

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: CS/SB 370

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Wise

SUBJECT: Supervised Visitation and Exchange Monitoring

DATE: February 8, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Fav/CS
2.	Munroe	Cibula	JU	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill creates a hierarchy for referring cases for supervised visitation or exchange monitoring for both non-dependency cases, where the courts are the primary source of referrals, and dependency cases, where referrals are made by child-placing agencies.

Additionally, the bill:

- Provides standards for supervised visitation or exchange programs to follow and requires that the programs affirm annually in a written agreement with court that they abide by those standards;
- Provides that programs that have accepted referrals may petition the court in writing when there is a problem with a case;
- Requires background checks to be conducted on all volunteers and employees of a supervised visitation or supervised exchange program;
- Creates a presumption that persons providing services at a supervised visitation or exchange monitoring program are acting in good faith and makes such persons immune from civil and criminal liability; and

- Provides that after January 1, 2013, only programs that have written agreements with the court may receive state funding.

This bill creates the following sections of the Florida Statutes: 753.06, 753.07, and 753.08.

II. Present Situation:

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. Use of a caseworker, relative, or other third party to oversee such contact has long been recognized as essential in child maltreatment cases where the child has been removed from the home. Other purposes of supervised visitation include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Facilitating appropriate child-parent interaction during supervised contact;
- Helping to build safe and healthy relationships between parents and children;
- Providing written factual information to the court relating to supervised contact, where appropriate;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.¹

The first supervised visitation program in Florida opened in 1993.² By 1996, there were 15 programs in the state, and by 2004, over 60 programs had been established. Currently, there are more than 70 programs statewide and every judicial circuit in the state has at least one supervised visitation program.³

The Clearinghouse on Supervised Visitation (clearinghouse)⁴ was created in 1996 through an appropriation from the Office of the State of Courts Administrator (OSCA) to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or department).⁵ Since 1996, the clearinghouse has received contracts on an annual basis from the

¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Purposes of Supervised Visitation, available at <http://familyvio.csw.fsu.edu/CHVPG.php>. (last visited Feb. 2, 2012).

² The Family Nurturing Center of Jacksonville.

³ Karen Oehme and Sharon Maxwell, Florida's Supervised Visitation Programs: The Next Phase, 78 FLA. B.J. 44, 44 (Jan. 2004); See list of programs on the website of Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, available at <http://dev.familyvio.csw.fsu.edu/clearinghouse/fl-programs/> (last visited Feb. 2, 2012).

⁴ The Clearinghouse on Supervised Visitation is housed within the Institute for Family Violence Studies in the College of Social Work of the Florida State University, and serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research, available at <http://familyvio.csw.fsu.edu/CHV.php> (last visited Feb. 2, 2012).

⁵ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Report to the Legislature: Recommendations of the Supervised Visitation Standards Committee (Dec. 2008), available at http://familyvio.csw.fsu.edu/messageboard/wordpress/wp-content/uploads/2010/03/Final_Report_to_Legislature.pdf (last visited Feb. 2, 2012)

department to continue this provision of technical assistance.⁶ Chapter 753, F.S., relating to supervised visitation, was created in 1996.⁷

The Florida Supreme Court's Family Court Steering Committee (committee) began developing a skeletal set of standards for supervised visitation programs in 1998. In an attempt to create uniformity relating to staff training, terminology, and basic practice norms, the committee presented standards to the Court. The Court endorsed the minimum standards and issued an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to which trial judges referred cases to programs that agreed to comply with the standards.⁸

In 2007, the Florida Legislature created s. 753.03 F.S., to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program.⁹ Section 753.03, F.S., required the clearinghouse to recommend a process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs.¹⁰ A final report containing the recommendations of the clearinghouse was received by the legislature in December 2008.¹¹

Until standards for supervised visitation programs are developed and a certification and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Florida Supreme Court on November 17, 1999.¹² In 1999, the chief justice requested that the legislature develop security protocols, certify programs, and monitor them to ensure compliance. Specifically, the chief justice told the Speaker of the House of Representatives and the President of the Senate:

The lack of guidelines or standards for these programs and lack of oversight of these programs, particularly as to staff and visitor safety and staff training, is of great concern It does not appear that this is an appropriate function for the chief judge, but, rather, is better suited to an executive branch agency I urge the legislature to consider establishing a certification process, and designate an entity outside of the judicial branch to be responsible for oversight of supervised visitation programs.¹³

⁶ *Id.*

⁷ Chapter 96-402, Laws of Florida.

⁸ Oehme and Maxwell, *supra* note 3, at 44; *See also* In re: Supervised Visitation, Admin. Order No. AOSC99-59 Fla. Nov. 18, 2011, available at: <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf> (last visited Feb. 2, 2012).

http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf.

⁹ Chapter 2007-109, Laws of Florida.

¹⁰ Section 8, chapter 2007-109, Laws of Florida.

¹¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, *supra* note 5.

¹² Chapter 2007-109, Laws of Florida. *See also* In re: Supervised Visitation, Admin. Order No. AOSC99-59 Fla. Nov. 18, 2011, available at: <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf> (last visited Feb. 2, 2012).

¹³ Oehme and Maxwell, *supra* note 3, at 47 (citations omitted).

III. Effect of Proposed Changes:

The bill provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., shall be the basis for state standards for supervised visitation and exchange monitoring programs. The standards may only be modified by the advisory board¹⁴ no more than once a year. The clearinghouse is required to publish the standards and the published standards shall be the state standards for supervised visitation programs.

The bill also implements four out of the 10 recommendations contained in the final report to the Legislature from the clearinghouse, which was designated in 2007 to develop new standards for Florida supervised visitation programs. Specifically:

- Chapter 753, F.S., is amended to allow programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address these problems. Programs regularly report that they have difficulty accessing the court to report problems related to the supervised visitation process, including:
 - Children’s unwillingness to participate in visits;
 - Parental substance abuse;
 - Parental mental illness issues interfering with visits;
 - Parental misconduct on-site;
 - Parental misconduct off-site reported to visitation staff, including but not limited to, parental arrests, additional litigation in family, dependency, or criminal court, and violations of probation, stalking, and threats; and
 - Parental noncompliance with program rules, including no-shows and cancellations without cause.
- Courts and child-placing agencies are required to adhere to a recommended hierarchy when referring cases to supervised visitation in both dependency and non-dependency cases.

Specifically:

In chs. 61 or 741, F.S., cases, the court is to direct referrals for supervised visitation or exchange monitoring as follows:

- A program that has a written agreement with the court;
- A local licensed mental health professional who has met specified conditions.

In ch. 39, F.S., cases, the child-placing agency is to direct referrals for supervised visitation or exchange monitoring as follows:

- If the agency having primary responsibility determines that there are safety risks present during parent-child contact, the agency shall direct parties to a program that has affirmed in writing that it adheres to the state standards.
- If there are no safety risks present, the child protective investigator or case manager may:
 - Supervise the parent-child contact him or herself;
 - Designate a foster parent or relative to supervise the parent-child visits.

¹⁴ Section 753.03(3), F.S., creates the advisory board to assist in developing standards.

- If a program that adheres to the state standards does not exist and the child protective investigator or case manager cannot supervise the visit or designate a foster parent or relative to supervise the visit, the agency having primary responsibility over the case may refer the case to other qualified staff within the agency to supervise.
- The agency having primary responsibility for the case may only refer the case to a subcontractor or other agency if the subcontractor or agency has reviewed or received training on the clearinghouse's supervised visitation programs.

A court is still permitted to allow a litigant's relatives or friends to supervise the visits if the court decides such supervision is safe.

- Chapter 753, F.S., is amended to create a presumption that any person providing services at a supervised visitation or exchange monitoring program, who has affirmed to the court that he or she is abiding by the state standards, is acting in good faith and is therefore immune from liability. This is similar to the immunity provision that currently protects Guardians ad Litem.¹⁵
- The bill restricts funding so that only programs, that affirm through a written agreement with the court that it abides by the standards, are eligible for state funding after January 1, 2013.

Additionally, the bill requires supervised visitation and supervised exchange programs to conduct a security background investigation on all volunteers and employees prior to hiring an employee or certifying a volunteer to serve. The security background investigation must include:

- Employment history checks;
- Checks of references;
- Local criminal history records checks through local law enforcement agencies; and
- Statewide criminal history record checks through the Florida Department of Law Enforcement (FDLE).

If requested, an employer must submit the personnel file of the employee or former employee who is the subject of the background investigation. The bill provides immunity to an employer who has released a copy of an employee's or former employee's personnel record in good faith.

The purpose of the security background investigation is to ensure that a person is not hired as an employee or certified as a volunteer of a supervised visitation or supervised exchange program if the person has:

- An arrest awaiting final disposition for;
- Been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to; or
- Has been adjudicated delinquent and the record has not been sealed or expunged for any offense prohibited under s. 435.04, F.S.¹⁶

¹⁵ Section 39.822(1), F.S.

¹⁶ Section 435.04, F.S., provides that all employees in positions of trust or responsibility must undergo a security background investigation, and the statute lists specific crimes that the employee undergoing the investigation must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty.

The bill provides that all employees hired or volunteers certified after July 1, 2012, must undergo a level 2 background screening.¹⁷ When analyzing the information obtained in the security background investigation, the supervised visitation or supervised exchange program must give particular emphasis to past activities involving children.

Finally, the bill provides that the supervised visitation or supervised exchange program has the sole discretion in determining whether to hire or certify a person based on the person's security background investigation.

The bill's requirement for a security background investigation is substantially similar to the background check requirement for guardians ad litem.¹⁸

The effective date of the bill is October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, section 21 of the Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” The test for assuring the right of access to the courts was established in *Kluger v. White*, in which the Florida Supreme Court held that:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right,¹⁹ and no alternative method of meeting such public necessity can be shown.

¹⁷ Section 435.04, F.S., provides the standards for level 2 background screenings.

¹⁸ See s. 39.821, F.S.

¹⁹ *Kluger v. White*, 281 So. 2d 1, 4 (1973).

Because the bill provides all persons responsible for providing services at a supervised visitation or exchange monitoring program who have affirmed that they are abiding by the state standards immunity, it raises questions about possible infringements on the right of access to the courts. A parent may argue that the limitation denies the person his or her access to courts if the service provider acts negligently. To the extent that such a tort action may be pursued under Florida law, the immunity provision would have to meet the constitutional test established in *Kluger v. White*. The Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.²⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department reports a potential fiscal impact for costs related to background screening if a supervised visitation program does not subcontract with DCF or a community-based care lead agency is possible. Programs contracting with DCF are already required to adhere to the background screening requirements under chapters 39, 409, and 435, F.S. Any program that does not meet specified standards by January 1, 2013, will be in jeopardy of losing state funding.²¹

C. Government Sector Impact:

Proposed new section 753.07(3), F.S., provides that supervised visitation programs may alert the court in writing if there are problems with referred cases and the court may set a hearing to address these problems. Any new hearings that occur as a result of the bill would have an effect on judicial workload, however, the number of instances in which this might occur is not known and therefore the anticipated affect on workload, if any, by this provision is also not known. According to the Office of the State Courts Administrator (OSCA), the bill may have a minimal impact on the judiciary and court staff.²²

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.²³

²⁰ *Id.*

²¹ Department of Children and Families, Staff Analysis and Economic Impact, SB 370, October 10, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

²² Office of the State Courts Administrator Judicial Impact Statement HB 557, November 21, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

²³ *Id.*

The department stated that according to the clearinghouse, the screenings are currently accessed through Volunteer and Employee Criminal History System and are the responsibility of the visitation centers. The bill provides the option for DCF to screen the results. With the current increase in screenings and staff reductions at DCF, the Background Screening Units would not be able to absorb a substantial increase in workload within existing resources.²⁴

The bill requires the department's approval of supervised visitation training materials for foster parents that "may" be developed by the clearinghouse. This review could be accomplished through existing resources such as the Quality Parenting Initiative.²⁵

Within existing funds of DCF, the advisory board established under s. 753.03, F.S., developed supervised visitation standards. Newly proposed s. 753.06, F.S., will give the advisory board the authority to modify the standards, but does not obligate DCF funding for this purpose.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that supervised visitation and supervised exchange programs conduct security background investigations on employees or volunteers prior to hiring or certifying them. The language in the bill is substantially similar to the background check requirement for guardians ad litem found in s. 39.821, F.S. However, s. 39.821, F.S., provides that the information collected on a guardian ad litem pursuant to the background security investigation is confidential and exempt under Florida's public records law. The bill does not provide the same confidential and exempt language for the information collected on employees or volunteers of supervised visitation or supervised exchange programs. To the extent that supervised visitation and supervised exchange programs may be subject to Florida's constitutional and statutory public records requirements, the Legislature may wish to explore whether they would need a similar public records exemption.

The bill provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., shall be the *basis* for state standards for supervised visitation and exchange monitoring programs. The standards may only be *modified* by the advisory board²⁷ no more than once a year. The clearinghouse is required to publish the standards and the published standards shall be the state standards for supervised visitation programs. It is unclear whether this delegation by the Legislature to

²⁴ Department of Children and Families, Staff Analysis and Economic Impact, SB 370, October 10, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 753.03(3), F.S., creates the advisory board to assist in developing standards.

the clearinghouse is a grant of rulemaking authority. The bill requires the clearinghouse to publish the standards on its website and provide reasonable notice to the programs but does not clarify whether the clearinghouse must comply with the requirements of the Administrative Procedures Act²⁸ in the adoption of any modifications to the standards.

The words of the bill conveying immunity from civil and criminal liability on a person providing supervised visitation or exchange monitoring services may provide a broader grant of immunity than is intended by the Legislature. Specifically, the bill states that:

Any person who is providing supervised visitation or exchange monitoring services through a supervised visitation program and who affirms to the court in writing that he or she abides by the state standards . . . is presumed, prima facie, to be acting in good faith and is immune from any liability, civil or criminal, which otherwise might be incurred or imposed with regard to the provision of such services.²⁹

The structure of the immunity provision appears to provide a conclusive grant of immunity to a person who makes the affirmation. The Legislature may wish to revise the immunity provision to clarify that the immunity only applies to a person who acts in good faith.

VIII. Additional Information:

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

CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:

The committee substitute:

- Amends the bill to require mental health professionals who supervise visitation to be licensed.

- B. **Amendments:**

None.

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

²⁸ Chapter 120, F.S., provides uniform requirements for agency rulemaking. Generally, rulemaking authority is the law that authorizes an agency to adopt rules. Generally, the statute will contain language that expressly mentions the authority or duty to adopt rules or that authorizes or requires an agency to establish or otherwise create any statement coming within the definition of a "rule."

²⁹ Section 753.08(2), F.S.