

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 Judiciary Committee

BILL: SB 1662

INTRODUCER: Senator Latvala

SUBJECT: Homeless Youth

DATE: February 8, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Preston | Farmer | CF | Favorable |
| 2. | O'Connor | Cibula | JU | Pre-meeting |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill contains a number of provisions related to homeless children, including the following:

- Defines the term “certified homeless youth” and specifies government officials who may certify a minor as a certified homeless youth;
- Authorizes certified homeless youth or certain minors, who have had the disabilities of nonage removed pursuant to s. 743.01, F.S., due to marriage and s. 743.015, F.S., through a petition to the court, to obtain his or her birth certificate;
- Provides that a certified homeless youth who is 16 years of age or older has the same rights afforded to them as a minor who has had disabilities of nonage removed pursuant to s. 743.015, F.S.; and
- Provides that an unaccompanied youth who has had the disabilities of nonage removed may not be required to have a parent or legal guardian’s consent for any purpose as long as he or she meets the criteria of those definitions.

The bill substantially amends the following sections of the Florida Statutes: 382.002, 382.0085, and 382.025.

The bill creates section 743.067, Florida Statutes.

II. Present Situation:

Background

*Homeless Children*¹

Although the causes for homelessness among children vary, the underlying themes among these causes reveal a strong link between homelessness and broader social issues including family breakdown and systems failure.

- **Family Breakdown.** The same factors that contribute to adult homelessness such as poverty, lack of affordable housing, low education levels, unemployment, mental health, and substance abuse issues can also play a role in the occurrence and duration of a child's homelessness. Beyond those factors, the phenomenon of child homelessness is largely a reflection of family dysfunction and breakdown, specifically familial conflict, abuse, and disruption. Children typically enter a state of homelessness as a result of:
 - Running away from home;
 - Being locked out or abandoned by their parents or guardians; or
 - Running from or being emancipated or discharged from institutional or other state care.^{2,3}
- **Systems Failure.** In addition, many children become homeless due to systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs. Every year between 20,000 and 25,000 children ages 16 and older transition from foster care to legal emancipation, or "age out" of the system. They enter into society with few resources and numerous challenges. As a result, former foster care children are disproportionately represented in the homeless population. Twenty-five percent of former foster children nationwide reported that they had been homeless at least one night within 30 to 48 months after exiting foster care.⁴

Many children encounter the juvenile justice system while homeless. Without a home, family support, or other resources, homeless children are often incarcerated because they are without supervision. Homeless children are socially marginalized and often arrested for "status" offenses—an action that is only illegal when performed by minors, like running away or breaking curfew. For children who are released from juvenile corrections facilities, reentry is often difficult because they lack the familial support systems and opportunities for work and housing. Additionally, homeless children are more likely than the general child population to become involved in the juvenile justice system.⁵

¹ A substantial portion of this section was taken from: *Fundamental Issues to Prevent and End Youth Homelessness*, Youth Homelessness Series, Brief No. 1, National Alliance to End Homelessness. May, 2006. Retrieved Jan. 25, 2012, from <http://www.endhomelessness.org/content/general/detail/1058>.

² *Fundamental Issues*, *supra* note 1 at 1.

³ Although family conflict also plays a part in adult homelessness, the nexus is more critical for youth since they are, by virtue of their developmental stage in life, still largely financially, emotionally, and, depending on their age, legally dependent upon their families.

⁴ *Fundamental Issues*, *supra* note 1 at 1-2.

⁵ *Id.*

According to the National Alliance to End Homelessness, the prevalence of child homelessness is difficult to measure. Researchers estimate that about 1.6 million children, aged 13-17, are homeless in the United States.⁶ Florida has the third largest homeless population in the country, with roughly 60,000 people facing homelessness daily.⁷ During the 2010-2011 school year 56,680 school-aged children were identified as homeless in the state.⁸ Of those, 6,503 were categorized as unaccompanied.⁹

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (act)¹⁰ was the first significant federal legislative response to homelessness, and was passed and signed into law by President Ronald Reagan in 1987. The act has been reauthorized several times subsequently. The act originally consisted of 15 programs providing a range of services to the homeless, including emergency shelter, transitional housing, job training, primary health care, education, and some permanent housing. The act contains nine titles. Title VII of the act authorizes four programs, including the Adult Education for the Homeless and the Education of Homeless Children and Youth Programs administered by the U.S. Department of Education.¹¹

Definition of Homeless Children and Youth

Federal law provides a definition for the term “homeless children and youths.” The term means¹² individuals who lack a fixed, regular, and adequate nighttime residence. The term also includes:

- Children and youths who are: sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; abandoned in hospitals; or awaiting foster care placement;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who are living in circumstances described above.

The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.¹³ Florida law in s. 1003.01(12), F.S., defines the term “children and youths who are experiencing homelessness” to have the same meaning as “homeless children and youths” under federal law.

⁶ Paul A. Toro, et. Al., *The Heterogeneity of Homeless Youth in America: Examining Typologies*, National Alliance to End Homelessness. Sept. 2011, 1. Retrieved Jan. 26, 2012, from <http://www.endhomelessness.org/content/article/detail/4247/>.

⁷ Florida Department of Children and Families. *Council on Homelessness Annual Report 2011*, ii, Retrieved Jan. 25, 2012, from <http://www.dcf.state.fl.us/programs/homelessness/council/index.shtml>.

⁸ Department of Education, Bureau of Federal Educational Programs, *2010-2011 Final Survey Homeless Counts*. As of Sept. 26, 2011. Retrieved Jan. 27, 2012, from <http://www.fldoe.org/bsa/title1/pdf/1011HomelessStudentsCount.pdf>.

⁹ *Id.*

¹⁰ Pub. L. 100-77, Jul. 22, 1987, 101 Stat. 482; 42 U.S.C. s. 11301 et seq.

¹¹ *Id.*

¹² 42 U.S.C. s. 11434a.

¹³ *Id.*

School District Homeless Liaison

The reauthorization of the McKinney-Vento Act requires school districts to designate a liaison for homeless children and youth.¹⁴ The Florida Department of Education (DOE) has established at least one “school district homeless liaison” for each of the 67 counties.¹⁵ The liaison must ensure:¹⁶

- Homeless children and youth, including unaccompanied youth, are identified by school personnel and through coordinated activities with other entities and agencies;
- Homeless children and youth enroll in, and have a full and equal opportunity to succeed in, schools of that local education agency (LEA);
- Homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start, Even Start, and other preschool programs administered by the LEA, and referrals to health care services, dental services, mental health services, and other appropriate services;
- The parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens;
- Enrollment disputes are mediated;
- The parents or guardians of homeless students, or any unaccompanied youth, are fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation to the school of origin or the school which serves the location where the students currently reside.

The local homeless liaison is also required to coordinate and collaborate with the state Homeless Education Coordinator and community and school personnel responsible for providing education and related services to homeless students.

Emergency Shelter Programs funded by U.S. Department of Housing and Urban Development

The emergency shelter programs funded by the Department of Housing and Urban Development are designed as the first step in the Continuum of Care (CoC).¹⁷ The Emergency Shelter Grants

¹⁴ Florida Department of Education, *The Education of Homeless Children and Youth (Title X, No Child Left Behind Act of 2001, The McKinney Vento Act)*, Retrieved Jan. 27, 2012, from http://www.fldoe.org/bsa/title1/pdf/homeless_tap_08_23_051.pdf.

¹⁵ Florida Department of Education, *District Liaison List*, Retrieved Jan. 28, 2012, from <https://app1.fldoe.org/flbpo/nclbchoice/bpoDirectory/directory.aspx>.

¹⁶ Florida Department of Education, *Technical Assistance Paper. Coordination of Title I, Part A Improving Basic Programs Operated by Local Educational Agencies, and Title X, Part C, McKinney-Vento Homeless Education Assistance Improvements Act of 2001 Education for Homeless Children and Youth Program*, Dec. 15, 2009, 5, Retrieved Jan. 28, 2012, from <http://info.fldoe.org/docushare/dsweb/Get/Document-5625/dps-2009-169.pdf>.

¹⁷ According to HUD, a CoC is “a community plan to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximize self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.” HUD identifies four necessary parts of a continuum:

Program provides funds for emergency shelters as immediate alternatives to the street and transitional housing that helps people reach independent living. States use grant funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness.¹⁸ The providers of service must document in their files that the child being served meets the federal definition of a homeless person.¹⁹

Runaway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Youth Center Programs work to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families. The programs provide youth up to age 18 with emergency shelter, food, clothing, counseling and referrals for health care. Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements. The providers of service must maintain individual case files on the youth that are in the program.²⁰

The Transitional Living Programs provide homeless youth with stable, safe living accommodations for up to 18 months. The programs provide services to help young people develop skills necessary to move to independence and life as healthy, productive adults. These services are provided through more than 191 community-based residential centers. The program also helps homeless youth improve basic life and interpersonal skills, provides educational opportunities, assists with job preparation and attainment, and ensures that physical and mental health care needs are met. The providers of service must maintain individual case files on the youth who are in the program.²¹

Birth Certificates

The Florida Department of Health (DOH), Office of Vital Statistics, maintains all vital records for the state. Under current law, homeless children are not specifically given the ability to obtain their birth certificates. Florida law provides that certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1), F.S., and, upon receipt of a request and payment of the fee prescribed

Outreach, intake, and assessment in order to identify service and housing needs and provide a link to the appropriate level of both; Emergency shelter to provide an immediate and safe alternative to sleeping on the streets, especially for homeless families with children; Transitional housing with supportive services to allow for the development of skills that will be needed once permanently housed; and Permanent and permanent supportive housing to provide individuals and families with an affordable place to live with services if needed. National Alliance to End Homelessness, *Questions and Answers on Homelessness Policy Research*, Retrieved Jan. 29, 2012, from <http://www.endhomelessness.org/content/article/detail/1744>.

¹⁸ U.S. Department of Housing and Homeless Development, *Homelessness Resource Exchange*, Retrieved Jan. 28, 2012, from <http://www.hudhre.info/index.cfm?do=viewEsgProgram>.

¹⁹ U.S. Department of Housing and Homeless Development, *Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities*, Retrieved Jan. 28, 2012, from <http://www.hudhre.info/index.cfm?do=viewEsgDeskguideSec4#4-4>.

²⁰ U.S. Department of Health and Human Services, Administration for Children and Families, *Fact Sheet Basic Center Program*, Retrieved Jan. 28, 2012, from <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>.

²¹ U.S. Department of Health and Human Services, *Transitional Living Program for Homeless Youth*, Retrieved Jan. 28, 2012, from <http://www.benefits.gov/benefits/benefit-details/619>. See also U.S. Department of Health and Human Services, Administration for Children and Families, *Fact Sheet Transitional Program*, <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>.

in s. 382.0255, F.S., shall be issued only as authorized by the department and in the form prescribed by the department, and only:

- To the registrant, if of legal age;
- To the registrant's parent or guardian or other legal representative;
- Upon receipt of the registrant's death certificate, to the registrant's spouse or to the registrant's child, grandchild, or sibling, if of legal age, or to the legal representative of any of such persons;
- To any person if the birth record is over 100 years old and not under seal pursuant to court order;
- To a law enforcement agency for official purposes;
- To any agency of the state or the United States for official purposes upon approval of the department; or
- Upon order of any court of competent jurisdiction.²²

Therefore, homeless children not of legal age and without a parent, guardian or other legal representative are not able to obtain their birth certificates.

Disabilities of Nonage – Emancipation

All states have laws dealing with the “emancipation” of minors, which are laws that specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.²³

Emancipation is the removal of disability of nonage. In other words, emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the benefits of their parents providing for them and the protection of the Department of Children and Family Services.²⁴

In Florida, the disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could perform if not a minor.²⁵

²² Section 382.025, F.S.

²³ A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors*. Retrieved Jan. 29, 2012, from http://www.law.cornell.edu/wex/emancipation_of_minors.

²⁴ A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide*. Retrieved Jan. 29, 2012, from [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf).

²⁵ Section 743.01, F.S.

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is age 16 or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. The petition must contain the following information:²⁶

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides that:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;
- If the petition is filed by the guardian ad litem or next friend, service of process must be perfected on the natural parents;
- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent;²⁷
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect. An order removing the disabilities of nonage has the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and authorizes the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older; and
- The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.²⁸

III. Effect of Proposed Changes:

The bill contains a number of provisions relating to homeless children, including:

²⁶ Section 743.015, F.S.

²⁷ Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.

²⁸ Section 743.015, F.S.

- Defining the term “certified homeless youth” to mean a minor who is a homeless child or youth, or an unaccompanied youth, as defined in federal law, and who has been certified as homeless or unaccompanied by:
 - A school district homeless liaison;
 - The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee; or
 - The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director’s designee.²⁹
- Authorizing the Department of Health to issue a birth certificate to a certified homeless youth or certain minors who have had the disabilities of nonage removed; and
- Providing that a certified homeless youth who is 16 years of age or older has the same rights as a minor who has had the disabilities of nonage removed under s. 743.015, F.S., and may not be required to have a parent or guardian’s consent for any purpose.

This bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁹ These three criteria are the same as used for other purposes, such as determining dependency on the Free Application for Federal Student Aid (FAFSA). Retrieved Jan. 27, 2012, from <http://www.fafsaonline.com/fafsa-form/dependent-status-for-fafsa-5.php>.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The provisions on lines 87-94 do not specify who will petition the court to have the disabilities of nonage removed. Because s. 743.015, F.S., requires the petition be filed by the minor's natural or legal guardian or, if there is none, a guardian ad litem, it is unclear who would be available to petition on behalf of an unaccompanied youth.

VII. Related Issues:

There are a variety of reasons that a minor would choose to act as an adult. One of the most important reasons is that a minor cannot enter into a contract. Contracts allow individuals to seek loans, receive credit, enter into lease agreements, and enter employment contracts. The ability to enter into a contract may also present an opportunity for the minor to agree to obligations that he or she may be unable to fulfill.

Current provisions in chapter 743, F.S., to remove the disabilities of nonage are more narrowly constructed than the language proposed in the bill and build in a variety of protections for the minors involved. Children in foster care, for example, may have the disabilities of nonage removed only for certain specific purposes, such as executing agreements for depository financial services,³⁰ executing contracts for a residential lease,³¹ and executing agreements for utility services.³² The Legislature may wish to revise the bill to similarly limit the removal of disabilities of nonage to overcome these common barriers as opposed to providing for complete emancipation.

The Department of Health may need to amend current rules in order to provide a process for certified homeless youth or minors who have had disabilities of nonage removed to obtain his or her birth certificate.

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

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

None.

B. Amendments:

None.

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

³⁰ Section 743.044, F.S.

³¹ Section 743.045, F.S.

³² Section 743.046, F.S.