years of age, without regard to any income, resource, or  
62 categorical eligibility test that is otherwise required. A young  
63 adult who is eligible for Medicaid under this paragraph must be  
64 offered the opportunity, subject to federal rules, to be made  
65 presumptively eligible.

66 (b) ~~A person who as a child was eligible under Title IV-E~~  
67 ~~of the Social Security Act for foster care or the state provided~~  
68 ~~foster care and who is a participant in the Road-to-Independence~~  
69 ~~Program.~~

70 ~~(e)~~ A child who is eligible for the Guardianship Assistance  
71 Program as provided in s. 39.6225.

72 Section 3. This act shall take effect July 1, 2021.



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THE FLORIDA SENATE

# APPEARANCE RECORD

3/9/2021

Meeting Date

SB 1526

Bill Number (if applicable)

Topic Medicaid Coverage for Former Foster Youth

Name Elizabeth Berglin, United Way of Miami-Dade

Amendment Barcode (if applicable)

Job Title Director, Public Policy

Address 3250 Southwest Third Avenue

Street

Phone 305-646-7093

Miami

Florida

33129

City

State

Zip

Email bergline@unitedwaymiami.org

Speaking:  For  Against  Information

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

Representing United Way of Miami-Dade

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.

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

March 9, 2021

*Meeting Date*

1526

*Bill Number (if applicable)*

Topic Medicaid Coverage for Former Foster Youth

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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.)

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

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BILL: CS/SB 1526

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

SUBJECT: Medicaid Coverage for Former Foster Youth

DATE: March 11, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	<b>Fav/CS</b>
2.			AHS	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 1526 makes a number of changes to the law relating to Medicaid coverage for young adults who have aged out of foster care. The bill requires the Department of Children and Families (DCF) to develop a program to facilitate enrollment of young adults formerly in out-of-home care in Medicaid.

The bill authorizes the DCF to coordinate with a community-based care lead agency in implementing the program and requires specified outreach services that must be included in the program.

The bill revises eligibility for Medicaid coverage for specified young adults formerly eligible for foster care to provide that a young adult who as a child was eligible under Title IV-E of the Social Security Act for foster care or state-provided foster care and was living in out-of-home care in Florida on his or her 18th birthday remains eligible until the young adult reaches 26 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required in order to be in compliance with federal law.

The bill may have an indeterminate fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

## II. Present Situation:

### Medicaid

Medicaid, authorized in Title XIX of the Social Security Act (SSA), is a state administered federal program that jointly finances medical and related services to a diverse low-income population.<sup>1</sup> To be eligible for Medicaid, individuals must meet both categorical<sup>2</sup> and financial<sup>3</sup> criteria in addition to requirements regarding residency, immigration status, and U.S. citizenship.<sup>4</sup> For some eligibility groups or pathways, state coverage is mandatory, while for others it is optional. States and territories must submit a state plan to the federal government to describe how they will carry out their Medicaid programs within the federal statute's framework.<sup>5</sup>

As the Medicaid agency for the state, as provided under federal law, Medicaid services in Florida are administered by the Agency for Health Care Administration (AHCA). Medicaid eligibility in Florida is determined either by the Department of Children and Families (DCF) or the Social Security Administration for SSI recipients. The DCF determines Medicaid eligibility for:

- Parents and caretaker relatives of children;
- Children;
- Pregnant women;
- Former Foster Care Individuals;
- Non-citizens with medical emergencies; and
- Aged or disabled individuals not currently receiving Supplemental Security Income (SSI).<sup>6</sup>

### Children in Out-of-Home Care

The Foster Care, Prevention, and Permanency program, authorized in Title IV-E of the SSA, is a federal-state program that, among other things, jointly finances foster care for children who a state determines cannot safely remain in their homes and who meet federal eligibility rules related to being removed from a low-income household and other factors. The program also provides some support for services to assist older children in foster care, and those who age out, in making a successful transition to adulthood. The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) administers the Title IV-E program.<sup>7</sup>

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the Title IV-E foster care program, are disabled, or meet other eligibility

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<sup>1</sup> Medicaid.gov, *Medicaid*, available at <https://www.medicaid.gov/medicaid/index.html> (last visited March 6, 2021).

<sup>2</sup> Categories include the elderly, children, or pregnant women.

<sup>3</sup> These include income and assets.

<sup>4</sup> Medicaid.gov, *Eligibility*, available at <https://www.medicaid.gov/medicaid/eligibility/index.html> (last visited March 6, 2021).

<sup>5</sup> Congressional Research Service, *Medicaid Coverage for Former Foster Youth Up to Age 26*, October 26, 2018, available at <https://fas.org/sgp/crs/misc/IF11010.pdf> (last visited March 5, 2021) (hereinafter cited as “CRS Medicaid for Foster Youth”).

<sup>6</sup> The DCF, ACCESS Program, Medicaid, available at <https://www.myflfamilies.com/service-programs/access/medicaid.shtml> (last visited March 5, 2021).

<sup>7</sup> CRS Medicaid for Foster Youth.



criteria. Under the Title IV-E program, states must inform foster youth within 90 days prior to emancipation about their future options for health care. Title IV-E also directs states to provide these youth with health information and official documentation that they were previously in care. Such documentation may be necessary to determine eligibility for some former foster youth who later apply for Medicaid.<sup>8</sup>

Current law requires the AHCA to make payments for medical assistance and related services on behalf of individuals who the department, or the Social Security Administration by contract with the DCF, determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or ch. 216, F.S.<sup>9</sup> These individuals include a child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. This category includes:<sup>10</sup>

- A young adult who is eligible to receive services under s. 409.1451, F.S., until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required.
- A person who as a child was eligible under Title IV-E of the Social Security Act for foster care or the state-provided foster care and who is a participant in the Road-to-Independence Program.
- A child who is eligible for the Guardianship Assistance Program as provided in s. 39.6225, F.S.

### **Young Adults Formerly in Out-of-Home Care**

The Medicaid pathway for former foster youth is intended to provide necessary health supports in the years immediately after leaving foster care.<sup>11</sup> The Patient Protection and Affordable Care Act<sup>12</sup> authorizes Medicaid for an individual up to age 26 if they were in foster care and receiving Medicaid when they aged out of foster care between ages 18 and 21 in Florida. It parallels another ACA requirement that health insurance companies provide coverage of children up to age 26 under their parents' private health care plans. There is no income limit for eligibility and the young adult must not be eligible for another Medicaid coverage type. However, the individual must make application for this coverage with ACCESS Florida.<sup>13</sup>

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

<sup>9</sup> Section 409.903, F.S.

<sup>10</sup> Section 409.903(4), F.S.

<sup>11</sup> CRS Medicaid for Foster Youth.

<sup>12</sup> *See* Pub.L. 111-148.

<sup>13</sup> The DCF, CFOP 170-15, Chapter 2 Medicaid, 2-9.a., available at

<https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-15%20%20Federal%20and%20State%20Funding%20Eligibility/CFOP%20170-15.%20%20Chapter%2002.%20Medicaid.pdf> (last visited March 6, 2021).

Prior to reaching age 21, if the young adult has an open supervision case or upon request of a young adult, child welfare staff must:<sup>14</sup>

- Assist the young adult in applying for Medicaid under this coverage group.
- Ensure that the young adult retains continuity of medical care and has a Medicaid card.

A review of continued Medicaid eligibility is completed at least once every 12 months or sooner if the child's circumstances change. The criteria for recertification remain the same as for the initial Medicaid eligibility determination. In all cases, Medicaid for non-Title IV-E eligible children must be authorized for 12-months. All factors relating to eligibility are reevaluated at each recertification.<sup>15</sup>

### III. Effect of Proposed Changes:

Currently, the DCF or the community-based lead agency is required to document that young adults who were formerly in out-of-home care are enrolled in Medicaid under s. 409.903(4), F.S.<sup>16</sup> The bill requires the DCF to develop a program to facilitate enrollment of young adults who are Medicaid eligible. The program is required to provide outreach services that include:

- Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about the eligibility and options for enrollment.
- Providing technical assistance to eligible young adults in enrolling.
- Publicizing options for Medicaid enrollment for young 36 adults who have lived in foster care.

The bill amends s. 409.903(4), F.S., modifying the application of Medicaid eligibility for certain categories of eligible youth. The bill provides that a young adult who as a child was eligible under Title IV-E of the Social Security Act for foster care or state-provided foster care and was living in out-of-home care in Florida on his or her 18th birthday remains eligible until the young adult reaches 26 years of age rather than 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required in order to be in compliance with federal law.

The bill is effective July 1, 2021.

### IV. Constitutional Issues:

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

None.

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

None.

<sup>14</sup> *Id.* Medicaid 2-9 b.

<sup>15</sup> The DCF, CFOP 170-15, Chapter 2 Medicaid, 2-14 a.

<sup>16</sup> Section 409.1451(10), F.S.

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 may have an indeterminate fiscal impact on the DCF.

The ACHA states that there will likely be no operational impact, but there is potential for a minor fiscal impact on the ACHA.<sup>17</sup> The ACHA states that former foster care youth are eligible for Medicaid coverage because coverage until age 26 is mandated by federal law, therefore the changes to 409.903, F.S., are codifying the statute to align with what is currently covered under Florida Medicaid. However, the program to assist enrollment young adults formerly in foster care to enroll in Medicaid may increase the number of Medicaid enrollees.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 409.1451 and 409.903 of the Florida Statutes.

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<sup>17</sup> The ACHA, 2021 Agency Summary Bill Analysis and Economic Impact Statement, SB 1526, (on file with the Senate Committee on Children, Families, and Elder Affairs).

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

**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 March 9, 2021:**

The committee substitute revises eligibility for Medicaid coverage for specified young adults formerly eligible for foster care and who was living in out-of-home care in Florida on his or her 18th birthday remains eligible until the young adult reaches 26 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required in order to be in compliance with federal law.

- B. **Amendments:**

None.



191352

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2021	.	
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The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 73 - 280

and insert:

State Disbursement Unit. In Title IV-D cases, an affidavit of default or a default in payments is not required to receive depository services. Upon notice by the department that it is providing Title IV-D services in a case with an existing support order, the depository shall transmit case data through, and set up appropriate payment accounts, regardless of whether there is



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11 a delinquency, on the Clerk of Court Child Support Enforcement  
12 Collection System as required under s. 61.181(2)(b).

13 Section 2. Subsection (3) of section 61.1354, Florida  
14 Statutes, is amended to read:

15 61.1354 Sharing of information between consumer reporting  
16 agencies and the IV-D agency.—

17 (3) A consumer reporting agency ~~For purposes of determining~~  
18 ~~an individual's income and establishing an individual's capacity~~  
19 ~~to make support payments or for determining the appropriate~~  
20 ~~amount of child support payment to be made by the individual,~~  
21 ~~consumer reporting agencies shall provide, upon request,~~  
22 ~~consumer reports to the department head of the IV-D agency~~  
23 ~~pursuant to s. 604 of the Fair Credit Reporting Act, provided~~  
24 ~~that the department head of the IV-D agency, or its designee,~~  
25 ~~certifies that:~~

26 (a) The consumer report is needed for the purpose of  
27 ~~determining an individual's income and establishing an~~  
28 ~~individual's capacity to make support payments, ~~or~~ determining~~  
29 ~~the appropriate level of support payments, or enforcing a child~~  
30 ~~support order, award, agreement, or judgment amount of child~~  
31 ~~support payment to be made by the individual;~~

32 (b) The consumer's parentage of the child to whom the  
33 obligation relates has been established or acknowledged by the  
34 consumer in accordance with state laws under which the  
35 obligation arises ~~Paternity of the child of the individual whose~~  
36 ~~report is sought, if that individual is the father of the child,~~  
37 ~~has been established or acknowledged pursuant to the laws of~~  
38 ~~Florida;~~

39 (c) The individual whose report is sought was provided with



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40 at least 15 days' prior notice, by regular ~~certified or~~  
41 ~~registered~~ mail to the individual's last known address, that the  
42 report was requested; and

43 (d) The consumer report will be kept confidential, will be  
44 used solely for the purpose described in paragraph (a), and will  
45 not be used in connection with any other civil, administrative,  
46 or criminal proceeding or for any other purpose.

47 Section 3. Present paragraph (c) of subsection (2) of  
48 section 61.30, Florida Statutes, is redesignated as paragraph  
49 (e), new paragraphs (c) and (d) are added to that subsection,  
50 and subsection (10) of that section is amended, to read:

51 61.30 Child support guidelines; retroactive child support.—

52 (2) Income shall be determined on a monthly basis for each  
53 parent as follows:

54 (c) Except for incarceration for willful nonpayment of  
55 child support or for an offense against a child or person who is  
56 owed child support, incarceration may not be treated as  
57 voluntary unemployment in establishing or modifying a support  
58 order. However, the court may deviate from the child support  
59 guideline amount as provided in paragraph (1) (a).

60 (d) Social security benefits received by a minor child due  
61 to the retirement or disability of the child's parent shall be  
62 included in the parent's gross income.

63 (10) (a) Each parent's actual dollar share of the total  
64 minimum child support need shall be determined by multiplying  
65 the minimum child support need by each parent's percentage share  
66 of the combined monthly net income.

67 (b)1. A parent is entitled to credit for social security  
68 benefits paid directly to the child or the child's caregiver



69 when the benefits are paid due to the parent's retirement or  
70 disability. The parent's share of the monthly support obligation  
71 is paid in full each month for which such benefits are paid that  
72 are equal to or greater than the parent's share of the monthly  
73 obligation. If the benefits are less than the parent's share of  
74 the monthly obligation, the parent owes the difference. If the  
75 benefits are more than the parent's share of the monthly  
76 obligation, the excess inures to the benefit of the child and  
77 may not be credited to arrears or retroactive support that  
78 accrued before the benefits commenced.

79 2. To obtain credit for social security benefits paid, a  
80 parent subject to a court order for child support, or the  
81 department in a Title IV-D case, may file a motion with the  
82 court or include the request in a petition to modify the support  
83 order. Alternatively, in a Title IV-D case, the department may  
84 determine and apply credit after notice and an opportunity for a  
85 hearing are provided in accordance with chapter 120. If the  
86 department determines that a credit applies, the department  
87 shall notify the clerk of court, and the clerk shall update the  
88 payment record to reflect the credit.

89 Section 4. Paragraph (i) of subsection (1) of section  
90 409.256, Florida Statutes, is amended to read:

91 409.256 Administrative proceeding to establish paternity or  
92 paternity and child support; order to appear for genetic  
93 testing.—

94 (1) DEFINITIONS.—As used in this section, the term:

95 (i) "Rendered" means that a signed written order is issued  
96 by filed with the clerk or a deputy clerk of the Department of  
97 Revenue and served on the respondent. ~~The date of filing must be~~





191352

98 ~~indicated on the face of the order at the time of rendition.~~

99 Section 5. Paragraph (e) of subsection (1) and subsection  
100 (8) of section 409.2563, Florida Statutes, are amended to read:

101 409.2563 Administrative establishment of child support  
102 obligations.-

103 (1) DEFINITIONS.-As used in this section, the term:

104 (e) "Rendered" means that a signed written order is issued  
105 ~~by filed with the clerk or any deputy clerk of the department~~  
106 and served on the respondent. ~~The date of filing must be~~  
107 ~~indicated on the face of the order at the time of rendition.~~

108  
109 Other terms used in this section have the meanings ascribed in  
110 ss. 61.046 and 409.2554.

111 (8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL  
112 PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.-The department  
113 shall file with the clerk of the circuit court a ~~certified~~ copy  
114 of an administrative support order rendered under this section.  
115 The depository operated pursuant to s. 61.181 for the county  
116 where the administrative support order has been filed shall:

117 (a) Act as the official recordkeeper for payments required  
118 under the administrative support order;

119 (b) Establish and maintain the necessary payment accounts;

120 (c) Upon a delinquency, initiate the judgment by operation  
121 of law procedure as provided by s. 61.14(6); and

122 (d) Perform all other duties required of a depository with  
123 respect to a support order entered by a court of this state.

124

125 When a proceeding to establish an administrative support order  
126 is commenced under subsection (4), the department shall file a



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127 copy of the initial notice with the depository. The depository  
128 shall assign an account number and provide the account number to  
129 the department within 4 business days after the initial notice  
130 is filed.

131 Section 6. Subsection (4) of section 409.25656, Florida  
132 Statutes, is amended to read:

133 409.25656 Garnishment.—

134 (4) A notice that is delivered under this section is  
135 effective at the time of delivery against all credits, other  
136 personal property, or debts of the obligor which are not at the  
137 time of such notice subject to an attachment, garnishment, or  
138 execution issued through a judicial process. Upon express  
139 written consent of a person who is or may be in possession of  
140 personal property belonging to the obligor, the department may  
141 deliver the notices required by this section to that person by  
142 secure electronic means.

143 Section 7. Section 409.25658, Florida Statutes, is amended  
144 to read:

145 409.25658 Use of unclaimed property for past due support.—

146 (1) In a joint effort to facilitate the collection and  
147 payment of past due support, the Department of Revenue, in  
148 cooperation with the Department of Financial Services, shall  
149 identify persons owing support collected by the department  
150 ~~through a court~~ who are presumed to have unclaimed property held  
151 by the Department of Financial Services.

152 (2) The Department of Financial Services ~~department~~ shall  
153 periodically provide the department ~~of Financial Services~~ with  
154 an electronic file of unclaimed property accounts. The  
155 department shall use the data to identify obligors with



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156 unclaimed property accounts and shall provide the Department of  
157 Financial Services with an electronic data file that includes  
158 the names and other personal identifying information of the  
159 obligors ~~support obligors who owe past due support. The~~  
160 ~~Department of Financial Services shall conduct a data match of~~  
161 ~~the file against all apparent owners of unclaimed property under~~  
162 ~~chapter 717 and provide the resulting match list to the~~  
163 ~~department.~~

164 (3) As the state's Title IV-D agency under s. 409.2557(1),  
165 the department is authorized to submit claims for unclaimed  
166 property to the Department of Financial Services for the purpose  
167 of collecting past due support and shall do so in accordance  
168 with the standards established by the Department of Financial  
169 Services ~~Upon receipt of the data match list, the department~~  
170 ~~shall provide to the Department of Financial Services the~~  
171 ~~obligor's last known address. The Department of Financial~~  
172 ~~Services shall follow the notification procedures under s.~~  
173 ~~717.118.~~

174 (4) Before ~~Prior to~~ paying an obligor's approved claim, the  
175 Department of Financial Services shall notify the department  
176 that such claim has been approved. Upon confirmation that the  
177 Department of Financial Services has approved the claim or a  
178 claim submitted by the department, the department shall  
179 ~~immediately~~ send a notice by regular ~~certified~~ mail to the  
180 obligor, ~~with a copy to the Department of Financial Services,~~  
181 advising the obligor of the department's intent to intercept the  
182 property approved claim up to the amount of the past due  
183 support, and informing the obligor of the obligor's right to  
184 request a hearing under chapter 120. If there is a hearing, the



185 Department of Financial Services shall retain custody of the  
186 property until a final order has been entered and any appeals  
187 thereon have been concluded. If the obligor fails to request a  
188 hearing, the department shall inform ~~enter a final order~~  
189 ~~instructing~~ the Department of Financial Services to transfer to  
190 the department the property up to the amount of past-due support  
191 owed in the amount stated in the final order. Upon such  
192 transfer, the Department of Financial Services shall be released  
193 from further liability related to the transferred property.

194 (5) ~~The provisions of~~ This section provides ~~provide~~ a  
195 supplemental remedy, and the department may use this remedy in  
196 conjunction with any other method of collecting support.

197 Section 8. Subsection (1) of section 409.2567, Florida  
198 Statutes, is amended to read:

199 409.2567 Services to individuals not otherwise eligible.—

200 (1) (a) All support services provided by the department  
201 shall be made available on behalf of all dependent children.  
202 Services shall be provided upon acceptance of public assistance  
203 or upon proper application filed with the department. The  
204 federally required application fee for individuals who do not  
205 receive public assistance is \$1, which shall be waived for all  
206 applicants and paid by the department. The annual fee required  
207 under 42 U.S.C. s. 654(6)(B), as amended by Pub. L. No. 115-123,  
208 for cases involving an individual who has never received  
209 temporary cash assistance and for whom the department has  
210 collected the federally required minimum amount of support shall  
211 be paid by the department.

212 (b) The department may include confidential and exempt  
213 information in unencrypted electronic mail communications with a



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214 parent,

215

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

217 And the title is amended as follows:

218       Delete line 35

219 and insert:

220       exempt information in unencrypted electronic mail

221       communications

By Senator Book

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1                                   A bill to be entitled  
2       An act relating to child support; amending s. 61.13,  
3       F.S.; revising requirements for child support  
4       depositories in Title IV-D cases; requiring the  
5       depositories to create a case in the Clerk of Court  
6       Child Support Enforcement Collection System and set up  
7       appropriate payment accounts upon certain notice from  
8       the Department of Revenue; amending s. 61.1354, F.S.;  
9       revising provisions related to the sharing of  
10      information between consumer reporting agencies and  
11      the department; requiring consumer reports to be kept  
12      confidential and used only for specified purposes;  
13      amending s. 61.30, F.S.; prohibiting the treatment of  
14      incarceration as voluntary employment for purposes of  
15      establishing or modifying child support orders, with  
16      exceptions; providing that certain social security  
17      benefits are included in a parent's gross income;  
18      authorizing certain social security benefits paid to  
19      be applied as a credit for purposes of monthly support  
20      obligations; providing requirements for such credit;  
21      providing procedures for a parent to seek application  
22      of such credit; amending s. 409.256, F.S.; revising  
23      the definition of the term "rendered"; amending s.  
24      409.2563, F.S.; revising the definition of the term  
25      "rendered"; deleting a requirement that a certain  
26      order filed by the department be a certified copy of  
27      the order; amending s. 409.25656, F.S.; authorizing  
28      the department to deliver certain notices by secure  
29      electronic means under certain circumstances; amending

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30 s. 409.25658, F.S.; revising provisions related to the  
31 department's joint efforts with the Department of  
32 Financial Services to use unclaimed property for past  
33 due child support; amending s. 409.2567, F.S.;  
34 authorizing the department to include confidential and  
35 exempt information in electronic mail communications  
36 with parents, caregivers, or other authorized persons  
37 under certain circumstances, with exceptions; amending  
38 s. 409.2576, F.S.; requiring service recipients to  
39 report certain information to the State Directory of  
40 New Hires; defining the term "service recipient";  
41 providing reporting requirements for service  
42 recipients; conforming provisions to changes made by  
43 the act; providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Paragraph (d) of subsection (1) of section  
48 61.13, Florida Statutes, is amended to read:

49 61.13 Support of children; parenting and time-sharing;  
50 powers of court.—

51 (1)

52 (d)1. All child support orders shall provide the full name  
53 and date of birth of each minor child who is the subject of the  
54 child support order.

55 2. If both parties request and the court finds that it is  
56 in the best interest of the child, support payments need not be  
57 subject to immediate income deduction. Support orders that are  
58 not subject to immediate income deduction may be directed

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59 through the depository under s. 61.181 or made payable directly  
60 to the obligee. Payments made by immediate income deduction  
61 shall be made to the State Disbursement Unit. The court shall  
62 provide a copy of the order to the depository.

63 3. For support orders payable directly to the obligee, any  
64 party, ~~or the department in a IV-D case,~~ may subsequently file  
65 an affidavit with the depository alleging a default in payment  
66 of child support and stating that the party wishes to require  
67 that payments be made through the depository. The party shall  
68 provide copies of the affidavit to the court and to each other  
69 party. Fifteen days after receipt of the affidavit, the  
70 depository shall notify all parties that future payments shall  
71 be paid through the depository, except that payments in Title  
72 IV-D cases and income deduction payments shall be made to the  
73 State Disbursement Unit. In Title IV-D cases, an affidavit of  
74 default or a default in payments is not required to receive  
75 depository services. Upon notice by the department that it has  
76 begun providing Title IV-D services in a case with an existing  
77 support order, the depository shall establish a case in the  
78 Clerk of Court Child Support Enforcement Collection System and  
79 set up the appropriate payment accounts regardless of whether  
80 there is a delinquency.

81 Section 2. Subsection (3) of section 61.1354, Florida  
82 Statutes, is amended to read:

83 61.1354 Sharing of information between consumer reporting  
84 agencies and the IV-D agency.—

85 (3) A consumer reporting agency ~~For purposes of determining~~  
86 ~~an individual's income and establishing an individual's capacity~~  
87 ~~to make support payments or for determining the appropriate~~



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88 ~~amount of child support payment to be made by the individual,~~  
89 ~~consumer reporting agencies shall provide, upon request,~~  
90 ~~consumer reports to the department head of the IV-D agency~~  
91 ~~pursuant to s. 604 of the Fair Credit Reporting Act, provided~~  
92 ~~that the department head of the IV-D agency, or its designee,~~  
93 certifies that:

94 (a) The consumer report is needed for the purpose of  
95 ~~determining an individual's income and establishing an~~  
96 ~~individual's capacity to make support payments, ~~or~~ determining~~  
97 ~~the appropriate level of support payments, or enforcing a child~~  
98 ~~support order, award, agreement, or judgment amount of child~~  
99 ~~support payment to be made by the individual;~~

100 (b) The consumer's parentage of the child to whom the  
101 obligation relates has been established or acknowledged by the  
102 consumer in accordance with state laws under which the  
103 obligation arises ~~Paternity of the child of the individual whose~~  
104 ~~report is sought, if that individual is the father of the child,~~  
105 ~~has been established or acknowledged pursuant to the laws of~~  
106 ~~Florida;~~

107 (c) The individual whose report is sought was provided with  
108 at least 15 days' prior notice, by regular ~~certified or~~  
109 ~~registered~~ mail to the individual's last known address, that the  
110 report was requested; and

111 (d) The consumer report will be kept confidential, will be  
112 used solely for the purpose described in paragraph (a), and will  
113 not be used in connection with any other civil, administrative,  
114 or criminal proceeding or for any other purpose.

115 Section 3. Present paragraph (c) of subsection (2) of  
116 section 61.30, Florida Statutes, is redesignated as paragraph

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117 (e), new paragraphs (c) and (d) are added to that subsection,  
118 and subsection (10) of that section is amended, to read:

119 61.30 Child support guidelines; retroactive child support.-

120 (2) Income shall be determined on a monthly basis for each  
121 parent as follows:

122 (c) Except for incarceration for willful nonpayment of  
123 child support or for an offense against a child or person who is  
124 owed child support, incarceration may not be treated as  
125 voluntary unemployment in establishing or modifying a support  
126 order. However, the court may deviate from the child support  
127 guideline amount as provided in paragraph (1) (a).

128 (d) Social security benefits received by a minor child due  
129 to the retirement or disability of the child's parent shall be  
130 included in the parent's gross income.

131 (10) (a) Each parent's actual dollar share of the total  
132 minimum child support need shall be determined by multiplying  
133 the minimum child support need by each parent's percentage share  
134 of the combined monthly net income.

135 (b)1. A parent is entitled to credit for social security  
136 benefits paid directly to the child or the child's caregiver  
137 when the benefits are paid due to the parent's retirement or  
138 disability. The parent's share of the monthly support obligation  
139 is paid in full each month for which such benefits are paid that  
140 are equal to or greater than the parent's share of the monthly  
141 obligation. If the benefits are less than the parent's share of  
142 the monthly obligation, the parent owes the difference. If the  
143 benefits are more than the parent's share of the monthly  
144 obligation, the excess inures to the benefit of the child and  
145 may not be credited to arrears or retroactive support that

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146 accrued before the benefits commenced.

147 2. To obtain credit for social security benefits paid, a  
148 parent subject to a court order for child support, or the  
149 department in a Title IV-D case, may file a motion with the  
150 court or include the request in a petition to modify the support  
151 order. Alternatively, in a Title IV-D case, the department may  
152 determine and apply credit after notice and an opportunity for a  
153 hearing are provided in accordance with chapter 120. If the  
154 department determines that a credit applies, the department  
155 shall notify the clerk of court, and the clerk shall update the  
156 payment record to reflect the credit.

157 Section 4. Paragraph (i) of subsection (1) of section  
158 409.256, Florida Statutes, is amended to read:

159 409.256 Administrative proceeding to establish paternity or  
160 paternity and child support; order to appear for genetic  
161 testing.—

162 (1) DEFINITIONS.—As used in this section, the term:

163 (i) "Rendered" means that a signed written order is issued  
164 ~~by filed with the clerk or a deputy clerk of the Department of~~  
165 ~~Revenue and served on the respondent. The date of filing must be~~  
166 ~~indicated on the face of the order at the time of rendition.~~

167 Section 5. Paragraph (e) of subsection (1) and subsection  
168 (8) of section 409.2563, Florida Statutes, are amended to read:

169 409.2563 Administrative establishment of child support  
170 obligations.—

171 (1) DEFINITIONS.—As used in this section, the term:

172 (e) "Rendered" means that a signed written order is issued  
173 ~~by filed with the clerk or any deputy clerk of the department~~  
174 ~~and served on the respondent. The date of filing must be~~

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175 ~~indicated on the face of the order at the time of rendition.~~

176  
177 Other terms used in this section have the meanings ascribed in  
178 ss. 61.046 and 409.2554.

179 (8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL  
180 PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.—The department  
181 shall file with the clerk of the circuit court a ~~certified~~ copy  
182 of an administrative support order rendered under this section.  
183 The depository operated pursuant to s. 61.181 for the county  
184 where the administrative support order has been filed shall:

185 (a) Act as the official recordkeeper for payments required  
186 under the administrative support order;

187 (b) Establish and maintain the necessary payment accounts;

188 (c) Upon a delinquency, initiate the judgment by operation  
189 of law procedure as provided by s. 61.14(6); and

190 (d) Perform all other duties required of a depository with  
191 respect to a support order entered by a court of this state.

192  
193 When a proceeding to establish an administrative support order  
194 is commenced under subsection (4), the department shall file a  
195 copy of the initial notice with the depository. The depository  
196 shall assign an account number and provide the account number to  
197 the department within 4 business days after the initial notice  
198 is filed.

199 Section 6. Subsection (4) of section 409.25656, Florida  
200 Statutes, is amended to read:

201 409.25656 Garnishment.—

202 (4) A notice that is delivered under this section is  
203 effective at the time of delivery against all credits, other

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204 personal property, or debts of the obligor which are not at the  
205 time of such notice subject to an attachment, garnishment, or  
206 execution issued through a judicial process. Upon the obligor's  
207 express written consent, the department may deliver the notices  
208 required by this section to the obligor by secure electronic  
209 means.

210 Section 7. Section 409.25658, Florida Statutes, is amended  
211 to read:

212 409.25658 Use of unclaimed property for past due support.—

213 (1) In a joint effort to facilitate the collection and  
214 payment of past due support, the Department of Revenue, in  
215 cooperation with the Department of Financial Services, shall  
216 identify persons owing support collected by the department  
217 ~~through a court~~ who are presumed to have unclaimed property held  
218 by the Department of Financial Services.

219 (2) The Department of Financial Services ~~department~~ shall  
220 periodically provide the department ~~of Financial Services~~ with  
221 an electronic file of unclaimed property accounts. The  
222 department shall use the data to identify obligors with  
223 unclaimed property accounts and shall provide the Department of  
224 Financial Services with an electronic data file that includes  
225 the names and other personal identifying information of the  
226 obligors ~~support obligors who owe past due support~~. The  
227 ~~Department of Financial Services shall conduct a data match of~~  
228 ~~the file against all apparent owners of unclaimed property under~~  
229 ~~chapter 717 and provide the resulting match list to the~~  
230 ~~department.~~

231 (3) As the state's Title IV-D agency under s. 409.2557(1),  
232 the department is authorized to submit claims for unclaimed

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233 property to the Department of Financial Services for the purpose  
234 of collecting past due support and shall do so in accordance  
235 with the standards established by the Department of Financial  
236 Services ~~Upon receipt of the data match list, the department~~  
237 ~~shall provide to the Department of Financial Services the~~  
238 ~~obligor's last known address. The Department of Financial~~  
239 ~~Services shall follow the notification procedures under s.~~  
240 ~~717.118.~~

241 (4) ~~Before~~ Prior to paying an obligor's approved claim, the  
242 Department of Financial Services shall notify the department  
243 that such claim has been approved. Upon confirmation that the  
244 Department of Financial Services has approved the claim or a  
245 claim submitted by the department, the department shall  
246 ~~immediately~~ send a notice by regular ~~certified~~ mail to the  
247 obligor, ~~with a copy to the Department of Financial Services,~~  
248 advising the obligor of the department's intent to intercept the  
249 property approved claim up to the amount of the past due  
250 support, and informing the obligor of the obligor's right to  
251 request a hearing under chapter 120. If there is a hearing, the  
252 Department of Financial Services shall retain custody of the  
253 property until a final order has been entered and any appeals  
254 thereon have been concluded. If the obligor fails to request a  
255 hearing, the department shall inform ~~enter a final order~~  
256 ~~instructing~~ the Department of Financial Services to transfer to  
257 the department the property up to the amount of past-due support  
258 owed ~~in the amount stated in the final order~~. Upon such  
259 transfer, the Department of Financial Services shall be released  
260 from further liability related to the transferred property.

261 (5) ~~The provisions of~~ This section provides ~~provide~~ a

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262 supplemental remedy, and the department may use this remedy in  
263 conjunction with any other method of collecting support.

264 Section 8. Subsection (1) of section 409.2567, Florida  
265 Statutes, is amended to read:

266 409.2567 Services to individuals not otherwise eligible.—

267 (1) (a) All support services provided by the department  
268 shall be made available on behalf of all dependent children.  
269 Services shall be provided upon acceptance of public assistance  
270 or upon proper application filed with the department. The  
271 federally required application fee for individuals who do not  
272 receive public assistance is \$1, which shall be waived for all  
273 applicants and paid by the department. The annual fee required  
274 under 42 U.S.C. s. 654(6)(B), as amended by Pub. L. No. 115-123,  
275 for cases involving an individual who has never received  
276 temporary cash assistance and for whom the department has  
277 collected the federally required minimum amount of support shall  
278 be paid by the department.

279 (b) The department may include confidential and exempt  
280 information in electronic mail communications with a parent,  
281 caregiver, or other person who is authorized to receive the  
282 information, provided the parent, caregiver, or other person  
283 consents to such communications, except that social security  
284 numbers, federal tax information, driver license numbers, and  
285 bank account numbers may not be provided in this manner.

286 Section 9. Section 409.2576, Florida Statutes, is amended  
287 to read:

288 409.2576 State Directory of New Hires.—

289 (1) DIRECTORY CREATED.—The State Directory of New Hires is  
290 hereby created and shall be administered by the Department of

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291 Revenue or its agent. All employers and service recipients in  
292 this ~~the~~ state shall furnish a report consistent with subsection  
293 (3) for each newly hired or rehired employee or individual who  
294 is not an employee but is provided payment for services  
295 rendered, unless the employee or individual is employed by or  
296 under contract with a federal or state agency performing  
297 intelligence or counterintelligence functions and the head of  
298 such agency has determined that reporting pursuant to this  
299 section could endanger the safety of the employee or individual  
300 or compromise an ongoing investigation or intelligence mission.

301 (2) DEFINITIONS.—For purposes of this section:

302 (a) "Employee" is defined as an individual who is an  
303 employee within the meaning of chapter 24 of the Internal  
304 Revenue Code of 1986.

305 (b) "Employer" has the meaning given such term in s.  
306 3401(d) of the Internal Revenue Code of 1986 and includes any  
307 government entity and labor organization.

308 (c) "Labor organization" has the meaning given such term in  
309 s. 2(5) of the National Labor Relations Act and includes any  
310 entity which is used by the organization and an employer to  
311 carry out requirements described in s. 8(f)(3) of such act of an  
312 agreement between the organization and employer.

313 (d) "Date of hire" is the first day of work for which the  
314 employee is owed income.

315 (e) "Service recipient" means a person engaged in a trade  
316 or business who pays an individual for services rendered in the  
317 course of such trade or business.

318 (3) EMPLOYERS AND SERVICE RECIPIENTS TO FURNISH REPORTS.—

319 (a) ~~Each employer subject to the reporting requirements of~~



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320 ~~chapter 443 with 250 or more employees, shall provide to the~~  
321 ~~State Directory of New Hires, a report listing the employer's~~  
322 ~~legal name, address, and reemployment assistance identification~~  
323 ~~number. The report must also provide the name and social~~  
324 ~~security number of each new employee or rehired employee at the~~  
325 ~~end of the first pay period following employment or~~  
326 ~~reemployment.~~

327       ~~(b)~~ All employers shall furnish a report to the State  
328 Directory of New Hires of the state in which the newly hired or  
329 rehired employee works. The report required in this section  
330 shall be made on a W-4 form or, at the option of the employer,  
331 an equivalent form, and can be transmitted magnetically,  
332 electronically, by first-class mail, or other methods which may  
333 be prescribed by the State Directory. Each report shall include  
334 the name, address, date of hire, and social security number of  
335 every new and rehired employee and the name, address, and  
336 federal employer identification number of the reporting  
337 employer. If available, the employer may also include the  
338 employee's date of birth in the report. Multistate employers  
339 that report new hire information electronically or magnetically  
340 may designate a single state to which it will transmit the above  
341 noted report, provided the employer has employees in that state  
342 and the employer notifies the Secretary of Health and Human  
343 Services in writing to which state the information will be  
344 provided. Agencies of the United States Government shall report  
345 directly to the National Directory of New Hires.

346       (b) A service recipient shall report to the State Directory  
347 of New Hires an individual who is not an employee in the same  
348 manner as described in paragraph (a) but who the service

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349 recipient, while engaged in a trade or business, pays in an  
350 amount of \$600 or more per calendar year for services rendered  
351 in the course of the trade or business. The report must include  
352 the name, address, and social security number or other  
353 identifying number assigned to the individual under section 6109  
354 of the Internal Revenue Code of 1986, the date services for  
355 payment were first rendered by the individual, and the name,  
356 address, and employer identification number of the service  
357 recipient.

358 (c) Pursuant to the federal Personal Responsibility and  
359 Work Opportunity Reconciliation Act of 1996, each party is  
360 required to provide his or her social security number in  
361 accordance with this section. Disclosure of social security  
362 numbers obtained through this requirement shall be limited to  
363 the purpose of administration of the Title IV-D program for  
364 child support enforcement and those programs listed in  
365 subsection (9).

366 (4) TIME FOR REPORTS.—

367 (a) Employers must report new hire information, as  
368 described in subsection (3), within 20 days of the hire date of  
369 the employee, or, in the case of employers that report new hire  
370 information electronically or by magnetic tape, by two monthly  
371 transmissions, if necessary, not less than 12 days nor more than  
372 16 days apart.

373 (b) Service recipients must report on individuals subject  
374 to reporting under paragraph (5) (b) within 20 days after the  
375 earlier of:

376 1. The date of the first payment made which requires an  
377 information return in accordance with section 6041A(a) of the

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378 Internal Revenue Code of 1986; or

379 2. The date on which a contract providing for such payments  
 380 is entered into.

381  
 382 If service recipients report individuals under this paragraph  
 383 electronically or by magnetic tape, the reports may be made by  
 384 two monthly transmissions, if necessary, but may not be less  
 385 than 12 days or more than 16 days apart.

386 (5) ENTRY OF DATA.—The State Directory of New Hires shall  
 387 enter ~~new hire~~ information reported under this section into an  
 388 automated database within 5 business days of receipt.

389 (6) MATCHES TO STATE REGISTRY. ~~Not later than May 1, 1998,~~  
 390 The Department of Revenue or its agent must conduct automated  
 391 matches of the social security numbers of employees reported to  
 392 the State Directory of New Hires against the social security  
 393 numbers of records in the State Case Registry. The Title IV-D  
 394 agency shall use the new hire information received to locate  
 395 individuals for the purposes of establishing paternity and  
 396 establishing, modifying, and enforcing support obligations.  
 397 Private entities under contract with the Title IV-D agency to  
 398 provide Title IV-D services may have access to information  
 399 obtained from the State Directory of New Hires and must comply  
 400 with privacy safeguards.

401 (7) WAGE WITHHOLDING NOTICE AND NATIONAL MEDICAL SUPPORT  
 402 NOTICE.—The department shall transmit a wage withholding notice  
 403 consistent with s. 61.1301 and, when appropriate, a national  
 404 medical support notice, as defined in s. 61.046, ~~to the~~  
 405 ~~employee's employer~~ within 2 business days after entry of the  
 406 new hire information into the State Directory of New Hires'

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407 database, unless the court has determined that the obligor's  
408 ~~employee's~~ wages or other income are not subject to withholding  
409 or, for purposes of the national medical support notice, the  
410 support order does not contain a provision ~~for the employee~~ to  
411 provide health insurance. The withholding notice shall direct  
412 the employer or other payor of income to withhold income in  
413 accordance with the income deduction order, and the national  
414 medical support notice shall direct the employer to withhold  
415 premiums for health insurance.

416 (8) PROVIDING INFORMATION TO NATIONAL DIRECTORY.—The State  
417 Directory of New Hires must furnish information regarding newly  
418 hired or rehired employees and other individuals subject to  
419 reporting to the National Directory of New Hires for matching  
420 with the records of other state case registries within 3  
421 business days of entering such information ~~from the employer~~  
422 into the State Directory of New Hires. The State Directory of  
423 New Hires shall enter into an agreement with the Department of  
424 Economic Opportunity or its tax collection service provider for  
425 the quarterly reporting to the National Directory of New Hires  
426 information on wages and reemployment assistance taken from the  
427 quarterly report to the Secretary of Labor, now required by  
428 Title III of the Social Security Act, except that no report  
429 shall be filed with respect to an employee of a state or local  
430 agency performing intelligence or counterintelligence functions,  
431 if the head of such agency has determined that filing such a  
432 report could endanger the safety of the employee or compromise  
433 an ongoing investigation or intelligence mission.

434 (9) DISCLOSURE OF INFORMATION.—

435 (a) ~~New hire~~ Information reported under this section shall

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436 be disclosed to the state agency administering the following  
437 programs for the purposes of determining eligibility under those  
438 programs:

439 1. Any state program funded under part A of Title IV of the  
440 Social Security Act;

441 2. The Medicaid program under Title XIX of the Social  
442 Security Act;

443 3. The reemployment assistance or unemployment compensation  
444 program under s. 3304 of the Internal Revenue Code of 1954;

445 4. The food assistance program under the Food and Nutrition  
446 Act of 2008; and

447 5. Any state program under a plan approved under Title I  
448 (Old-Age Assistance for the Aged), Title X (Aid to the Blind),  
449 Title XIV (Aid to the Permanently and Totally Disabled), or  
450 Title XVI (Aid to the Aged, Blind, or Disabled; Supplemental  
451 Security Income for the Aged, Blind, and Disabled) of the Social  
452 Security Act.

453 (b) ~~New-hire~~ Information reported under this section shall  
454 be disclosed to the state agencies operating employment security  
455 and workers' compensation programs for the purposes of  
456 administering such programs.

457 Section 10. This act shall take effect October 1, 2021.

The Florida Senate  
**COMMITTEE VOTE RECORD**

**COMMITTEE:** Children, Families, and Elder Affairs  
**ITEM:** SB 1532  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 9, 2021  
**TIME:** 3:30—6:00 p.m.  
**PLACE:** 37 Senate Building

FINAL VOTE		SENATORS	3/09/2021 Amendment 191352					
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	<b>TOTALS</b>	RCS	-				
<b>Yea</b>	<b>Nay</b>		<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

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

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

*Duplicate*

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

March 9, 2021  
*Meeting Date*

1532  
*Bill Number (if applicable)*

Topic Child Support

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title Chief Executive Officer

Address 2215 Thomasville Road  
*Street*

Phone 850.510.9922

Tallahassee FL 32308  
*City State Zip*

Email Barney@BarneyBishop.com

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1532

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

SUBJECT: Child Support

DATE: March 9, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AP</u>	_____

**I. Summary:**

In Florida, families receive child support services through private attorneys, filing pro se actions, or the Child Support Program administered by the Department of Revenue (DOR). As Florida's Title IV-D agency, the DOR is responsible for collecting and enforcing child support. To receive services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.

CS/SB 1532 makes numerous changes to the Child Support Program. The bill:

- Specifies that affidavits of default or a default in payments are not required for Title IV-D cases to have accounts established in the Clerk of Court Child Support Collection System and that Title IV-D payments are processed through the State Disbursement Unit;
- Amends the statements the DOR is required to certify when requesting a consumer report, to conform to the federal Fair Credit Reporting Act;
- Allows notices relating to consumer reports to be made by regular mail instead of by certified or registered mail;
- Prohibits the state from treating incarceration as voluntary unemployment when a support order is established or modified, unless limited exceptions apply;
- Codifies how Social Security dependent benefits affect the amount of child support ordered; the extent to which the parent receives credit for the benefits; and how a parent obtains credit for dependent benefits;
- Updates the process for rendering final orders;
- Authorizes the use of electronic notices of garnishment to consenting financial institutions;
- Revises the data exchange process between the DOR and the Department of Financial Services relating to the use of unclaimed property for past due child support;
- Permits the DOR to transmit confidential and exempt information with limited exception by unencrypted electronic mail to a parent, caregiver, or other person authorized to receive information about DOR services upon his or her consent;



- Requires an entity to report to the State Directory of New Hires nonemployees who perform services and are paid \$600 or more in a calendar year.

The fiscal impact of the bill on state and local governments is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

## II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

## III. Effect of Proposed Changes:

### Support of Children (Section 1)

#### *Title IV-D cases*

Title IV-D (IV-D) refers to Title IV, Part D of the Social Security Act, which is the federally funded, state administered child support enforcement program.<sup>1</sup> The IV-D program is administered by the federal Office of Child Support Enforcement (OCSE), within the United States Department of Health and Human Services. The OCSE oversees the national child support program and partners with state and local child support agencies to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households.<sup>2</sup> The OCSE does not provide services directly to families, but helps state child support agencies develop, manage, and operate their child support programs effectively and according to federal law.<sup>3</sup>

As Florida's IV-D agency,<sup>4</sup> the Department of Revenue (DOR) is responsible for collecting and enforcing child support.<sup>5</sup> The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year.<sup>6</sup> The Child Support Program works with parents, employers, financial institutions, the Internal Revenue Service, state and local agencies, and courts throughout the state to receive timely child support payments and also works with families and partners to:

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;
- Collect and disburse child support payments; and

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<sup>1</sup> 42 U.S.C. § 651, et. seq.

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

<sup>3</sup> U.S. Department of Health & Human Services, Office of Child Support Enforcement (OCSE), An Office of the Administration for Children & Families, *About the Office of Child Support Enforcement*, available at <https://www.acf.hhs.gov/css/about> (last visited Mar. 8, 2021).

<sup>4</sup> Section 409.2557(1), F.S.

<sup>5</sup> See s. 61.13, F.S.

<sup>6</sup> The DOR, *Child Support Program: Overview 2019*, p. 6, 19, available at [https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x\\_Child\\_Support\\_Overview\\_Presentation\\_External\\_2020\\_FFY\\_2018-19.pdf](https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x_Child_Support_Overview_Presentation_External_2020_FFY_2018-19.pdf) (last visited Mar. 8, 2021).

- Monitor and enforce child support orders.<sup>7</sup>

Child support services are available even if a parent lives in another state or country. To receive the no-cost services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.<sup>8</sup>

The DOR offers child support services in all but two Florida counties, partnering with the State Attorney's Office for services in Miami-Dade County and the Manatee County Clerk of Court for services in Manatee County.<sup>9</sup>

### ***Depository Role in IV-D Cases***

Once a judge orders child support, the obligor may pay the obligee directly or payments can be made through an Income Withholding Order. If an Income Withholding Order is issued, the payments will be processed at the State Disbursement Unit (SDU)<sup>10</sup> administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligor must make all child support payments in IV-D cases to the SDU.<sup>11</sup>

Upon request of the parties, the court may order that child support payments must be made through the depository or directly to the obligee if it is in the child's best interest.<sup>12</sup> If such an order is made, any party or the DOR in a IV-D case may file an affidavit with the depository<sup>13</sup> that alleges the obligor has defaulted on his or her child support payment obligations and that requests the payments be made through the depository.<sup>14</sup> The party must submit a copy of the affidavit to the court and to all parties.<sup>15</sup> Fifteen days after receipt of the affidavit, the depository must notify all parties that future payments will be paid through the depository, except income deduction payments must be made through the State Disbursement Unit.<sup>16</sup>

When a private case with a support order payable directly to the parent who is owed support becomes a IV-D case, the clerk's depository must create payment accounts on the Clerk of Court Child Support Collection System (CLERC System) for payments to be disbursed to the parent

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

<sup>8</sup> *Id.* at 5.

<sup>9</sup> The DOR, *About the Child Support Program*, available at [https://floridarevenue.com/childsupport/about\\_us/Pages/about\\_us.aspx](https://floridarevenue.com/childsupport/about_us/Pages/about_us.aspx) (last visited March 8, 2021).

<sup>10</sup> Section 61.046(20), F.S., provides that the "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the DOR pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the DOR in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

<sup>11</sup> Sections 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 USC 654b(a)(1)(A).

<sup>12</sup> Section 61.13(1)(d), F.S.

<sup>13</sup> Section 61.046(4), F.S., provides "depository" means the central governmental depository established pursuant to s. 61.181, F.S., created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.

<sup>14</sup> Section 61.13(1)(d)3., F.S.

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

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

owed support and for the payment data to be sent to the DOR.<sup>17</sup> A private case may become a IV-D case due to either payment of public assistance or because a parent applies for IV-D services.<sup>18</sup>

### ***Effect of Bill***

The bill amends s. 61.13, F.S., to:

- Specify that payments in IV-D cases must be made to the SDU; and
- Require that, upon notice by the DOR that it is providing IV-D services in a case with an existing support order, the depository establish a case on the CLERC System and set up the appropriate payment accounts so that payments can be disbursed by the SDU, regardless of whether there is a default in payment.

### **Child Support Guidelines; Retroactive Payments (Section 3)**

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, head of the IV-D agency, or its designee, must certify that:<sup>19</sup>

- The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;
- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.

In *DOR v. Jackson*,<sup>20</sup> the Florida Supreme Court held that parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The trial court has some discretion, but the child's interest in receiving support must generally supersede the obligor parent's substantial change in circumstances resulting from incarceration.

The District Courts of Appeal are not in agreement on whether income can be imputed when determining *an initial* child support order when the parent is in prison or going to prison.

In *McCall v. Martin*,<sup>21</sup> the Fourth District Court of Appeal (DCA) reversed the trial court's order refusing to impute income to the father during his incarceration for committing battery on his

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<sup>17</sup> The DOR, *Agency Analysis for SB 1532*, p. 2, March 1, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOR Analysis").

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

<sup>19</sup> Section 61.1354(3), F.S.

<sup>20</sup> 846 So. 2d 486 (Fla. 2003).

<sup>21</sup> 34 So.3d 121 (Fla. 4th DCA 2010).

wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*,<sup>22</sup> which was approved by the Supreme Court in *Jackson*, the Fourth District held that the father's child support order may not be modified based on his incarceration due to a conviction for attempting to kill the mother to avoid child support.

However, in *DOR v. Llamas*,<sup>23</sup> the First District Court of Appeal affirmed an order declining to impose a child support obligation upon the father who was going to prison. The First DCA certified conflict with the Fourth DCA's opinion in *McCall*, finding that the administrative law judge reasonably applied the law and did not abuse his discretion in declining to impute income to the father. Subsequently, in *Wilkerson v. Wilkerson*,<sup>24</sup> the Fifth DCA aligned itself with *McCall* and certified conflict with *Llamas*, holding that a court does not abuse its discretion in setting an initial child support obligation by imputing income to an incarcerated parent. The court in *Wilkerson* believed that an individual's actions that lead to incarceration are voluntary for purposes of s. 61.30(2)(b), F.S., and that s. 61.30, F.S., was not intended to operate as a shield to avoid having an initial support obligation established while the parent is incarcerated.

In 2016, federal law was amended to prohibit state laws from treating incarceration as voluntary unemployment for purposes of establishing or modifying child support orders.<sup>25</sup> On September 17, 2020, the U.S. Office of Child Support Enforcement proposed two optional exceptions to allow incarceration to be treated as voluntary unemployment under child support guidelines, including incarceration which results from:

- Intentional nonpayment of child support resulting from a criminal case or civil contempt action; or
- Any offense of which the individual's dependent child or the child support recipient was the victim.<sup>26</sup>

### ***Effect of Bill***

The bill prohibits treating incarceration as voluntary unemployment when a support order is established or modified, unless incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support, or the court or administrative tribunal deviates from the guideline amount as provided under current law. This change will bring the state guidelines into closer compliance with federal regulations, though state guidelines would include exemptions not authorized in current regulations. Should the proposed rule creating limited exceptions for treating incarceration as voluntary unemployment be finalized, the exception in SB 1532 relating to "willful nonpayment of child support" will be in conflict with the new federal rule, which may necessitate a future amendment.

The bill also amends ss. 61.30(2) and (10), F.S., to be consistent with Florida case law, specifying:

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<sup>22</sup> 727 So. 2d 328 (Fla. 4<sup>th</sup> DCA 1999).

<sup>23</sup> 196 So.3d 1267 (Fla. 1<sup>st</sup> DCA 2016).

<sup>24</sup> 220 So. 3d 480 (Fla. 5<sup>th</sup> DCA 2017).

<sup>25</sup> 45 CFR 302.56(c)(3).

<sup>26</sup> 85 FR 58029 (September 17, 2020).

- Social security benefits received by a minor child due to the retirement or disability of the child's parent are considered part of the parent's gross income for determining child support obligations.
- A parent is entitled to credit for social security benefits paid directly to the child or the child's caregiver when the benefits are paid due to the parent's retirement or disability.
- The parent's share of the monthly support obligation is considered paid in full each month for which such benefits are paid that are equal to or greater than the parent's share of the monthly obligation.
- If the benefits are less than the parent's share of the monthly obligation, the parent must pay the difference. If the benefits are more than the parent's share of the monthly obligation, the excess inures to the benefit of the child and may not be credited to arrears or retroactive support that accrued before the benefits commenced.

To obtain credit, a parent subject to a court order for child support, or the DOR in a IV-D case, may file a motion with the court or include the request in a petition to modify the support order, and that, alternatively, in a IV-D case, the DOR may determine and apply credit after notice and opportunity for hearing as provided under chapter 120, F.S. If credit is determined and applied by the DOR, the DOR shall notify the clerk of court and the clerk shall update the payment record.

### **Consumer Reporting Agencies (Section 2)**

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, head of the IV-D agency, or its designee, must certify that:

- The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;
- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.<sup>27</sup>

### ***Effect of Bill***

The bill amends s. 63.1354, F.S., requiring consumer reporting agencies to provide requested consumer reports to the DOR, rather than the head of the IV-D agency or its designee. The bill also requires that, when requesting a consumer report, certified statements required to be made

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<sup>27</sup> Section 61.1354(3), F.S.

under s. 61.1354, F.S., to conform to the federal Fair Credit Reporting Act (FRCA)<sup>28</sup> and that the DOR, rather than the head of the IV-D agency, or its designee, make the certification.

Although the FCRA was amended in 2015 to remove the requirement to provide notice to individuals, the bill maintains the current notice requirement; however, the bill authorizes such notice to be made by regular mail instead of by certified or registered mail.

#### **Rendering Final Orders (Section 4)**

Final orders determining paternity or paternity and child support rendered as authorized by s. 409.256(11), F.S., and administrative support orders rendered as authorized by s. 409.2563(7), F.S., are prepared, reviewed and approved using the Child Support Program's automated system.<sup>29</sup> Once approved, the rendered final orders are digitally stored as PDF documents after electronic signatures are affixed and copies are automatically mailed to the parties with the by the automated system.<sup>30</sup> Under current law, rendered means that a signed written order is filed with the clerk or any deputy clerk of the DOR and served on the respondent.<sup>31</sup> The date of filing must also be indicated on the face of the order at the time of rendition.<sup>32</sup> Final orders issued by the Child Support Program under ss. 409.256 and 409.2563, F.S., must state that "The Final Order has been rendered on the above date by filing it with the agency clerk of the Florida Department of Revenue and serving it on the respondent."<sup>33</sup>

As it relates to administrative support orders, s. 409.2563(8), F.S., also requires the DOR to file a certified copy of such orders with the clerk of the circuit court. Currently, the DOR's automated system generates final administrative support orders, which are batch e-filed electronically through the Florida Courts E-Filing Portal or automatically sent via US mail to the clerk.<sup>34</sup>

#### ***Effect of Bill***

The bill amends ss. 409.256(1)(i) and 409.2563(1)(e), F.S., modifying the definition of "rendered" to reflect that final orders and administrative support orders are system-generated with electronic signatures, rather than filed with the agency clerk or a deputy clerk.

The bill also removes the requirement to file a certified copy of an administrative support order with the clerk of the circuit court, as the orders are filed electronically or automatically sent via US mail to the clerk.

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<sup>28</sup> 15 U.S.C. § 1681b(a)(4). FRCA protects information held by credit reporting agencies, and places legal obligations on companies who report information to them. The Federal Trade Commission, *Fair Credit Reporting Act*, available at <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited March 8, 2021).

<sup>29</sup> The DOR Analysis at p. 5.

<sup>30</sup> *Id.*

<sup>31</sup> Sections 409.256(1)(i) and 409.2563(1)(e), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> The DOR Analysis at p. 5.

<sup>34</sup> *Id.*

## Garnishment/FAST Levy (Section 6)

The DOR is authorized to collect unpaid child support obligations by garnishing accounts at banks, credit unions and other financial institutions.<sup>35</sup> Upon service of the initial garnishment notice (Notice to Freeze) by registered mail, a person in possession of personal property owned by or owed to a person who owes past due support may not transfer or otherwise dispose of the obligor's property until 60 days after receipt of the notice.<sup>36</sup> After the Notice to Freeze is served on the one in possession of the property, the obligor is served with a Notice of Intent to Levy by certified or registered mail and given an opportunity to contest the notice.<sup>37</sup> If a timely petition to contest is not filed, or there is a hearing and an order entered that garnishment may proceed, the DOR is authorized to serve a Notice of Levy by registered mail on the one in possession of the property to be levied upon.<sup>38</sup>

The federal OCSE sponsors the Federally Assisted State Transmitted (FAST) Levy program. The FAST Levy program, which is voluntary for both child support and financial institutions, allows the agency and institutions to communicate more easily in respect of levy actions and in a standardized, automated manner.<sup>39</sup> The FAST Levy program also reduces costs, increases efficiency to collect past due child support, and gets support to families faster.<sup>40</sup> To participate, the DOR must provide notice by secure electronic means to the participating financial institutions. However, since the statute requires service of the Notice of Levy by registered mail, the DOR and Florida financial institutions are currently unable to participate in the FAST Levy program.

### *Effect of Bill*

The bill amends s. 409.25656(4), F.S., authorizing the DOR to deliver levy notices electronically to banks, credit unions, and other financial institutions that provide express consent to receive notice in that manner. For financial institutions that elect to participate in the FAST Levy program, the DOR would notify participating financial institutions of pending levy actions by periodically transmitting an electronic data file to the OCSE.<sup>41</sup> The financial institution would access the data on the secure website maintained by the federal office and process the data to determine which customer accounts would be levied on and for what amounts.<sup>42</sup> The financial institution would provide this data to the central site which would generate a response file to the DOR that would be used to automatically update the Child Support Program's automated system.<sup>43</sup> Financial institutions that do not elect to participate in the program would continue to receive hard copy levy notices from the DOR by registered mail pursuant to current law.

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<sup>35</sup> Section 409.25656, F.S.

<sup>36</sup> Section 409.25656(1), F.S.

<sup>37</sup> See s. 409.25656(7) and (8), F.S.

<sup>38</sup> Section 409.25656(3), F.S. The Notice of Levy requires a financial institution to transfer the funds in the account to the DOR up to the amount of past due or overdue support. The DOR then disburses the funds to the parent who is owed support.

<sup>39</sup> Office of Child Support Enforcement: *An Office of the Administration for Children & Families, FAST Levy Overview*, available at <https://www.acf.hhs.gov/css/training-technical-assistance/fast-levy-overview> (last visited Mar. 8, 2021).

<sup>40</sup> *Id.*

<sup>41</sup> The DOR Analysis at p. 6.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

**Unclaimed Property (Section 7)**

Florida’s Department of Financial Services (DFS) regulates the disposition of unclaimed property in this state.<sup>44</sup> In addition to money and securities, unclaimed property includes tangible property such as watches, jewelry, coins, currency, stamps, historical items and other miscellaneous articles from abandoned safe deposit boxes. Until claimed, unclaimed money is deposited into the state school fund, where it is used for public education. Florida’s Chief Financial Officer holds unclaimed property claimable accounts valued at \$2 billion, mostly from dormant accounts in financial institutions, insurance and utility companies, securities and trust holdings. There is, however, no statute of limitations, and citizens have the right to claim their property any time at no cost.<sup>45</sup>

As part of an effort to collect and pay past due support, s. 409.25658, F.S., requires the DOR and the DFS to identify past due obligors’ unclaimed property held by the DFS.<sup>46</sup> The DOR is required to periodically provide the DFS with an electronic file of support obligors who owe past due support.<sup>47</sup> The DFS is then required to conduct a data match of the file against all apparent owners of unclaimed property under ch. 717, F.S., and provide the resulting match list to the DOR.<sup>48</sup> Upon receipt of the data match list, the DOR is required to provide the DFS the obligor’s last known address and DFS is required to follow the notification procedures under s. 717.118, F.S., ensuring owners of unclaimed property are notified in a cost-effective manner.<sup>49</sup>

Prior to paying the approved claim for unclaimed property of an obligor owing past due support, the DFS must notify the DOR that the claim has been approved.<sup>50</sup> Upon such notice by the DFS to the DOR, the DOR must immediately send a notice by certified mail to the obligor, with a copy to the DFS, advising the obligor of the DOR’s intent to intercept the approved claim up to the amount of the past due support owed, and informing the obligor of the obligor’s right to request a hearing under ch. 120, F.S.<sup>51</sup> The DFS must retain custody of the property until a final order is entered by the DOR and any appeals have been concluded.<sup>52</sup> If the obligor does not request a hearing, the DOR enters a final order instructing the DFS to transfer the property to the DOR in the amount stated in the final order.<sup>53</sup>

The following chart reflects recent data from the DOR on the number of actions, collections, and final orders related to unclaimed property:<sup>54</sup>

State Fiscal Year	Actions Initiated	Final Orders Entered	Collections Received
2020/21 (YTD)	5,261	4,617	\$721,040

<sup>44</sup> Section 717.101, F.S.

<sup>45</sup> The DFS, *Unclaimed Property*, available at <https://myfloridacfo.com/division/unclaimedproperty/home> (last visited Mar. 8, 2021).

<sup>46</sup> Section 409.25658(1), F.S.

<sup>47</sup> Section 409.25658(2), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> Section 409.25658(3), F.S.

<sup>50</sup> Section 409.25658(4), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Section 409.25658(4), F.S.

<sup>54</sup> E-mail from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: DOR Child Support Concepts Information, March 7, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).



2019/20	6,943	4,904	\$1,165,414
2018/19	6,726	5,285	\$1,021,727
2017/18	8,316	5,035	\$1,388,238

### *Effect of Bill*

The bill switches the current roles of the DOR and the DFS as they relate to unclaimed property. The DFS must periodically provide the DOR with an electronic data file of unclaimed property accounts. The DOR must then use this data to identify support obligors with unclaimed property accounts and send the DFS an electronic data file with the names and other personal identifying information of the support obligors.<sup>55</sup> The bill authorizes the DOR to submit claims for unclaimed property to the DFS.

The bill requires the DOR to send a notice of intent to intercept unclaimed property by regular mail, instead of certified mail. If a support obligor does not request a hearing, the DOR notifies the DFS to transfer property to the DOR in the amount of the past due support instead of entering a final order.

### **Customer Service via E-mail (Section 8)**

Under the Department of Management Services, Division of State Technology, r. 60GG-2.003(4)(b)1., F.A.C., each state agency is required to “[e]ncrypt confidential and exempt information during transmission, except when the transport medium is owned or managed by the agency and controls are in place to protect the data during transit.” Due to the COVID-19 pandemic, the DOR is operating under a waiver of this rule, providing consumer services by e-mail, phone, fax, online chat, and online self-help.<sup>56</sup> Since March 2020, e-mails from customers have increased tenfold.<sup>57</sup> Using encrypted e-mail to respond to customers’ e-mails is cumbersome and disfavored by customers.<sup>58</sup>

### *Effect of Bill*

The bill amends s. 409.2567, F.S., authorizing the DOR to include confidential and exempt information in unencrypted e-mail communications with a parent, caregiver, or other person who is authorized to receive the information, provided the parent, caregiver, or other person consents, except that social security numbers, federal tax information, driver license numbers and bank account numbers may not be provided in this manner.

### **Compensation Reporting (Section 9)**

Under state and federal law, employers are required to report newly hired or rehired employees to the State Directory of New Hires<sup>59</sup> within 20 days of the date of hire.<sup>60</sup> Employers must report the employee’s name, address, social security number, date of birth (if available) date of hire (the

<sup>55</sup> This reflects the 2015 Memorandum of Understanding currently in effect between the DOR and the DFS. See The DOR Analysis at p. 7.

<sup>56</sup> The DOR Analysis at p. 7.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> The State Directory of New Hires is a database maintained by each state containing information regarding newly hired employees for the respective state.

<sup>60</sup> See s. 409.2576, F.S. and 42 USC § 653a.

date the employee first performs services for pay), employer's name and address, and the employer's federal employer identification number.<sup>61</sup> Employers may report new hires online by submitting electronic data files or by fax, phone or by first class mail.

The Child Support Program adds the new hire data to the State Directory of New Hires database daily and performs automated data matching using the names and social security numbers provided to identify employers of individuals who owe child support.<sup>62</sup> Within two business days after the information is reported and added to the data base, the Child Support Program must, when appropriate, issue an income deduction notice to the employer.<sup>63</sup> The information is also made available to other agencies responsible for determining eligibility for various benefit programs under s. 409.2576(9), F.S.

Some individuals rendering services for payment may not be classified as employees but might instead be considered independent contractors. However, income paid to individuals not classified as employees is not reported to the State Directory of New Hires, limiting the ability of the Child Support Program to collect child support by income deduction. Income earned by independent contractors who are paid or will be paid \$600 or more during a calendar year by a service-recipient engaged in a business must be reported to the Internal Revenue Service.<sup>64</sup> Mandatory reporting of these individuals in the same manner as employees could result in increased child support collections for families. Several states have laws requiring employers to report new-hire information on independent contractors, including California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, Ohio, Texas, Utah and West Virginia.<sup>65</sup>

### *Effect of Bill*

The bill amends s. 409.2576, F.S., adding the definition of "service recipient," a person engaged in a trade or business for whom a service is performed by an individual in a capacity other than that of an employee. The bill requires a service recipient to report to the State Directory of New Hires any individual, other than an employee, to whom the service recipient pays more than \$600 in a calendar year for services performed by the individual in the course of the service recipient's trade or business.

The bill also specifies that, for an individual who is not an employee, the service recipient's report must include the individual's name, address, and social security number, or other identifying number assigned under s. 6109 of the Internal Revenue Code, the date services for payment were first performed by the individual, and the name, address, and employer identification number of the service recipient. The bill provide that service recipients must report these individuals within 20 days after the earlier of either:

- First making payments that require an IRS Form 1099; or
- Entering into a contract providing for such payments.

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<sup>61</sup> Section 409.2576(3)(a), F.S. See also, OCSE, New Hire Reporting-Answers to Employer Questions, available at <https://www.acf.hhs.gov/css/faq/new-hire-reporting-answers-employer-questions> (last visited Mar. 8, 2021).

<sup>62</sup> The DOR Analysis at p. 7.

<sup>63</sup> Section 409.2576(7), F.S.

<sup>64</sup> 26 U.S.C. § 6041A

<sup>65</sup> The DOR Analysis at p. 8.

The bill specifies that the information would be provided to the National Directory of New Hires for use by other state child support programs, the same as new hire reports for employees under current law.

The effective date of the bill is October 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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will need to start reporting independent contractors' information to the State Directory of New Hires and the new reporting requirement may require more resources and additional costs to private businesses.

Incarcerated parents will benefit from not having their incarceration treated as voluntary unemployment, as income will not be imputed to them while they have no ability to pay, reducing the amount in past-due child support they would otherwise owe.

Financial institutions that participate in the FAST Levy program may experience cost savings with the improved efficiencies associated with participating in the program such as processing levy notices from multiple states in a standardized, automated manner.

**C. Government Sector Impact:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

With respect to a fiscal impact on state government, the DOR reports an operational impact only.<sup>66</sup> The Florida Court Clerks & Comptrollers (FCCC) report the bill would most likely result in minimal impact to the Clerks' operations and to those of FCCC in its operation and maintenance of the CLERC system.<sup>67</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 61.13, 61.1354, 61.30, 409.256, 409.2563, 409.25656, 409.25658, 409.2567, and 409.2576 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.)

**CS by Children, Families, and Elder Affairs on March 9, 2021:**

The committee substitute:

- Amends the provision which permits the DOR to deliver notices required under the garnishment section to the obligor by secured electronic means upon express written consent to a person who is in possession of personal property belonging to the obligor;
- Authorizes the DOR to transmit certain confidential and exempt electronic mail regarding support services made on behalf of dependent children in an “unencrypted” format; and
- Makes technical changes to the notice that may be given by the DOR to receive depository services even if the obligor is not delinquent in payment of child support.

**B. Amendments:**

None.

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

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<sup>66</sup> The DOR Analysis at p. 9.

<sup>67</sup> The FCCC, *Agency Analysis for SB 1532*, p. 4, (on file with the Senate Committee on Children, Families, and Elder Affairs).