

<b>Tab 1</b>	<b>SB 144</b> by <b>Berman</b> ; (Similar to CS/H 00087) Lactation Spaces
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<b>Tab 2</b>	<b>SB 226</b> by <b>Berman</b> ; Support for Dependent Adult Children					
284646	A	S	RCS	JU, Berman	Delete L.111 - 368:	02/07 04:39 PM

<b>Tab 3</b>	<b>SB 278</b> by <b>Rodriguez</b> ; (Identical to H 00619) State Estate Tax
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Yarborough, Chair**  
**Senator Burton, Vice Chair**

**MEETING DATE:** Tuesday, February 7, 2023  
**TIME:** 3:30—5:30 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators Albritton, Baxley, Book, Boyd, Broxson, DiCeglie, Harrell, Stewart, Thompson, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 144</b> Berman (Identical H 87)	Lactation Spaces; Requiring each county courthouse to provide at least one lactation space for members of the public by a specified date; providing requirements for such lactation space; authorizing the use of state or private funds to provide lactation spaces in appellate courthouses; providing exceptions, etc.  JU      02/07/2023 Favorable FP	Favorable Yeas 12 Nays 0
2	<b>SB 226</b> Berman	Support for Dependent Adult Children; Specifying that parents are responsible for supporting their dependent adult child; requiring that certain rights of the parents of a dependent adult child be established in a guardianship proceeding; specifying that a court may modify a child support order for adult children in certain circumstances; providing factors a court must consider when determining the amount of child support for a dependent adult child; authorizing a court to assign support to certain trusts established for a dependent adult child for a specified purpose, etc.  JU      02/07/2023 Fav/CS CF RC	Fav/CS Yeas 12 Nays 0
3	<b>SB 278</b> Rodriguez (Identical H 619)	State Estate Tax; Providing applicability of ch. 198, F.S., with respect to certain estates; providing a directive to the Division of Law Revision, etc.  JU      02/07/2023 Favorable FT AP	Favorable Yeas 12 Nays 0

Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 144

INTRODUCER: Senator Berman

SUBJECT: Lactation Spaces

DATE: February 6, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 144 requires each county courthouse to provide at least one dedicated lactation space, outside of the confines of a restroom, for members of the public to express breast milk or breastfeed in private.

The bill requires the lactation space to be provided no later than January 1, 2024. It must be hygienic, shielded from public view, free from intrusion while occupied, and contain an electrical outlet.

These requirements do not apply to a courthouse if the person responsible for the operation of the courthouse determines that:

- The courthouse does not contain a lactation space for employees which may be used by the members of the public, and the courthouse does not have:
  - A space that could be repurposed as a lactation space open to the public; or
  - A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.
- New construction would be required to create the lactation space.

The bill also authorizes the person responsible for the operation of the facility housing each district court of appeal to use state-appropriated funds or private funding to provide a lactation space.

The bill contains a legislative finding that the bill fulfills an important state interest.

The bill takes effect on July 1, 2023.

## II. Present Situation:

### Breastfeeding in Florida

Florida was one of the first states to pass legislation specifically authorizing women to breastfeed in any public or private location.<sup>1</sup> State law provides that the breastfeeding of a baby is an “important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.”<sup>2</sup> Accordingly, “[a] mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breastfeeding.”<sup>3</sup> And any facility lawfully providing maternity services or newborn infant care may use the designation “baby-friendly” if it establishes a breast-feeding policy in accordance with certain Department of Health standards.<sup>4</sup>

### Lactation Spaces in Florida Courthouses

#### *Judicial Circuits*

According to the Florida Association of Women Lawyers (FAWL), 32 judicial circuit courthouses currently provide dedicated lactation spaces.<sup>5</sup> They include:

- 1<sup>st</sup> Judicial Circuit Court (Okaloosa County Courthouse and Courthouse Annex Extension);
- 2<sup>nd</sup> Judicial Circuit Court (Leon County Courthouse);
- 4<sup>th</sup> Judicial Circuit Court (Duval County Courthouse);
- 6<sup>th</sup> Judicial Circuit Court (St. Petersburg Judicial Center);
- 8<sup>th</sup> Judicial Circuit Court (Alachua County Criminal Justice Center and Family and Civil Justice Center);
- 9<sup>th</sup> Judicial Circuit Court (Orange County Courthouse);
- 10<sup>th</sup> Judicial Circuit Court (Polk County Courthouse);
- 11<sup>th</sup> Judicial Circuit Courts (including the Coral Gables Branch, Dade County Courthouse, Joseph Caleb Center, Lawson E. Thomas Courthouse, Miami-Dade Children’s Courthouse, Richard E. Gerstein Justice Building, and the South Dade Justice Center);<sup>6</sup>
- 12<sup>th</sup> Judicial Circuit Court (Sarasota County Justice Center – Judge Lynn N. Silvertooth Judicial Center and Manatee County Judicial Center);
- 13<sup>th</sup> Judicial Circuit Court (Edgecomb Courthouse and Criminal Courthouse Annex);
- 15<sup>th</sup> Judicial Circuit Court (Main Courthouse, West County Courthouse, and South County Courthouse);

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<sup>1</sup> See National Conference of State Legislatures, *Breastfeeding State Laws*, <https://www.ncsl.org/health/breastfeeding-state-laws> (last visited Jan. 19, 2023) (providing the passage dates of relevant legislation state-by-state and noting that Florida enacted s. 383.015, F.S., in 1993).

<sup>2</sup> Section 383.015, F.S.

<sup>3</sup> Section 383.015(1), F.S.

<sup>4</sup> Section 383.015(2), F.S.; see also s. 383.016, F.S. (providing that “[a] facility lawfully providing maternity services or newborn infant care may use the designation “baby-friendly” on its promotional materials if the facility has complied with at least 80 percent of the requirements developed by the Department of Health in accordance with UNICEF and World Health Organization baby-friendly hospital initiatives”).

<sup>5</sup> Fla. Ass’n of Women Lawyers, *Florida Courthouse Lactation Room Directory* (posted Jan. 31, 2023), available at [https://fawl.org/page/lactation\\_space](https://fawl.org/page/lactation_space).

<sup>6</sup> *Id.*; see also Florida’s Eleventh Judicial Circuit, *Courthouse Amenities – Lactations Rooms*, available at <https://www.jud11.flcourts.org/About-the-Court/Courthouse-Amenities/Lactation-Rooms>, (last visited Jan. 20, 2023).

- 17<sup>th</sup> Judicial Circuit Court (Central Courthouse);
- 18<sup>th</sup> Judicial Circuit Court (Brevard County Moore Justice Center, and Seminole County Civil Courthouse and Criminal Justice Center);
- 19<sup>th</sup> Judicial Circuit Court (Martin County Courthouse and Okeechobee County Judicial Complex); and
- 20<sup>th</sup> Judicial Circuit Court (Lee Justice Center, Collier County Courthouse, and Collier County Health Department Building).

Additionally, two courthouses in the 11<sup>th</sup> Judicial Circuit (the Hialeah Branch Courthouse and the North Dade Justice Center), one in the 20<sup>th</sup> Judicial Circuit (the Lee Government Center), and two in the 4<sup>th</sup> Judicial Circuit (Green Cove Springs – Headquarters and the Robert M. Foster Justice Center) either intend to soon open, or have recently opened, lactation spaces.<sup>7</sup> There remain 108 courthouses in Florida that do not offer dedicated lactation spaces.<sup>8</sup>

### *District Courts of Appeal*

According to FAWL, none of the district courts of appeal currently offer dedicated lactation spaces.<sup>9</sup>

### **Courthouse Lactation Room Handbook**

FAWL has published a Lactation Space Handbook (Handbook)<sup>10</sup> intended to promote women’s (*i.e.* women lawyers, jurors, witnesses, and others who participate in the legal process) access to lactation rooms in courthouses throughout the state.<sup>11</sup> The Handbook includes, among other things, a discussion regarding why women need dedicated lactation spaces; the law regarding lactation breaks and spaces; and best practices for establishing lactation spaces (including room access, naming, specifications, amenities, and funding).<sup>12</sup>

According to The Florida Bar, 38 percent of Florida attorneys are women,<sup>13</sup> and 39 percent of Florida judges are women.<sup>14</sup> The percentage of women attorneys in the state is expected to rise over the coming years due to women accounting for almost 50 percent of the total number of law school students in Florida.<sup>15</sup>

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<sup>7</sup> Fla. Ass’n of Women Lawyers, *supra* note 5.

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

<sup>9</sup> *See id.* (addressing District Courts of Appeal, but not addressing branches); *see also* s. 35.05(1), F.S. (identifying the headquarters for the six District Courts of Appeal). At this time it is unknown whether the new Sixth District Court of Appeal, whose operations began on January 1, 2023, or the Second District Court of Appeal, which is being relocated from Lakeland to St. Petersburg to facilitate creation of the Sixth District Court of Appeal, have plans to offer dedicated lactation spaces. *See* Florida Second District of Appeal, *Home*, <https://2dca.flcourts.gov/> (last visited Jan. 20, 2023).

<sup>10</sup> Fla. Ass’n of Women Lawyers, *Courthouse Lactation Space Handbook* (posted Jan. 20, 2023), [https://fawl.org/page/lactation\\_space](https://fawl.org/page/lactation_space).

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 7-15.

<sup>13</sup> The Florida Bar, *Women in the Law/Gender Bias* (rev. Feb. 13, 2017), <https://www.floridabar.org/about/diversity/diversity003/issue-04/>.

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

<sup>15</sup> *See id.* (stating that the number is currently at 48.7% and has risen over the last few years).

### **Funding Requirements for Court-Related Functions**

Article V, section 14 of the Florida Constitution requires counties to fund the cost of “communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks of the circuit and county courts performing court-related functions.”<sup>16</sup>

In this context, the term “facility” means “reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate[.]”<sup>17</sup> Consequently, counties are responsible for the funding of physical modifications and improvements to all facilities in order to comply with the Americans with Disabilities Act.<sup>18</sup>

State law also provides that the construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court are funded through state revenues in the General Appropriations Act.<sup>19</sup>

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

The bill creates s. 29.24, F.S., to require each county courthouse to provide at least one dedicated lactation space outside the confines of a restroom for members of the public to express breast milk or breastfeed in private by January 1, 2024. The dedicated space must be hygienic, shielded from public view, and free from intrusion while occupied. The lactation space must also contain an electrical outlet.

The bill authorizes the person responsible for the operation of the facility housing each district court of appeal to use state-appropriated funds or private funding to provide a dedicated lactation space.

The bill establishes that the requirements to provide a dedicated lactation space do not apply to a county courthouse if the person who is responsible for the operation of the courthouse determines that:

- The courthouse does not contain a lactation space for employees which may be used by the members of the public, and the courthouse does not have:
  - A space that could be repurposed as a lactation space open to the public; or
  - A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.

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<sup>16</sup> FLA. CONST. art. V, s. 14(c); *see also* s. 29.008(1), F.S. (citing the Florida Constitution as requiring counties to fund the cost of “communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders’ offices, state attorneys’ offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions”). On the other hand, counties are not required to fund “the state courts system, state attorneys’ offices, public defenders’ offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions.” *See* FLA. CONST. art. V, s. 14(c).

<sup>17</sup> Section 29.008(1)(a), F.S.

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

<sup>19</sup> Section 29.004(4), F.S.

- New construction would be required to create the lactation space.

The bill contains a legislative finding that the bill fulfills an important state interest.

The bill takes effect July 1, 2023.

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

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

Article VII, section 18(a) of the Florida Constitution provides that:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds ... unless the legislature has determined that such law fulfills an important state interest and unless: ... the law requiring such expenditure is approved by two-thirds of the membership of each house of the legislature ....

Counties will incur costs in complying with the lactation space requirements set forth in the bill, unless the person responsible for the operation of the courthouse determines that the lactation space requirements do not apply based upon the criteria in the bill. As drafted, the bill contains a finding that the bill fulfills an important state interest.

The mandate requirements do not apply to laws having an insignificant impact<sup>20</sup> which, for Fiscal Year 2022-2023, would include laws having a statewide impact that is less than \$2,256,827.<sup>21</sup> The fiscal impact of this bill on counties is indeterminate. If costs imposed by the bill do not exceed \$2,256,827, then the mandate requirements (*i.e.* the legislative finding and 2/3 vote) do not apply and the bill will be binding on the counties.

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

None.

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

None.

##### **D. State Tax or Fee Increases:**

None.

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<sup>20</sup> FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is “an amount not greater than the average statewide population for the applicable fiscal year times ten cents.” See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact* (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> .

<sup>21</sup> Based upon the Demographic Estimating Conference, the population forecast for Florida in 2023 is 22,568,268. See Economic and Demographic Research, *Demographic Estimating Conference, Executive Summary* (Jul. 18, 2022), <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> .

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes private entities to contribute funds for lactation spaces in county courthouses and in district courts of appeal.

C. Government Sector Impact:

Each county will incur costs associated with providing a dedicated lactation space in its county courthouses. Also, the state may incur costs associated with providing a dedicated lactation space within district courts of appeal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 29.24 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 Berman

26-00040-23

2023144\_\_

A bill to be entitled

An act relating to lactation spaces; creating s. 29.24, F.S.; requiring each county courthouse to provide at least one lactation space for members of the public by a specified date; providing requirements for such lactation space; authorizing the use of state or private funds to provide lactation spaces in appellate courthouses; providing exceptions; declaring that this act fulfills an important state interest; providing an effective date.

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

Section 1. Section 29.24, Florida Statutes, is created to read:

29.24 Lactation spaces in courthouses.—

(1) Except as otherwise provided in this section, by January 1, 2024, each county courthouse must provide at least one dedicated lactation space for members of the public to express breast milk or breastfeed in private outside of the confines of a restroom. The space must be hygienic, be shielded from public view, be free from intrusion while occupied, and contain an electrical outlet.

(2) The person responsible for the operation of the facility housing each district court of appeal may use state-appropriated funds or private funding to provide a lactation space as set forth in subsection (1).

(3) The requirements of subsection (1) do not apply to a courthouse if the person responsible for the operation of the

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

26-00040-23

2023144\_\_

courthouse determines that:

(a) The courthouse does not contain a lactation space for employees which may be used by the members of the public, and the courthouse does not have:

1. A space that could be repurposed as a lactation space open to the public; or

2. A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.

(b) New construction would be required to create the lactation space.

Section 2. The Legislature finds that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2023.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Clay Yarborough, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 19, 2023

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I respectfully request that **Senate Bill #144**, relating to Lactation Spaces, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Lori Berman" followed by a horizontal line.

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Senator Lori Berman  
Florida Senate, District 26

**Cc:** Senator Colleen Burton, Vice Chair  
Tom Cibula, Staff Director

The Florida Senate

APPEARANCE RECORD

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

2/7/23

Meeting Date

SB 144

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Barbara DeVore

Phone 850-251-4280

Address 625 E. Breward St.  
Street

Email \_\_\_\_\_

Tallahassee, FL  
City State

32308  
Zip

Speaking:  For  Against  Information

OR

Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida N.O.W.

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

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

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

The Florida Senate

APPEARANCE RECORD

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

SB 144

Bill Number or Topic

2/7/23

Meeting Date

Judiciary

Committee

Amendment Barcode (if applicable)

Name Aurelie Colon

Phone 954 881 8595

Address \_\_\_\_\_  
Street

Email aurelie@latinainstitute.org

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: National Latina Institute for Reproductive Justice FL

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/7/23

Meeting Date

144

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Tiffany Cruz

Phone 850-701-8838

Address 411 N. Calhoun Street

Street

Email Tiffany@tiffanycruzlaw.com

Tallahassee

FL

32301

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 226

INTRODUCER: Judiciary Committee and Senator Berman

SUBJECT: Support for Dependent Adult Children

DATE: February 7, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	<b>Fav/CS</b>
2.			CF	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 226 specifies procedures for effectuating the common law duty of parents to support a dependent adult child. In this context, a dependent adult child is an adult who is dependent on others for care or support because of a mental or physical incapacity that began before the age of 18. This duty of support is detailed in court opinions and is recognized in the Florida Statutes, but the procedures for a dependent adult child to obtain support are not clear.

This bill specifies that a suit to establish support may be initiated at any time by the dependent adult child, the child's parent, or another person, including an agent under the adult child's durable power of attorney, or the adult child's guardian or guardian advocate. In determining the amount of support, the court must consider the adult child's income and assets, existing and future needs, support provided by a parent, the financial resources of each parent, and the availability of other resources and programs to support the adult child. The court may order that support payments be made to the adult child, the adult child's guardian advocate, guardian, or agent under a durable power of attorney or a special needs or pooled trust.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Support for Dependent Adult Children

Generally, the obligation of a parent to support a child ceases when the child reaches majority, but an exception arises when the child is, from physical or mental deficiencies, unable to support himself or herself.<sup>1</sup> State common law imposes a duty of support upon parents for a dependent adult child who is unable to support himself or herself because of a mental or physical incapacity that began prior to the child reaching majority.<sup>2</sup> This duty of support rests upon both parents throughout the dependency and throughout their lives.<sup>3</sup>

In 1973, the Legislature adopted s. 743.07, F.S., removing the disability of nonage, while preserving an exception for continued support of a certain class of dependent adults.<sup>4</sup> In its present form, the statute provides as follows (emphases added):

743.07 Rights, privileges, and obligations of persons 18 years of age or older.—

(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.

(2) *This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.*

(3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

The statute preserves a common law right to seek adult dependent support from a parent in a court of competent jurisdiction, if the dependency was the result of a mental or physical incapacity that began prior to the person reaching majority.<sup>5</sup> The circuit court is the proper court for such adjudications.<sup>6</sup> The right to support, and the corresponding right to bring the cause of action, belongs to the mentally or physically disabled adult whose disability began prior to majority,<sup>7</sup> although the child does not need to be adjudicated dependent before he or she reaches majority for the court to order extended support.<sup>8</sup>

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<sup>1</sup> *Perla v. Perla*, 58 So. 2d 689, 690 (Fla. 1952).

<sup>2</sup> *Brown v. Brown*, 714 So. 2d 475, 477 (Fla. 5th DCA 1998); *Monitzer v. Monitzer*, 600 So. 2d 575, 575 (Fla. 2d DCA 1992); *Fincham v. Levin*, 155 So. 2d 883, 884 (Fla. 1st DCA 1963).

<sup>3</sup> *Fernandez v. Fernandez*, 306 So. 3d 1013, 1015 (Fla. 3d DCA 2020) (quoting *Hastings v. Hastings*, 841 So. 2d 484, 486 (Fla. 3d DCA 2003) (internal citations omitted)).

<sup>4</sup> *Fernandez*, 306 So. 3d at 1015.

<sup>5</sup> *Fernandez*, 306 So. 3d at 1016-17.

<sup>6</sup> *Fernandez*, 306 So. 3d at 1015.

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

<sup>8</sup> *Skelly v. Skelly*, 300 So. 3d 342, 345 (Fla. 5th DCA 2020) (confirming that s. 743.07(2), F.S., does not require that a child be adjudicated dependent before he or she reaches majority for the trial court to order extended support).

In cases where the parents of a dependent adult child have dissolved their marriage, and one party has fulfilled his or her child support obligations through the age of majority as provided in the final judgment of dissolution, an independent action may nevertheless be brought to adjudicate that party's continuing support obligation for the dependent adult child.<sup>9</sup>

Aside from the above-described statute that recognizes the existence of a common law right to seek support for dependent persons, state statutes do not otherwise recognize or regulate any right to support for dependent adult children.

## **Kinds of Financial Support Available to Adult Dependent Children**

### ***Government Benefits***

There are many government benefits available to individuals with special needs, and they vary significantly from state to state. Some of the major programs are:<sup>10</sup>

- *Medicaid*. Medicaid provides basic medical care to low-income individuals. Most states also have “waiver” Medicaid programs covering residential, day care, career, and other services.
- *Supplemental Security Income (SSI)*. SSI provides funds for food and shelter to individuals with disabilities. To qualify, a person must have less than \$2,000 in “countable assets.”
- *Social Security Disability Insurance (SSDI)*. SSDI requires that participants have been unable to work for at least a year due to their disability. Benefits are based on the individual's income history and the number of quarters they have worked and contributed to the program.
- *Disabled Adult Child (DAC)*. DAC requires a determination that the onset of the participant's disability occurred before age 22, that the person is unmarried, and that the participant has a parent who has a disability, is retired or deceased and who qualifies for Social Security himself or herself.
- *Supplemental Nutrition Assistance Program (SNAP/Food Stamps)*. SNAP has eligibility guidelines similar to SSI.
- *Section 8 Housing*. Section 8 Housing subsidizes residential rents for families for low-income families, which may include those with special needs. Eligibility is based on a sliding scale that considers income and family size.<sup>11</sup>

### ***Special Needs Trusts***

A special needs trust, sometimes called a supplemental needs trust, is a legal vehicle enabling assets to be held on behalf of someone with disabilities without affecting their eligibility for means-tested public benefits such as Medicaid or Supplemental Security Income.<sup>12</sup> Put another way, the essential purpose of a special needs trust is usually to improve the quality of an individual's life without disqualifying him or her from eligibility for public benefits.<sup>13</sup>

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<sup>9</sup> *Fernandez*, 306 So. 3d at 1015.

<sup>10</sup> Special Needs Alliance, *Government Benefits*, <https://www.specialneedsalliance.org/special-needs-101/government-benefits/> (last visited Jan. 30, 2023).

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

<sup>12</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Jan. 30, 2023).

<sup>13</sup> Special Needs Alliance, *Administering a Special Needs Trust: A Handbook for Trustees* (2022 Ed.), at 4, <https://www.specialneedsalliance.org/wp-content/uploads/2022/01/2022-SNA-Handbook.pdf>.



Special needs trusts are meant to supplement the funds and services available through government programs.<sup>14</sup> While assets held by the trust are not “countable” for the purpose of qualifying for such programs, there are strict regulations regarding disbursements.<sup>15</sup>

To create a valid special needs trust, the trust must be established in a way that complies with the Federal law authorizing them.<sup>16</sup> Specifically, a special needs trust must:

- Contain the assets of an individual under age 65;
- Be established for an individual who has a disability that makes him or her substantially unable to work;<sup>17</sup>
- Be established for the benefit of the individual;
- Be established by the individual’s parent, grandparent, legal guardian, or a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual’s death.<sup>18</sup>

Special needs trusts can be either “first party” or “third party” trusts.<sup>19</sup> A first-party special needs trust is created with assets belonging to an individual with disabilities, who becomes the “beneficiary.” The funds typically consist of a personal injury settlement or an inheritance. The person must be under 65 at the time that the trust is established. Funds remaining in the trust at the beneficiary’s death must be used to reimburse Medicaid for services to that individual before they can be distributed to anyone else.<sup>20</sup>

A third-party special needs trust is created with assets provided by anyone other than the beneficiary, such as parents, other relatives, or friends of the beneficiary.<sup>21</sup> The trust can be created and funded during the life of the originator (“inter vivos”) or as part of a last will and testament (“testamentary”). Upon the beneficiary’s death, there is no requirement to use residual funds to reimburse Medicaid for services provided to the individual, and “remainder” beneficiaries may be named to receive those assets.<sup>22</sup>

### ***Pooled Trusts***

A pooled trust is often a practical alternative for small estates or where it is difficult to identify a person who will agree to serve as trustee. Sub-accounts belonging to many beneficiaries are managed as a single entity, usually by nonprofit corporations, which call upon the experience of social workers, money managers, and attorneys specializing in special needs cases. Because many financial institutions do not handle small special needs trusts, or charge fees that are not cost-effective for modest trusts, pooled trusts can give families access to highly skilled trustees.

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<sup>14</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Jan. 30, 2023).

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

<sup>16</sup> 42 U.S.C. s. 1396p(d)(4).

<sup>17</sup> See 42 U.S.C. s. 1382c(a)(3) (providing full details of what constitutes a disability).

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

<sup>19</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Jan. 30, 2023).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Funds remaining at the beneficiary's death are typically divided between Medicaid and the nonprofit entity.<sup>23</sup>

Similar to special needs trusts, pooled trusts must be established in a way that complies with the Federal law authorizing them.<sup>24</sup> Specifically, a pooled trust must:

- Contain the assets of an individual of any age who has a disability that makes him or her substantially unable to work;<sup>25</sup>
- Be established for the benefit of the individual;
- Be established and managed by a nonprofit association;
- Maintain a separate account for each beneficiary but pool the funds for investment and management purposes;
- Be established by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death to the extent the funds are not retained by the trust.<sup>26</sup>

### ***Child Support***

In dissolution of marriage proceedings, the court may at any time order a parent to pay support to the other parent or to a third party who has custody.<sup>27</sup> The amount of child support is based on statutory child support guidelines.<sup>28</sup> These guidelines are intended to ensure support amounts are fair.<sup>29</sup>

Child support guidelines are used the first time child support is ordered and every time the child support amount changes. They are also used to review the order to see if the support amount should be changed. Child support guidelines consider:<sup>30</sup>

- The income of both parents;
- The child's health care and child care costs; and
- The standard needs for the child. A table of support amounts based on the child's age and net income of the parents is provided in statute.<sup>31</sup>

The court or agency establishing support must use the guidelines to decide the amount of child support that will go in the support order.<sup>32</sup> In special circumstances, support amounts can be

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

<sup>24</sup> 42 U.S.C. s. 1396p(d)(4)(C).

<sup>25</sup> 42 U.S.C. s. 1382c(a)(3).

<sup>26</sup> *Id.*

<sup>27</sup> Section 61.13(1)(a)1.a., F.S.

<sup>28</sup> Fla. Dep't of Rev., *Child Support Amounts*, [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Jan. 30, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

<sup>29</sup> Fla. Dep't of Rev., *Child Support Amounts*, [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Jan. 30, 2023).

<sup>30</sup> Fla. Dep't of Rev., *Child Support Amounts*, [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Jan. 30, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

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

<sup>32</sup> Fla. Dep't of Rev., *Child Support Amounts*, [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Jan. 30, 2023).

higher or lower than the guideline amounts. For example, a judge may consider a child's high medical expenses as a reason to change the support amount. In most cases, judges have to give written reasons why support amounts are different from the guideline amounts.<sup>33</sup>

All child support orders and income deduction orders entered on or after October 1, 2010, must provide, among other things, for child support to terminate on a child's 18<sup>th</sup> birthday, unless the court finds or has previously found that child support should continue:

for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.<sup>34</sup>

Additionally, a court that initially enters an order requiring a parent to make child support payments has continuing jurisdiction after entry of the initial order to modify the amount and terms and conditions of the child support payments if:

- The modification is found by the court to be in the best interests of the child;
- There is a substantial change in the circumstances of the parties;
- The child support payments are for an adult child who is dependent due to a mental or physical incapacity that began before age 18;
- The child support payments are for a child who is between the ages of 18 and 19 and is reasonably expected to graduate before age 19; or
- The child is emancipated, marries, joins the armed services, or dies.<sup>35</sup>

## **Guardianship**

If a court finds that a person does not have the ability to safely manage the things that belong to him or her, or the ability to meet his or her basic health, safety, and self-care needs, the court will rule that this person is incapacitated.<sup>36</sup> In many cases, after a court decides that a person is incapacitated, it will choose someone else to make some or all the decisions for the incapacitated person. This is called a guardianship.<sup>37</sup>

Guardianships are restrictive and may be unnecessary.<sup>38</sup> Being placed in a guardianship results in the loss of an individual's right to make his or her own life choices. The rights that a person can lose include the right to contract, vote, travel, marry, work, consent to treatment, sue or defend

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<sup>33</sup> *Id.*

<sup>34</sup> Section 743.07(2), F.S.

<sup>35</sup> Section 61.13(1)(a)2., F.S.

<sup>36</sup> *See generally* Part V, Ch. 744, F.S.; *see also* Disability Rights Florida, *What is Guardianship?*, [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/what\\_is\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/what_is_guardianship) (last visited Jan. 30, 2023).

<sup>37</sup> *See id.*

<sup>38</sup> *See* 744.1012(1), F.S. (providing that “[a]djudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary”).

lawsuits, choose living arrangements, make decisions about their social life, have a driver's license, personally apply for benefits, and manage money or property.<sup>39</sup>

Guardianships must be specific to the abilities and needs of the individual and should not be any more restrictive than necessary.<sup>40</sup> Consequently, there are different types of guardianships under state law. They include:<sup>41</sup>

- Preneed guardian;<sup>42</sup>
- Voluntary guardianship;<sup>43</sup>
- Emergency temporary guardianship;<sup>44</sup>
- Limited guardianship;<sup>45</sup>
- Guardian advocate for individuals who have a developmental disability;<sup>46</sup>
- Guardian advocate for individuals receiving mental health treatment;<sup>47</sup> and
- Full (*i.e.* plenary) guardianship.<sup>48</sup>

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

- Filing an initial plan and annual reports;<sup>49</sup>
- Making provision for the medical, mental, rehabilitative, and personal care of the person;<sup>50</sup>
- Making residential decisions on behalf of the person;<sup>51</sup>
- Advocating on behalf of the person in institutional and other residential settings;<sup>52</sup> and
- Making financial decisions on behalf of the person.<sup>53</sup>

Any resident of the state who is 18 years old and of sound mind is qualified to act as a guardian.<sup>54</sup> Additionally, a non-resident may serve if he or she is related to the person with a developmental disability by blood, adoption, or law.<sup>55</sup> Certain individuals, however, cannot be appointed to act as a guardian.<sup>56</sup>

<sup>39</sup> See 744.1012(1), F.S.; see also Disability Rights Florida, *Types of Guardianship*, [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited Jan. 30, 2023).

<sup>40</sup> Section 744.1012(2), F.S.; see also Disability Rights Florida, *Types of Guardianship*, [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited Jan. 30, 2023).

<sup>41</sup> See generally Disability Rights Florida, *Types of Guardianship*, [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited Jan. 30, 2023).

<sup>42</sup> Sections 744.3045 and 744.3046, F.S.

<sup>43</sup> Section 744.341, F.S.

<sup>44</sup> Section 744.3031, F.S.

<sup>45</sup> Section 744.441(1), F.S.; see also s. 744.102(9)(a), F.S. (defining "limited guardian").

<sup>46</sup> Sections 744.3085 and 393.12, F.S.

<sup>47</sup> Sections 744.3085 and 394.4598, F.S.

<sup>48</sup> Section 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining "plenary guardian").

<sup>49</sup> Section 744.361(6)-(7), F.S.

<sup>50</sup> Section 744.361(13)(f), F.S.

<sup>51</sup> Section 744.361(13)(h), F.S.

<sup>52</sup> Section 744.361(13)(i), F.S.

<sup>53</sup> Section 744.361(12), F.S.

<sup>54</sup> Section 744.309(1), F.S.

<sup>55</sup> Section 744.309(2), F.S.

<sup>56</sup> See generally ss. 744.309(3), (6), F.S.

Guardians must file an initial guardianship report with the court within 60 days after appointment.<sup>57</sup> The initial guardianship report must consist of an initial guardianship plan,<sup>58</sup> which must include certain specified information for the person for whom the guardianship is being established. For example, the initial guardianship plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the person, as well as the place and kind of residential setting best suited for the needs of the person.<sup>59</sup>

Guardians must also file an annual guardianship report with the court.<sup>60</sup> The annual guardianship report must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. The annual guardianship report must include an annual guardianship plan<sup>61</sup> containing information regarding the residence of the person for whom the guardianship has been established; the medical and mental health conditions, treatment, and rehabilitation needs of the person; the social condition of the person; and a list of any preexisting orders not to resuscitate, or preexisting advance directives.<sup>62</sup>

### ***Guardian Advocates***

A “guardian advocate” is a person appointed by a written order of the court to represent a person with developmental disabilities.<sup>63</sup> A “developmental disability” means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>64</sup>

Guardian advocacy is a circuit court process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for the appointment of a guardian advocate.<sup>65</sup>

State law recognizes the appointment of a guardian advocate as a less restrictive alternative to guardianship.<sup>66</sup> A guardian advocate can be appointed without having to declare the person with a developmental disability incapacitated.<sup>67</sup> The process of becoming a guardian advocate of a person with a developmental disability does not require the hiring of an attorney, although during

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<sup>57</sup> Sections 744.361(6) and 744.362(1), F.S.

<sup>58</sup> Section 744.362(1), F.S.

<sup>59</sup> See s. 744.363(1)(a)-(f), F.S.

<sup>60</sup> Section 744.367(1), F.S.

<sup>61</sup> Section 744.367(3)(a), F.S.

<sup>62</sup> Section 744.3675, F.S.

<sup>63</sup> Sections 393.063(21) and 393.12, F.S.

<sup>64</sup> Section 393.063(12), F.S.

<sup>65</sup> See s. 393.12(2)(a), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf).

<sup>66</sup> Section 744.3085, F.S.

<sup>67</sup> Section 393.12(2)(a), F.S.

the proceedings the court will appoint an attorney for the person with the developmental disability to ensure that his or her best interests are protected.<sup>68</sup>

If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person's behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated, and the person petitioning to become a plenary guardian must have an attorney.<sup>69</sup>

A guardian advocate for a person with a developmental disability has the same powers, duties, and responsibilities required of a guardian under the guardianship statute or as defined by court order issued under the statute governing the appointment of guardian advocates.<sup>70</sup>

The qualifications to serve as a guardian advocate are the same as those required of any guardian under the guardianship statute.<sup>71</sup> The court will also consider the wishes expressed by a developmentally disabled person as to whom will be appointed as his or her guardian advocate.<sup>72</sup> A guardian advocate need not be the caregiver of the person with a disability.<sup>73</sup>

### III. Effect of Proposed Changes:

The common law and statutes of this state recognize that a parent has a duty to support a dependent adult child who has a mental or physical incapacity that began before the age of 18. Under current law, a dependent adult child may pursue support from a parent in court, but the procedures for doing so, proof required to obtain support, and standards governing awards are not clear. This bill clarifies those matters by creating or amending statutes relating to the dissolution of marriage, support and time-sharing;<sup>74</sup> developmental disabilities;<sup>75</sup> determination of parentage;<sup>76</sup> and guardianship.<sup>77</sup>

#### **Amendments to Dissolution of Marriage, Support, and Time-Sharing Statutes**

Within the statutes governing dissolution of marriage, support, and time-sharing, the bill creates s. 61.1255, F.S., entitled "Support for dependent adult children; powers of court," to provide for the support of dependent adult children. Specifically, the bill:

<sup>68</sup> Section 393.12(2)(b), F.S.; *see also* Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf).

<sup>69</sup> Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf).

<sup>70</sup> Section 393.12(10), F.S.

<sup>71</sup> Fifth Judicial Circuit, Lake County, Florida, *Florida Law and Guardian Advocacy: A Guide for Families and Friends of Developmentally Disabled Individuals* (Oct. 2014), at 2, [https://www.lakecountyclerk.org/forms/Guardianship/Davis\\_GuardianAdvocacyManual.pdf](https://www.lakecountyclerk.org/forms/Guardianship/Davis_GuardianAdvocacyManual.pdf).

<sup>72</sup> *Id.*

<sup>73</sup> Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf).

<sup>74</sup> Chapter 61, F.S.

<sup>75</sup> Chapter 393, F.S.

<sup>76</sup> Chapter 742, F.S.

<sup>77</sup> Chapter 744, F.S.

- Defines the term “dependent adult child” to mean an unmarried adult who is incapable of self-support as a result of physical or mental incapacity that began before the person reached the age of 18.
- Establishes that the parents of a dependent adult child are responsible for supporting that child.
- Requires that any right of a parent or other person to decide where the dependent adult child will live be established in a guardianship proceeding brought under the statutes governing developmental disabilities or guardianship.
- Provides that a suit to establish support for a dependent adult child may only be filed by one of the following:
  - The dependent adult child or his or her agent under a durable power of attorney, if the dependent adult child’s right to sue or defend lawsuits has not been removed by the court. Any such action must be brought in the circuit court in the county in which the child resides.
  - A parent or other person on behalf of the dependent adult child. Any such action must be brought under the statutes governing developmental disabilities or guardianship.
  - The dependent adult child’s guardian advocate appointed under the statutes governing developmental disabilities, or guardian appointed under the statutes governing guardianship.
- Provides that a suit to establish support for a dependent adult child may be filed at any time after he or she reaches the age of 17 years and 6 months, unless such an order is already in place, having been established during the child’s minority.
- Provides that if a court has jurisdiction over the parties because of an issue of child support, the parents may agree in writing to extend support in the existing case if the agreement is submitted to the court for approval before the dependent adult child reaches the age of 18. Otherwise, the amount of support to be paid by one parent to the other must be established in a guardianship proceeding or in a separate support proceeding in circuit court pursuant to the bill. The bill does not preclude a court from establishing support, ordering continued support, or enforcing or modifying support orders established under the statutes governing dissolution of marriage, support, and time-sharing, absent an agreement by the parents.
- Provides that support ordered after the dependent adult child reaches the age of 18 may be paid only to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law<sup>78</sup> established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child’s means-based government benefits.
- Prohibits the Department of Revenue from filing a petition to establish, modify, or enforce a support order under the bill.

The bill also creates s. 61.31, F.S., entitled “Amount of support for a dependent adult child,” to provide for the amount of support for dependent adult children. In determining the amount of support to be paid after a dependent adult child reaches the age of 18, the specific terms and

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<sup>78</sup> See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); see also 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

conditions of such support, and the rights and duties of both parents with respect to support, the court must determine and give consideration to all of the following:

- The dependent adult child's income and assets;
- Any existing and future needs of the dependent adult child which are directly related to his or her mental or physical incapacity and the substantial care and personal supervision directly required by or related to that incapacity;
- Whether a parent pays for or will pay for the care or supervision of the dependent adult child or provides or will provide substantial care or personal supervision to the dependent adult child himself or herself;
- The financial resources available to each parent for the support, care, and supervision of the dependent adult child; and
- Any other financial resources or other resources or programs available for the support, care, and supervision of the dependent adult child.

The bill provides that the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law<sup>79</sup> established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. In making its decisions, the court must take into consideration any state or federal programs and benefits that the dependent adult child is receiving and the effect that the court-ordered support would have on the dependent adult child's continued eligibility for such programs and benefits.

The bill amends the statute governing child support and parenting<sup>80</sup> by replacing certain statutory cross-references<sup>81</sup> to s. 743.07(2), F.S., with specific language from the cross-referenced statute. The replacement of the cross-references with specific language from the cross-referenced statute is a technical change that does not create new rights or obligations relating to child support. The language inserted from the cross-referenced statute relates to the authority of a court to order child support for a child who is between 18 and 19 and is reasonably expected to graduate high school before age 19.

The bill amends the statute governing child support and guidelines,<sup>82</sup> to provide that the guidelines in that section do not apply to support for a dependent adult child, and that the amount of support for a dependent adult child must be determined with reference to the new statute created by the bill governing the amount of support for a dependent adult child.

The bill amends the statute governing child support guidelines and retroactive child support.<sup>83</sup> The amendment clarifies that the existing child support guidelines apply to a child support order for a child who is dependent in fact and between the ages of 18 and 19 and who is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19.

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<sup>79</sup> *See id.*

<sup>80</sup> Section 61.13, F.S.

<sup>81</sup> Section 743.07(2), F.S.

<sup>82</sup> Section 61.29, F.S.

<sup>83</sup> Section 61.30, F.S.



### **Amendments to Developmental Disabilities Statute**

Within the statutes governing developmental disabilities, the bill amends the section governing the capacity and appointment of guardian advocates,<sup>84</sup> to provide that a person who is being considered for appointment or is appointed as a guardian advocate is not required to be represented by an attorney if he or she is delegated the right of a parent to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability.

The bill also provides that a petition to appoint a guardian advocate may include a request for periodic payments from either or both parents of the person with a developmental disability for the support, care, maintenance, education, or other needs of that person.

### **Amendments to Determination of Parentage Statute**

Within the statutes governing the determination of parentage, the bill amends the section governing hearings and court orders for support, hospital expenses, and attorney fees,<sup>85</sup> to make conforming changes. The bill also amends the section governing the retention of jurisdiction for future orders,<sup>86</sup> to clarify that modifications of child support and time-sharing must be determined under the statutes governing dissolution of marriage, support, and time-sharing.

### **Amendments to Guardianship Statute**

Within the statutes governing guardianship, the bill creates s. 744.1013, F.S., entitled “Jurisdiction for support claims,” to provide jurisdiction for dependent adult child-related support claims. The bill provides that the court has jurisdiction over claims for support of a dependent adult child and must adjudicate the financial obligation, including health insurance, of the dependent adult child’s parents and enforce the financial obligation as provided in the statute governing dissolution of marriage, support, and time-sharing. All support required to be paid in relation to a dependent adult child over the age of 18 must be paid to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law<sup>87</sup> established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child’s means-based government benefits. Any order for support entered in a proceeding under the statutes governing guardianship or developmental disabilities supersedes any support order entered under the statute governing the dissolution of marriage, support, and time-sharing.

The bill also creates s. 744.422, F.S., entitled “Petition for child support for a dependent adult child,” to authorize the filing of petitions in court for child support for a dependent adult child.

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<sup>84</sup> Section 393.12, F.S.

<sup>85</sup> Section 742.031, F.S.

<sup>86</sup> Section 742.06, F.S.

<sup>87</sup> See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); see also 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

The bill provides that pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for the support of dependent adult children, a guardian may petition the court for an order requiring either or both parents to pay periodic amounts for the support, care, maintenance, education, and any other needs of a dependent adult child if not otherwise provided for in the guardianship plan. The amount of support must be determined pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for same.

The bill amends the statute governing guardians of minors,<sup>88</sup> to include a reference to the dissolution of marriage, support, and time-sharing statute.

The bill takes effect July 1, 2023.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By providing clear procedures to obtain support for adult dependent children, more suits seeking support will likely be pursued and more support obtained. However, the clear procedures may reduce the time and expense of obtaining awards.

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<sup>88</sup> Section 744.3021, F.S.

**C. Government Sector Impact:**

According to the Office of the State Courts Administrator (OSCA), any additional workload on the courts as a result of the bill will apply only to a small number of cases. Moreover, OSCA reports that it does not have sufficient “data to quantifiably establish the increase in judicial time and workload as a result of additional court filings” that result from the bill.<sup>89</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 61.1255, 61.31, 744.1013, and 744.422.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.29, 61.30, 393.12, 742.031, 742.06, and 744.3021.

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

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

**CS by Judiciary on February 7, 2023:**

- Makes technical changes to s. 61.13(1)(a)2., F.S., to clarify that the provided list was intended to establish separate independent bases for which a court is authorized to modify the amount and terms and conditions of child support payments.
- Replaces references to “attorney in fact” with references to “agent under a durable power of attorney,” to ensure consistency within the bill and to use the more common and modern term to refer to a person having authority to act under a power of attorney.

**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>89</sup> Office of the State Courts Administrator, 2023 Judicial Impact Statement for SB 226 (Feb. 2, 2023).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2023	.	
	.	
	.	
	.	

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The Committee on Judiciary (Berman) recommended the following:

**Senate Amendment**

Delete lines 111 - 368  
and insert:  
agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those



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12 rights in order to maintain the dependent adult child's means-  
13 based government benefits.

14 (8) The Department of Revenue may not file a petition to  
15 establish, modify, or enforce a support order under this  
16 section.

17 Section 2. Paragraph (a) of subsection (1) and paragraph  
18 (b) of subsection (2) of section 61.13, Florida Statutes, are  
19 amended to read:

20 61.13 Support of children; parenting and time-sharing;  
21 powers of court.—

22 (1) (a) In a proceeding under this chapter, the court may at  
23 any time order either or both parents who owe a duty of support  
24 to a child to pay support to the other parent or, ~~in the case of~~  
25 ~~both parents~~, to a third party who has custody in accordance  
26 with the child support guidelines schedule in s. 61.30.

27 1. All child support orders and income deduction orders  
28 entered on or after October 1, 2010, must provide:

29 a. For child support to terminate on a child's 18th  
30 birthday unless the court finds or previously found that the  
31 minor child, or the child who is dependent in fact and between  
32 the ages of 18 and 19, is still in high school and is performing  
33 in good faith with a reasonable expectation of graduation before  
34 he or she reaches the age of 19 ~~s. 743.07(2) applies~~, or the  
35 continued support is otherwise agreed to by the parties;

36 b. A schedule, based on the record existing at the time of  
37 the order, stating the amount of the monthly child support  
38 obligation for all the minor children at the time of the order  
39 and the amount of child support that will be owed for any  
40 remaining children after one or more of the children are no



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41 longer entitled to receive child support; and

42 c. The month, day, and year that the reduction or  
43 termination of child support becomes effective.

44 2. The court initially entering an order requiring one or  
45 both parents to make child support payments has continuing  
46 jurisdiction after the entry of the initial order to modify the  
47 amount and terms and conditions of the child support payments  
48 if: the modification is found by the court to be in the best  
49 interests of the child; ~~when~~ the child reaches majority; ~~if~~  
50 there is a substantial change in the circumstances of the  
51 parties; the minor child, or the child who is dependent in fact  
52 and between the ages of 18 and 19, is still in high school and  
53 is performing in good faith with a reasonable expectation of  
54 graduation before he or she reaches the age of 19 if s.  
55 ~~743.07(2) applies; or the when~~ a child is emancipated, marries,  
56 joins the armed services, or dies. The court initially entering  
57 a child support order has continuing jurisdiction to require the  
58 obligee to report to the court on terms prescribed by the court  
59 regarding the disposition of the child support payments.

60 (2)

61 (b) A parenting plan approved by the court must, at a  
62 minimum:

63 1. Describe in adequate detail how the parents will share  
64 and be responsible for the daily tasks associated with the  
65 upbringing of the child;

66 2. Include the time-sharing schedule arrangements that  
67 specify the time that the minor child will spend with each  
68 parent;

69 3. Designate who will be responsible for:



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70 a. Any and all forms of health care. If the court orders  
71 shared parental responsibility over health care decisions, ~~the~~  
72 ~~parenting plan must provide that~~ either parent may consent to  
73 mental health treatment for the child unless stated otherwise in  
74 the parenting plan.

75 b. School-related matters, including the address to be used  
76 for school-boundary determination and registration.

77 c. Other activities; and

78 4. Describe in adequate detail the methods and technologies  
79 that the parents will use to communicate with the child.

80 Section 3. Section 61.29, Florida Statutes, is amended to  
81 read:

82 61.29 Child support guidelines; principles; application.—

83 (1) The following principles establish the public policy of  
84 the State of Florida in the creation of the child support  
85 guidelines:

86 (a)~~(1)~~ Each parent has a fundamental obligation to support  
87 his or her minor or legally dependent child.

88 (b)~~(2)~~ The guidelines schedule is based on the parent's  
89 combined net income estimated to have been allocated to the  
90 child as if the parents and children were living in an intact  
91 household.

92 (c)~~(3)~~ The guidelines encourage fair and efficient  
93 settlement of support issues between parents and minimizes the  
94 need for litigation.

95 (2) The guidelines in this section do not apply to support  
96 for a dependent adult child as defined in s. 61.1255. The amount  
97 of support for a dependent adult child is determined by s.  
98 61.31.



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99 Section 4. Paragraph (a) of subsection (1) of section  
100 61.30, Florida Statutes, is amended to read:

101 61.30 Child support guidelines; retroactive child support.—

102 (1) (a) The child support guideline amount as determined by  
103 this section presumptively establishes the amount the trier of  
104 fact must ~~shall~~ order as child support for a minor child, or a  
105 child who is dependent in fact and between the ages of 18 and 19  
106 and who is still in high school and is performing in good faith  
107 with a reasonable expectation of graduation before he or she  
108 reaches the age of 19, in an initial proceeding for such support  
109 or in a proceeding for modification of an existing order for  
110 such support, whether the proceeding arises under this or  
111 another chapter. The trier of fact may order payment of child  
112 support which varies, plus or minus 5 percent, from the  
113 guideline amount, after considering all relevant factors,  
114 including the needs of the child or children, age, station in  
115 life, standard of living, and the financial status and ability  
116 of each parent. The trier of fact may order payment of child  
117 support in an amount which varies more than 5 percent from such  
118 guideline amount only upon a written finding explaining why  
119 ordering payment of such guideline amount would be unjust or  
120 inappropriate. Notwithstanding the variance limitations of this  
121 section, the trier of fact must ~~shall~~ order payment of child  
122 support which varies from the guideline amount as provided in  
123 paragraph (11) (b) whenever any of the children are required by  
124 court order or mediation agreement to spend a substantial amount  
125 of time with either parent. This requirement applies to any  
126 living arrangement, whether temporary or permanent.

127 Section 5. Section 61.31, Florida Statutes, is created to





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128 read:

129 61.31 Amount of support for a dependent adult child.—

130 (1) In determining the amount of support to be paid after a  
131 dependent adult child as defined in s. 61.1255 reaches the age  
132 of 18, the specific terms and conditions of such support, and  
133 the rights and duties of both parents with respect to the  
134 support, the court shall determine and give consideration to all  
135 of the following:

136 (a) The dependent adult child's income and assets.

137 (b) Any existing and future needs of the dependent adult  
138 child which are directly related to his or her mental or  
139 physical incapacity and the substantial care and personal  
140 supervision directly required by or related to that incapacity.

141 (c) Whether a parent pays for or will pay for the care or  
142 supervision of the dependent adult child or provides or will  
143 provide substantial care or personal supervision to the  
144 dependent adult child himself or herself.

145 (d) The financial resources available to each parent for  
146 the support, care, and supervision of the dependent adult child.

147 (e) Any other financial resources or other resources or  
148 programs available for the support, care, and supervision of the  
149 dependent adult child.

150 (2) The court may irrevocably assign the support to a  
151 special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a  
152 pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for  
153 the dependent adult child by the dependent adult child, his or  
154 her agent under a durable power of attorney, the court, a parent  
155 or grandparent, a guardian, or a guardian advocate who has been  
156 delegated those rights in order to maintain the dependent adult



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157 child's means-based government benefits.

158 (3) In making its decisions, the court shall take into  
159 consideration any state or federal programs and benefits that  
160 the dependent adult child is receiving and the effect that the  
161 court-ordered support would have on the dependent adult child's  
162 continued eligibility for such programs and benefits.

163 Section 6. Paragraph (b) of subsection (2) and subsection  
164 (3) of section 393.12, Florida Statutes, are amended to read:

165 393.12 Capacity; appointment of guardian advocate.—

166 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

167 (b) A person who is being considered for appointment or is  
168 appointed as a guardian advocate is not required to need not be  
169 represented by an attorney unless required by the court or if  
170 the guardian advocate is delegated any rights regarding property  
171 other than the right to be the representative payee for  
172 government benefits or the right of a parent to receive periodic  
173 payments for the support, care, maintenance, education, or other  
174 needs of the person with a developmental disability. This  
175 paragraph applies only to proceedings relating to the  
176 appointment of a guardian advocate and the court's supervision  
177 of a guardian advocate and is not an exercise of the  
178 Legislature's authority under ~~pursuant to~~ s. 2(a), Art. V of the  
179 State Constitution.

180 (3) PETITION.—

181 (a) A petition to appoint a guardian advocate for a person  
182 with a developmental disability may be executed by an adult  
183 person who is a resident of this state. The petition must be  
184 verified and must:

185 1. ~~(a)~~ State the name, age, and present address of the



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186 petitioner and his or her relationship to the person with a  
187 developmental disability;

188 2.~~(b)~~ State the name, age, county of residence, and present  
189 address of the person with a developmental disability;

190 3.~~(c)~~ Allege that the petitioner believes that the person  
191 needs a guardian advocate and specify the factual information on  
192 which such belief is based;

193 4.~~(d)~~ Specify the exact areas in which the person lacks the  
194 decisionmaking ability to make informed decisions about his or  
195 her care and treatment services or to meet the essential  
196 requirements for his or her physical health or safety;

197 5.~~(e)~~ Specify the legal disabilities to which the person is  
198 subject; and

199 6.~~(f)~~ State the name of the proposed guardian advocate, the  
200 relationship of that person to the person with a developmental  
201 disability; the relationship that the proposed guardian advocate  
202 had or has with a provider of health care services, residential  
203 services, or other services to the person with a developmental  
204 disability; and the reason why this person should be appointed.  
205 The petition must also state if a willing and qualified guardian  
206 advocate cannot be located, ~~the petition shall so state.~~

207 (b) A petition to appoint a guardian advocate may include a  
208 request for periodic payments from either or both parents of the  
209 person with a developmental disability for the support, care,  
210 maintenance, education, or other needs of that person.

211 Section 7. Subsection (1) of section 742.031, Florida  
212 Statutes, is amended to read:

213 742.031 Hearings; court orders for support, hospital  
214 expenses, and attorney ~~attorney's~~ fee.-



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215 (1) Hearings for the purpose of establishing or refuting  
216 the allegations of the complaint and answer must ~~shall~~ be held  
217 in the chambers and may be restricted to persons, in addition to  
218 the parties involved and their counsel, as the judge in his or  
219 her discretion may direct. The court shall determine the issues  
220 of paternity of the child and the ability of the parents to  
221 support the child. Each party's social security number must  
222 ~~shall~~ be recorded in the file containing the adjudication of  
223 paternity. If the court finds that the alleged father is the  
224 father of the child, it must ~~shall~~ so order. If appropriate, the  
225 court may ~~shall~~ order the father to pay the complainant, her  
226 guardian, or any other person assuming responsibility for the  
227 child moneys sufficient to pay reasonable attorney ~~attorney's~~  
228 fees, hospital or medical expenses, cost of confinement, and any  
229 other expenses incident to the birth of the child and to pay all  
230 costs of the proceeding. Bills for pregnancy, childbirth, and  
231 scientific testing are admissible as evidence without requiring  
232 third-party foundation testimony, and ~~shall~~ constitute prima  
233 facie evidence of amounts incurred for such services or for  
234 testing on behalf of the child. The court shall order either or  
235 both parents owing a duty of support to the child to pay support  
236 under chapter 61 pursuant to s. 61.30. The court must ~~shall~~  
237 issue, upon motion by a party, a temporary order requiring child  
238 support for a minor child under pursuant to s. 61.30 pending an  
239 administrative or judicial determination of parentage, if there  
240 is clear and convincing evidence of paternity on the basis of  
241 genetic tests or other evidence. The court may also make a  
242 determination of an appropriate parenting plan, including a  
243 time-sharing schedule, in accordance with chapter 61.



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244           Section 8. Section 742.06, Florida Statutes, is amended to  
245 read:

246           742.06 Jurisdiction retained for future orders.—The court  
247 shall retain jurisdiction of the cause for the purpose of  
248 entering such other and further orders as changing circumstances  
249 of the parties may in justice and equity require. Modifications  
250 of child support and time-sharing are determined under chapter  
251 61.

252           Section 9. Section 744.1013, Florida Statutes, is created  
253 to read:

254           744.1013 Jurisdiction for support claims.—The court has  
255 jurisdiction over claims for support of a dependent adult child  
256 as defined in s. 61.1255 and shall adjudicate the financial  
257 obligation, including health insurance, of the dependent adult  
258 child's parents and enforce the financial obligation as provided  
259 in chapter 61. All support required to be paid in relation to a  
260 dependent adult child over the age of 18 must be paid to the  
261 dependent adult child or his or her court-appointed guardian  
262 advocate, guardian, or agent under a durable power of attorney.  
263 However, the court may

By Senator Berman

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1 A bill to be entitled  
 2 An act relating to support for dependent adult  
 3 children; creating s. 61.1255, F.S.; defining the term  
 4 "dependent adult child"; specifying that parents are  
 5 responsible for supporting their dependent adult  
 6 child; requiring that certain rights of the parents of  
 7 a dependent adult child be established in a  
 8 guardianship proceeding; specifying individuals who  
 9 may file a suit to establish support for a dependent  
 10 adult child; specifying a timeframe during which such  
 11 suits may be filed; providing an exception; specifying  
 12 procedures for establishing support; specifying who  
 13 may receive such support before and after the  
 14 dependent adult child reaches the age of 18; providing  
 15 construction; authorizing the court to assign support  
 16 to certain trusts established for a dependent adult  
 17 child; prohibiting the Department of Revenue from  
 18 filing petitions to establish, modify, or enforce  
 19 certain support orders; amending s. 61.13, F.S.;  
 20 conforming a provision to changes made by the act;  
 21 specifying that a child support order does not  
 22 terminate on the child's 18th birthday in certain  
 23 circumstances; specifying that a court may modify a  
 24 child support order for adult children in certain  
 25 circumstances; authorizing either parent to consent to  
 26 mental health treatment for a child in certain  
 27 circumstances unless stated otherwise in the parenting  
 28 plan; amending s. 61.29, F.S.; providing that child  
 29 support guidelines do not apply to certain cases;

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

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30 amending s. 61.30, F.S.; conforming a provision to  
 31 changes made by the act; creating s. 61.31, F.S.;  
 32 providing factors a court must consider when  
 33 determining the amount of child support for a  
 34 dependent adult child; authorizing a court to assign  
 35 support to certain trusts established for a dependent  
 36 adult child for a specified purpose; requiring the  
 37 court to consider certain state and federal programs  
 38 and benefits when making its decisions; amending s.  
 39 393.12, F.S.; providing an additional circumstance  
 40 under which a guardian advocate must be represented by  
 41 an attorney in guardianship proceedings; specifying  
 42 that petitions to appoint a guardian advocate for a  
 43 person with disabilities may include certain requests  
 44 for support from the person's parents; amending ss.  
 45 742.031 and 742.06, F.S.; conforming provisions to  
 46 changes made by the act; creating s. 744.1013, F.S.;  
 47 assigning jurisdiction over petitions for support of  
 48 dependent adult children to the guardianship court;  
 49 specifying who may receive such support for dependent  
 50 adult children over the age of 18; authorizing a court  
 51 to assign support to certain trusts established for a  
 52 dependent adult child for a specified purpose;  
 53 specifying that such support orders supersede any  
 54 orders entered under certain other provisions;  
 55 amending s. 744.3021, F.S.; conforming provisions to  
 56 changes made by the act; creating s. 744.422, F.S.;  
 57 authorizing a guardian of a dependent adult child to  
 58 petition the court for certain support payments from

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

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59 the dependent adult child's parents in certain  
60 circumstances; specifying that the amount of such  
61 support is determined pursuant to certain provisions;  
62 providing an effective date.

63  
64 Be It Enacted by the Legislature of the State of Florida:

65  
66 Section 1. Section 61.1255, Florida Statutes, is created to  
67 read:

68 61.1255 Support for dependent adult children; powers of  
69 court.-

70 (1) For purposes of this section, the term "dependent adult  
71 child" means an unmarried adult who is incapable of self-support  
72 as a result of a physical or mental incapacity that began before  
73 the person reached the age of 18.

74 (2) The parents of a dependent adult child are responsible  
75 for supporting that child.

76 (3) The right of a parent or other person to decide where  
77 the dependent adult child will live must be established in a  
78 guardianship proceeding brought under chapter 393 or chapter  
79 744.

80 (4) A suit to establish support for a dependent adult child  
81 may only be filed by one of the following:

82 (a) The dependent adult child or his or her agent under a  
83 durable power of attorney, if the dependent adult child's right  
84 to sue or defend lawsuits has not been removed by the court. Any  
85 such action must be brought in the circuit court in the county  
86 in which the child resides.

87 (b) A parent or other person on behalf of the dependent

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88 adult child. Any such action must be brought under chapter 393  
89 or chapter 744.

90 (c) The dependent adult child's guardian advocate appointed  
91 under chapter 393 or guardian appointed under chapter 744.

92 (5) A suit to establish support for a dependent adult child  
93 may be filed at any time after he or she reaches the age of 17  
94 years and 6 months, unless such an order is already in place,  
95 having been established during the child's minority.

96 (6) If a court has jurisdiction over the parties because of  
97 an issue of child support, the parents may agree in writing to  
98 extend support in the existing case if the agreement is  
99 submitted to the court for approval before the dependent adult  
100 child reaches the age of 18. Otherwise, the amount of support to  
101 be paid by one parent to the other must be established in a  
102 guardianship proceeding or in a separate support proceeding in  
103 circuit court pursuant to paragraph (4) (a). This section does  
104 not preclude a court from establishing support, ordering  
105 continued support, or enforcing or modifying support orders  
106 established under this chapter absent an agreement by the  
107 parents.

108 (7) Support ordered after the dependent adult child reaches  
109 the age of 18 may be paid only to the dependent adult child or  
110 his or her court-appointed guardian advocate, guardian, or  
111 attorney in fact. However, the court may irrevocably assign the  
112 support to a special needs trust under 42 U.S.C. s. 1396p(d) (4)  
113 or to a pooled trust under 42 U.S.C. s. 1396p(d) (4) (C)  
114 established for the dependent adult child by the dependent adult  
115 child, his or her agent under a durable power of attorney, the  
116 court, a parent or grandparent, a guardian, or a guardian

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117 advocate who has been delegated those rights in order to  
 118 maintain the dependent adult child's means-based government  
 119 benefits.

120 (8) The Department of Revenue may not file a petition to  
 121 establish, modify, or enforce a support order under this  
 122 section.

123 Section 2. Paragraph (a) of subsection (1) and paragraph  
 124 (b) of subsection (2) of section 61.13, Florida Statutes, are  
 125 amended to read:

126 61.13 Support of children; parenting and time-sharing;  
 127 powers of court.—

128 (1) (a) In a proceeding under this chapter, the court may at  
 129 any time order either or both parents who owe a duty of support  
 130 to a child to pay support to the other parent or, ~~in the case of~~  
 131 ~~both parents~~, to a third party who has custody in accordance  
 132 with the child support guidelines schedule in s. 61.30.

133 1. All child support orders and income deduction orders  
 134 entered on or after October 1, 2010, must provide:

135 a. For child support to terminate on a child's 18th  
 136 birthday unless the court finds or previously found that the  
 137 minor child, or the child who is dependent in fact and between  
 138 the ages of 18 and 19, is still in high school and is performing  
 139 in good faith with a reasonable expectation of graduation before  
 140 he or she reaches the age of 19 ~~s. 743.07(2) applies~~, or the  
 141 continued support is otherwise agreed to by the parties;

142 b. A schedule, based on the record existing at the time of  
 143 the order, stating the amount of the monthly child support  
 144 obligation for all the minor children at the time of the order  
 145 and the amount of child support that will be owed for any

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146 remaining children after one or more of the children are no  
 147 longer entitled to receive child support; and

148 c. The month, day, and year that the reduction or  
 149 termination of child support becomes effective.

150 2. The court initially entering an order requiring one or  
 151 both parents to make child support payments has continuing  
 152 jurisdiction after the entry of the initial order to modify the  
 153 amount and terms and conditions of the child support payments if  
 154 the modification is found by the court to be in the best  
 155 interests of the child and ~~when the child reaches majority; if~~  
 156 there is a substantial change in the circumstances of the  
 157 parties; if the minor child, or the child who is dependent in  
 158 fact and between the ages of 18 and 19, is still in high school  
 159 and is performing in good faith with a reasonable expectation of  
 160 graduation before he or she reaches the age of 19 ~~s. 743.07(2)~~  
 161 ~~applies~~; or when a child is emancipated, marries, joins the  
 162 armed services, or dies. The court initially entering a child  
 163 support order has continuing jurisdiction to require the obligee  
 164 to report to the court on terms prescribed by the court  
 165 regarding the disposition of the child support payments.

166 (2)

167 (b) A parenting plan approved by the court must, at a  
 168 minimum:

169 1. Describe in adequate detail how the parents will share  
 170 and be responsible for the daily tasks associated with the  
 171 upbringing of the child;

172 2. Include the time-sharing schedule arrangements that  
 173 specify the time that the minor child will spend with each  
 174 parent;



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175 3. Designate who will be responsible for:

176 a. Any and all forms of health care. If the court orders  
177 shared parental responsibility over health care decisions, ~~the~~  
178 ~~parenting plan must provide that~~ either parent may consent to  
179 mental health treatment for the child unless stated otherwise in  
180 the parenting plan.

181 b. School-related matters, including the address to be used  
182 for school-boundary determination and registration.

183 c. Other activities; and

184 4. Describe in adequate detail the methods and technologies  
185 that the parents will use to communicate with the child.

186 Section 3. Section 61.29, Florida Statutes, is amended to  
187 read:

188 61.29 Child support guidelines; principles; application.-

189 (1) The following principles establish the public policy of  
190 the State of Florida in the creation of the child support  
191 guidelines:

192 (a)(1) Each parent has a fundamental obligation to support  
193 his or her minor or legally dependent child.

194 (b)(2) The guidelines schedule is based on the parent's  
195 combined net income estimated to have been allocated to the  
196 child as if the parents and children were living in an intact  
197 household.

198 (c)(3) The guidelines encourage fair and efficient  
199 settlement of support issues between parents and minimizes the  
200 need for litigation.

201 (2) The guidelines in this section do not apply to support  
202 for a dependent adult child as defined in s. 61.1255. The amount  
203 of support for a dependent adult child is determined by s.

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204 61.31.

205 Section 4. Paragraph (a) of subsection (1) of section  
206 61.30, Florida Statutes, is amended to read:

207 61.30 Child support guidelines; retroactive child support.-

208 (1) (a) The child support guideline amount as determined by  
209 this section presumptively establishes the amount the trier of  
210 fact must shall order as child support for a minor child, or a  
211 child who is dependent in fact and between the ages of 18 and 19  
212 and who is still in high school and is performing in good faith  
213 with a reasonable expectation of graduation before he or she  
214 reaches the age of 19, in an initial proceeding for such support  
215 or in a proceeding for modification of an existing order for  
216 such support, whether the proceeding arises under this or  
217 another chapter. The trier of fact may order payment of child  
218 support which varies, plus or minus 5 percent, from the  
219 guideline amount, after considering all relevant factors,  
220 including the needs of the child or children, age, station in  
221 life, standard of living, and the financial status and ability  
222 of each parent. The trier of fact may order payment of child  
223 support in an amount which varies more than 5 percent from such  
224 guideline amount only upon a written finding explaining why  
225 ordering payment of such guideline amount would be unjust or  
226 inappropriate. Notwithstanding the variance limitations of this  
227 section, the trier of fact must shall order payment of child  
228 support which varies from the guideline amount as provided in  
229 paragraph (11) (b) whenever any of the children are required by  
230 court order or mediation agreement to spend a substantial amount  
231 of time with either parent. This requirement applies to any  
232 living arrangement, whether temporary or permanent.

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233 Section 5. Section 61.31, Florida Statutes, is created to  
234 read:

235 61.31 Amount of support for a dependent adult child.—

236 (1) In determining the amount of support to be paid after a  
237 dependent adult child as defined in s. 61.1255 reaches the age  
238 of 18, the specific terms and conditions of such support, and  
239 the rights and duties of both parents with respect to the  
240 support, the court shall determine and give consideration to all  
241 of the following:

242 (a) The dependent adult child's income and assets.

243 (b) Any existing and future needs of the dependent adult  
244 child which are directly related to his or her mental or  
245 physical incapacity and the substantial care and personal  
246 supervision directly required by or related to that incapacity.

247 (c) Whether a parent pays for or will pay for the care or  
248 supervision of the dependent adult child or provides or will  
249 provide substantial care or personal supervision to the  
250 dependent adult child himself or herself.

251 (d) The financial resources available to each parent for  
252 the support, care, and supervision of the dependent adult child.

253 (e) Any other financial resources or other resources or  
254 programs available for the support, care, and supervision of the  
255 dependent adult child.

256 (2) The court may irrevocably assign the support to a  
257 special needs trust under 42 U.S.C. s. 1396p(d)(4) or to a  
258 pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for  
259 the dependent adult child by the dependent adult child, his or  
260 her agent under a durable power of attorney, the court, a parent  
261 or grandparent, a guardian, or a guardian advocate who has been

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262 delegated those rights in order to maintain the dependent adult  
263 child's means-based government benefits.

264 (3) In making its decisions, the court shall take into  
265 consideration any state or federal programs and benefits that  
266 the dependent adult child is receiving and the effect that the  
267 court-ordered support would have on the dependent adult child's  
268 continued eligibility for such programs and benefits.

269 Section 6. Paragraph (b) of subsection (2) and subsection  
270 (3) of section 393.12, Florida Statutes, are amended to read:

271 393.12 Capacity; appointment of guardian advocate.—

272 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

273 (b) A person who is being considered for appointment or is  
274 appointed as a guardian advocate is not required to need not be  
275 represented by an attorney unless required by the court or if  
276 the guardian advocate is delegated any rights regarding property  
277 other than the right to be the representative payee for  
278 government benefits or the right of a parent to receive periodic  
279 payments for the support, care, maintenance, education, or other  
280 needs of the person with a developmental disability. This  
281 paragraph applies only to proceedings relating to the  
282 appointment of a guardian advocate and the court's supervision  
283 of a guardian advocate and is not an exercise of the  
284 Legislature's authority under pursuant to s. 2(a), Art. V of the  
285 State Constitution.

286 (3) PETITION.—

287 (a) A petition to appoint a guardian advocate for a person  
288 with a developmental disability may be executed by an adult  
289 person who is a resident of this state. The petition must be  
290 verified and must:

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291 ~~1.(a)~~ State the name, age, and present address of the  
 292 petitioner and his or her relationship to the person with a  
 293 developmental disability;

294 ~~2.(b)~~ State the name, age, county of residence, and present  
 295 address of the person with a developmental disability;

296 ~~3.(c)~~ Allege that the petitioner believes that the person  
 297 needs a guardian advocate and specify the factual information on  
 298 which such belief is based;

299 ~~4.(d)~~ Specify the exact areas in which the person lacks the  
 300 decisionmaking ability to make informed decisions about his or  
 301 her care and treatment services or to meet the essential  
 302 requirements for his or her physical health or safety;

303 ~~5.(e)~~ Specify the legal disabilities to which the person is  
 304 subject; and

305 ~~6.(f)~~ State the name of the proposed guardian advocate, the  
 306 relationship of that person to the person with a developmental  
 307 disability; the relationship that the proposed guardian advocate  
 308 had or has with a provider of health care services, residential  
 309 services, or other services to the person with a developmental  
 310 disability; and the reason why this person should be appointed.  
 311 The petition must also state if a willing and qualified guardian  
 312 advocate cannot be located, ~~the petition shall so state.~~

313 (b) A petition to appoint a guardian advocate may include a  
 314 request for periodic payments from either or both parents of the  
 315 person with a developmental disability for the support, care,  
 316 maintenance, education, or other needs of that person.

317 Section 7. Subsection (1) of section 742.031, Florida  
 318 Statutes, is amended to read:  
 319 742.031 Hearings; court orders for support, hospital

Page 11 of 14

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320 expenses, and attorney ~~attorney's~~ fee.-

321 (1) Hearings for the purpose of establishing or refuting  
 322 the allegations of the complaint and answer ~~must shall~~ be held  
 323 in the chambers and may be restricted to persons, in addition to  
 324 the parties involved and their counsel, as the judge in his or  
 325 her discretion may direct. The court shall determine the issues  
 326 of paternity of the child and the ability of the parents to  
 327 support the child. Each party's social security number must  
 328 ~~shall~~ be recorded in the file containing the adjudication of  
 329 paternity. If the court finds that the alleged father is the  
 330 father of the child, it must shall so order. If appropriate, the  
 331 court may shall order the father to pay the complainant, her  
 332 guardian, or any other person assuming responsibility for the  
 333 child moneys sufficient to pay reasonable attorney attorney's  
 334 fees, hospital or medical expenses, cost of confinement, and any  
 335 other expenses incident to the birth of the child and to pay all  
 336 costs of the proceeding. Bills for pregnancy, childbirth, and  
 337 scientific testing are admissible as evidence without requiring  
 338 third-party foundation testimony, ~~and shall~~ constitute prima  
 339 facie evidence of amounts incurred for such services or for  
 340 testing on behalf of the child. The court shall order either or  
 341 both parents owing a duty of support to the child to pay support  
 342 under chapter 61 pursuant to s. 61.30. The court must shall  
 343 issue, upon motion by a party, a temporary order requiring child  
 344 support for a minor child under pursuant to s. 61.30 pending an  
 345 administrative or judicial determination of parentage, ~~if there~~  
 346 is clear and convincing evidence of paternity on the basis of  
 347 genetic tests or other evidence. The court may also make a  
 348 determination of an appropriate parenting plan, including a

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349 time-sharing schedule, in accordance with chapter 61.

350 Section 8. Section 742.06, Florida Statutes, is amended to  
351 read:

352 742.06 Jurisdiction retained for future orders.—The court  
353 shall retain jurisdiction of the cause for the purpose of  
354 entering such other and further orders as changing circumstances  
355 of the parties may in justice and equity require. Modifications  
356 of child support and time-sharing are determined under chapter  
357 61.

358 Section 9. Section 744.1013, Florida Statutes, is created  
359 to read:

360 744.1013 Jurisdiction for support claims.—The court has  
361 jurisdiction over claims for support of a dependent adult child  
362 as defined in s. 61.1255 and shall adjudicate the financial  
363 obligation, including health insurance, of the dependent adult  
364 child’s parents and enforce the financial obligation as provided  
365 in chapter 61. All support required to be paid in relation to a  
366 dependent adult child over the age of 18 must be paid to the  
367 dependent adult child or his or her court-appointed guardian  
368 advocate, guardian, or attorney in fact. However, the court may  
369 irrevocably assign the support to a special needs trust under 42  
370 U.S.C. s. 1396p(d) (4) or to a pooled trust under 42 U.S.C. s.  
371 1396p(d) (4) (C) established for the dependent adult child by the  
372 dependent adult child, his or her agent under a durable power of  
373 attorney, the court, a parent or grandparent, a guardian, or a  
374 guardian advocate who has been delegated those rights in order  
375 to maintain the dependent adult child’s means-based government  
376 benefits. Any order for support entered in a proceeding under  
377 this chapter or chapter 393 supersedes any support order entered

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378 under chapter 61.

379 Section 10. Subsection (4) of section 744.3021, Florida  
380 Statutes, is amended to read:

381 744.3021 Guardians of minors.—

382 (4) If a petition is filed under ~~pursuant to~~ this section  
383 requesting appointment of a guardian for a minor who is the  
384 subject of any proceeding under chapter 39 or chapter 61 and who  
385 is aged 17 years and 6 months or older, the court division with  
386 jurisdiction over guardianship matters has jurisdiction over the  
387 proceedings under s. 744.331. The alleged incapacitated minor  
388 under this subsection must ~~shall~~ be provided all the due process  
389 rights conferred upon an alleged incapacitated adult under  
390 ~~pursuant to~~ this chapter and applicable court rules. The order  
391 of adjudication under s. 744.331 and the letters of limited or  
392 plenary guardianship may issue upon the minor’s 18th birthday or  
393 as soon thereafter as possible. Any proceeding under ~~pursuant to~~  
394 this subsection must ~~shall~~ be conducted separately from any  
395 other proceeding.

396 Section 11. Section 744.422, Florida Statutes, is created  
397 to read:

398 744.422 Petition for child support for a dependent adult  
399 child.—Pursuant to s. 61.1255, a guardian may petition the court  
400 for an order requiring either or both parents to pay periodic  
401 amounts for the support, care, maintenance, education, and any  
402 other needs of a dependent adult child if not otherwise provided  
403 for in the guardianship plan. The amount of support is  
404 determined pursuant to s. 61.31.

405 Section 12. This act shall take effect July 1, 2023.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Clay Yarborough, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 27, 2023

---

I respectfully request that **Senate Bill #226**, relating to Support for Dependent Adult Children, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Lori Berman".

---

Senator Lori Berman  
Florida Senate, District 26

cc: Senator Colleen Burton, Vice Chair  
Tom Cibula, Staff Director

The Florida Senate

APPEARANCE RECORD

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

2/7/2023

Meeting Date

226

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Caitlyn Clibbon

Phone (850)488-9071 x 9789

Address 2473 Care Drive, Suite 200

Email caitlync@disabilityrightsflorida.org

City TLH

State FL

Zip 32308

Speaking: [ ] For [ ] Against [X] Information OR Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing: Disability Rights Florida

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

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

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

SB 226

2/7/23

Meeting Date

Bill Number or Topic

Judiciary

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

Committee

Amendment Barcode (if applicable)

Name Kim Rommel-Enright

Phone 561.822.9769

Address 423 Fern St.

Email kenright@legalaidpbc.org

Street

West Palm Beach

Florida

33401

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

**Family Law Section**

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

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

SB 226

2/7/23

Meeting Date

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

Bill Number or Topic

Judiciary

284646

Committee

Amendment Barcode (if applicable)

Name **Kim Rommel-Enright**

Phone **561.822.9769**

Address **423 Fern St.**

Email **kenright@legalaidpbc.org**

Street

**West Palm Beach**

**Florida**

**33401**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

**Family Law Section**

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

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

S-001 (08/10/2021)



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

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

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: SB 278

INTRODUCER: Senator Rodriguez

SUBJECT: State Estate Tax

DATE: February 6, 2023

REVISED: 02/07/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Favorable</b>
2.			FT	
3.			AP	

---

## I. Summary:

SB 278 amends the Florida estate tax law to eliminate the requirement to show proof of payment of or no liability for the Florida estate tax, provided that federal estate tax law is not amended in a way that reinstates the Florida estate tax.

Imposition of the Florida estate tax is contingent upon provisions in federal law imposing the federal estate tax. The state has not imposed an estate tax in over a decade, but the estate tax statutes remain in statute should the federal estate tax law be amended. The state statute includes a currently unnecessary requirement to show proof of having paid the state estate tax or having no liability for the tax before an estate may be closed by the court.

The bill takes effect upon becoming law, and applies to pending probate proceedings.

## II. Present Situation:

The United States imposes an estate tax on some estates. For 2023, an estate valued at less than \$12.92 million is exempt from the federal estate tax.<sup>1</sup> Federal estate taxes are due from the estates of less than 0.2% of all persons who die in the United States.<sup>2</sup>

The State Constitution allows the imposition of a state estate tax, but only to the extent that the tax is a credit against the federal estate tax payable.<sup>3</sup> Former federal estate tax law included such

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<sup>1</sup> INTERNAL REVENUE SERVICE, ESTATE TAX, <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> (updated Oct. 26, 2022).

<sup>2</sup> JOINT COMMITTEE ON TAXATION, UNITED STATES CONGRESS, REPORT JCX-52-15, HISTORY, PRESENT LAW, AND ANALYSIS OF THE FEDERAL WEALTH TRANSFER TAX SYSTEM 1 (Mar. 16, 2015), <https://www.jct.gov/publications/2015/jcx-52-15/>.

<sup>3</sup> FLA. CONST. art VII, s. 5., reads:

a credit, but the credit was phased out starting in 2001. The complete phase out of the credit was effective for persons dying on or after January 1, 2005, and Congress "permanently" repealed the credit as of 2010.<sup>4</sup> Thus, there has been no state-level estate tax in more than a decade.

However, even though the Florida Constitution effectively prohibits a Florida estate tax given the current structure of the federal estate tax law, the Florida estate tax is still in law. It remains in law should the federal government reinstate the credit and thereby revive the state's ability to collect the tax. One provision of the Florida estate tax code requires that a probate court obtain proof that the estate has paid the tax or is exempt from paying the tax as a condition of closing the estate.<sup>5</sup> Obtaining this proof is mildly burdensome on estates and on the courts, and appears unnecessary so long as there continues to be no state-level estate tax.

Federal estate tax law imposes a tax on certain transfers of wealth that are generation-skipping. The generation-skipping tax (GST), also referred to as the generation-skipping transfer tax, is designed to prevent a person from deliberately skipping his or her children in his or her estate plan in favor of younger generations as a means to bypass potential estate taxes due upon the children's deaths.

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

The bill provides that the Florida estate tax law, ch. 198, F.S., does not apply to the estate of a decedent who dies after December 31, 2004, so long as federal tax law does not allow a state death tax credit or state generation-skipping transfer tax credit. This will have the current effect of suspending the requirement to show proof of having paid the state estate tax or no liability for the tax as a condition of closing a probate case. However, the requirement to show proof of payment or no liability would automatically be imposed again should the federal government reinstate the tax credit.

The bill takes effect upon becoming law, and applies to pending probate proceedings.

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

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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

None.

---

No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.

<sup>4</sup> American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

<sup>5</sup> Section 198.26, 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:

The bill may have a minimal positive fiscal impact on probate lawyers and law firms.

C. Government Sector Impact:

Some practitioners record proof in the Official Records that an estate was not liable for the state estate tax. The effect of this bill is that these recordings will no longer be necessary. The relatively small number of recorded documents and the minimal recording fee (\$10) of these documents leads to the conclusion that this bill appears to have an insignificant fiscal impact on the clerks of court.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 198.41 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

---

By Senator Rodriguez

40-00464-23

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1 A bill to be entitled  
 2 An act relating to the state estate tax; amending s.  
 3 198.41, F.S.; providing applicability of ch. 198,  
 4 F.S., with respect to certain estates; providing a  
 5 directive to the Division of Law Revision; providing  
 6 an effective date.

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

10 Section 1. Section 198.41, Florida Statutes, is amended to  
 11 read:

12 198.41 Effectiveness of this chapter; ~~applicability, etc.~~-  
 13 (1) Except as provided in this section, this chapter shall  
 14 remain in force and effect so long as the Government of the  
 15 United States retains in full force and effect as a part of the  
 16 Revenue Laws of the United States a Federal Estate Tax, and this  
 17 chapter shall cease to be operative as and when the Government  
 18 of the United States ceases to impose any Estate Tax of the  
 19 United States.

20 (2) This chapter does not apply with respect to the estate  
 21 of a decedent who dies after December 31, 2004, if, upon the  
 22 death of the decedent, a state death tax credit or state  
 23 generation-skipping transfer tax credit is not allowable  
 24 pursuant to the provisions of the Internal Revenue Code of 1986,  
 25 as amended. This subsection applies to all probate proceedings  
 26 commenced on or after the effective date of this act and to all  
 27 probate proceedings pending on the effective date of this act  
 28 for which an order of final discharge has not been entered.

29 Section 2. The Division of Law Revision is directed to

Page 1 of 2

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30 replace the phrase "the effective date of this act" wherever it  
 31 occurs in this act with the date this act becomes a law.

32 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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The Florida Senate

## Committee Agenda Request

**To:** Senator Clay Yarborough, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 26, 2023

---

I respectfully request that **Senate Bill #278**, relating to State Estate Tax, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, appearing to read "Ana Maria Rodriguez".

---

Senator Ana Maria Rodriguez  
Florida Senate, District 40

2/7/23

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 278

Bill Number or Topic

Judiciary

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

Committee

Amendment Barcode (if applicable)

Name Martha Edenfield

Phone 850-999-4100

Address 106 E. College Ave Suite 1200

Email medenfield@deanmead.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**The Real Property, Probate and Trust Law Section of the Florida Bar**

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

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

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

# CourtSmart Tag Report

**Room:** KB 412  
**Caption:** Judiciary Committee

**Case No.:** -  
**Judge:**

**Type:**

**Started:** 2/7/2023 3:31:21 PM  
**Ends:** 2/7/2023 3:53:11 PM **Length:** 00:21:51

3:31:20 PM Meeting called to order by Chair Yarborough  
3:31:36 PM Roll call, quorum met  
3:32:02 PM Chair Yarborough makes opening remarks  
3:32:10 PM Tab-3 SB 278, State Estate Tax  
3:32:39 PM Senator Rodriguez presents bill  
3:33:11 PM Martha Edenfield, The Real Property, Probate and Trust Law Section of the Florida Bar waives in support  
3:33:49 PM Senator Rodriguez waives close  
3:33:57 PM Roll call on SB 278  
3:34:08 PM Tab- 1 SB 144, Lactation Spaces  
3:34:29 PM Senator Berman presents SB 144  
3:35:11 PM Public Testimony:  
3:35:53 PM Tiffany Cruz  
3:36:04 PM Debate:  
3:36:29 PM Senator Book  
3:36:31 PM Senator Baxley  
3:36:59 PM Senator Berman waives closing  
3:37:35 PM Roll call on SB 144  
3:37:44 PM Tab-2 Sb 226, Support for Dependent Adult Children  
3:38:22 PM Senator Berman presents bill  
3:39:16 PM Amendment 284646  
3:40:16 PM Senator Berman explains amendment 284646  
3:40:21 PM Public Testimony:  
3:40:27 PM Kim Rommel-Enright, Family Law Section  
3:40:56 PM Amendment Adopted  
3:41:05 PM Questions:  
3:41:09 PM Senator Harrell  
3:41:16 PM Senator Berman  
3:42:02 PM Kimberly Rommel-Enright answers questions  
3:42:31 PM Senator Harrell  
3:43:10 PM Kimberly Rommel-Enright  
3:43:44 PM Senator Harrell  
3:44:36 PM Kimberly Rommel-Enright  
3:44:55 PM Public Testimony:  
3:45:31 PM Kimberly Rommel-Enright, Family Law Section  
3:46:20 PM Caitlin Clibbon, Disability Rights FLorida  
3:47:19 PM Caitlyn Clibbon speaks in support  
3:47:33 PM Debate:  
3:48:33 PM Senator Baxley  
3:49:16 PM Senator Harrell  
3:50:23 PM Senator Berman closes on the bill  
3:51:22 PM Roll call on SB 226  
3:52:03 PM Chair Yarborough makes closing remarks  
3:52:39 PM Senator Trumbull records votes after roll call  
3:52:49 PM Senator Burton moves to adjourn  
3:52:54 PM Meeting Adjourned