

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 Health Policy

BILL: SB 260

INTRODUCER: Senator Latvala

SUBJECT: Unaccompanied Youth

DATE: February 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Favorable
3.	_____	_____	<u>JU</u>	_____

I. Summary:

SB 260 provides that an unaccompanied certified homeless youth 16 years of age or older may consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment for himself or herself and for his or her child under specified circumstances.

Florida had the third largest number of homeless people reported nationally in 2013. Many of these homeless persons are minors, and a substantial number of the minors are unaccompanied by parents or guardians. Without legislative or court approval, an unwed minor cannot consent to medical treatment for himself or herself, except in limited circumstances, such as pregnancy. This bill will enable the unaccompanied certified homeless youth to provide consent to his or her own medical treatment without regard to pregnancy status and for treatment of his or her child without the necessity of obtaining a court order.

The bill does not affect the requirements of section 390.01114, Florida Statutes, the Parental Notice of Abortion Act.

SB 260 is not expected to have a fiscal impact and has an effective date of July 1, 2014.

II. Present Situation:

Definitions Relating to Homeless Children and Youth

Federal law authorizes a number of programs for homeless people¹ and provides a definition for the term “homeless children and youths.” The term means² individuals who lack a fixed, regular, and adequate nighttime residence. The term also includes:

¹ See, for example, the McKinney-Vento Homeless Assistance Act, Pub. Law No. 100-77, H.R. 558, 100th Cong. (July 22, 1987), 101 Stat. 482; 42 U.S.C. s. 11301 et seq.

² 42 U.S.C. s. 11434a.

- 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” means a youth not in the physical custody of a parent or guardian.³

Florida law includes special provisions for homeless youth and defines terms.

Section 1003.01(12), Florida Statutes, defines the term “children and youths who are experiencing homelessness” to have the same meaning as “homeless children and youths” under federal law. A “certified homeless youth” means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a, and who has been certified as homeless or unaccompanied by: (a) a school district homeless liaison; (b) the director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee; or (c) 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.⁴

Demographics

The number of homeless youth is difficult to ascertain, since homeless youth are less likely to spend time in the same places as older homeless people.⁵ The National Alliance to End Homelessness estimates that nationwide there were approximately 380,000 youth under the age of 18 who were homeless and who were unaccompanied by a parent or legal guardian in 2013.⁶ Florida had the third highest number of homeless people reported nationally in 2013, after only California and New York.⁷ According to the Florida Department of Education, the homeless count for children in the 2011-2012 school year, the latest data available, was 63,685 homeless students, 6,798 of whom were unaccompanied youth.⁸ During this same time period, 1,166,339 homeless children and youth were enrolled in public school nationwide.⁹ The education numbers

³ *Id.*

⁴ Section 382.002(3), F.S.

⁵ National Alliance to End Homelessness, *Youth*, <http://www.endhomelessness.org/pages/youth> (last visited Feb. 11, 2014).

⁶ *Id.*

⁷ U.S. Department of Housing and Urban Development, *The 2013 Annual Homeless Assessment Report (AHAR) to Congress, Part I Point in Time Estimates*, <https://www.onecpd.info/resources/documents/AHAR-2013-Part1.pdf> (last visited Feb. 11, 2014).

⁸ Florida Department of Education, Bureau of Federal Educational Programs, *2011-2012 Final Survey 5 Homeless Counts* (As of Oct. 5, 2012), <http://fldoe.org/bsa/title1/pdf/1112HomelessStudentsCount.pdf> (last visited Jan. 24, 2014).

⁹ National Association for the Education of Homeless Children and Youth, *Facts and Resources about the Education of Children and Youth Experiencing Homelessness*, quoting from the U.S. Department of Education, Federal Data Collection 2011-2012, <http://www.naehcy.org/sites/default/files/dl/homeless-ed-101.pdf> (last visited January 24, 2014).

underestimate the actual numbers of homeless and homeless unaccompanied youth, since many of these youth are not registered in school.

Research shows a high prevalence of depression, suicide initiations, and other mental health disorders among youth who are homeless. Chronic physical health conditions are common, as are high rates of substance abuse disorders.¹⁰

While details about unaccompanied homeless youth are difficult to obtain, the Amherst H. Wilder Foundation, a non-profit social services organization, has done an analysis of this population in Minnesota.¹¹ Although not directly applicable to Florida, the findings are at least illustrative of the characteristics of this population. The point-in-time study, conducted on October 25, 2012, counted 1,151 youth 21 years of age and under, of whom 146 were 17 years of age and younger. According to this study, high proportions of homeless youth have physical, mental, and chemical health problems. Slightly over one-third (36 percent) have a chronic physical health condition, most often high blood pressure (10 percent) or chronic lung or respiratory problems (7 percent). Nine percent of the minors in the study had children; of these, 21 percent had their children with them. Most had only one child (77 percent) and three-quarters of the children were 2 years of age or younger.

Emancipation of Minors

All states have laws dealing with the “emancipation” of minors, which 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 18.¹²

Emancipation is the removal of “disability of nonage.” Legally, in most instances, children lack the capacity that adults are assumed to have to perform certain activities, such as entering into binding contracts, making certain purchases, and being held responsible in the same way as adults for criminal offenses. This lack of capacity is termed the “disability of nonage.” 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 right to have their parents provide for them and the protection of the Department of Children and Families.¹³

¹⁰ U.S. Interagency Council on Homelessness, *Homelessness Among Youth*, http://usich.gov/usich_resources/fact_sheets/opening_doors_homelessness_among_youth (last visited on Feb. 11, 2014).

¹¹ Wilder Research, *Homelessness in Minnesota*, <http://www.wilder.org/Wilder-Research/Research-Areas/Homelessness/Pages/default.aspx> (last visited on Feb. 11, 2014).

¹² A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors*, http://www.law.cornell.edu/wex/emancipation_of_minors (last visited Jan. 21, 2014).

¹³ A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide*, [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf) (last visited Jan. 21, 2014).

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is 16 years of age 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. Subsequent to July 1, 2012, the petition may also be filed by the minor him or herself if the minor is a certified homeless and unaccompanied minor over the age of 16. The petition must contain the following information:¹⁴

- 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 non-petitioning parent;¹⁵
- 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.¹⁶

¹⁴ Section 743.015, F.S.

¹⁵ 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.

¹⁶ Section 743.015, F.S.

Recent Legislative Action

The 2012 Legislature passed HB 1351,¹⁷ which provided a mechanism for a homeless minor to become a “certified homeless youth,” and, if the minor is 16 years of age or older, to petition the court for removal of the disabilities of nonage.

Other Related Statutes

The Legislature has granted to selected groups of youth the powers of adulthood. Some grants are limited, some are not. Some require a court order; others do not. See, for example:

- Married minors (no court order required; all powers of adults), s. 743.01, F.S.;
- Persons entitled to benefits under the “Home, Farm and Business Loans Act” (no court order required; limited powers), s. 743.04, F.S.;
- Foster children executing agreements for depository financial services (court order required; limited powers), s. 743.044, F.S.;
- Foster children executing contracts for a residential lease (court order required; limited powers), s. 743.045, F.S.;
- Foster children executing agreements for utility services (court order required; limited powers), s. 743.046, F.S.;
- Minors borrowing money for educational purposes (no court order required; limited powers), s. 743.05, F.S.;
- Minors donating blood (no court order required; limited powers), s. 743.06, F.S.
- Unwed pregnant minors providing consent for medical services relating to the pregnancy for themselves and unwed minor mother providing consent for children (no court order required; limited powers), s. 743.065, F.S.;
- Children adjudicated as adults for most medical services (no separate court order required; limited powers), s. 743.066, F.S.;
- Minors entering into contracts for artistic or creative services (court order required; limited powers), s. 743.08, F.S.; and,
- Minors entering into sports contracts (court order required; limited powers), s. 743.09, F.S.

Medicaid Policy

The Agency for Health Care Administration (AHCA) has established policies under the Florida Medicaid program that specify when a legal guardian must consent in order for services provided to a minor be eligible for reimbursement. Medicaid will reimburse for family planning services for a minor (under the age of 18) without parental consent if:

- Is married;
- Is a parent;
- Is pregnant; or,

¹⁷ Chapter 2012-186, Laws of Fla.

- Will suffer from probable health hazards if such services are not provided as determined by the practitioner, based on sexual activity or other medical reasons.¹⁸

Additional exceptions for parental consent are also provided for mental health or substance abuse services for a Medicaid recipient under the age of 18.¹⁹

III. Effect of Proposed Changes:

Section 1 authorizes certified homeless youth, if 16 years of age or older, to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397, for himself or herself without the necessity of a court order or the removal of the disability of nonage. The bill also authorizes the certified homeless youth to provide consent to the same procedures for his or her child, if the youth is unmarried, is the parent of the child, and has actual custody of the child. The bill states that these rights do not change the requirements of the Parental Notice of Abortion Act.²⁰

Section 2 provides an effective date of July 1, 2014.

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.

¹⁸ Agency for Health Care Administration, *Florida Medicaid Practitioner Services Coverage and Limitations Handbook- "Family Planning Services"* http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_12_12-12-01_Practitioner_Services_Handbook.pdf (last visited Feb. 11, 2014).

¹⁹ Agency for Health Care Administration, *2014 Agency Legislative Bill Analysis - SB 260* (January 2, 2014) p. 3, on filed with Committee on Senate Health Policy.

²⁰ Section 390.01114, F.S.

C. Government Sector Impact:

The AHCA reports that rules relating to Florida Medicaid Handbooks for the following services would need to be modified to incorporate the changes in SB 260:

- Birth Center and Licensed Midwife Services;
- County Health Department Services;
- Federally Qualified Health Center Services;
- Rural Health Clinic Services; and,
- Community Behavioral Health Services.

The AHCA indicates that the fiscal impact is negligible to incorporate handbook modifications. Medicaid currently provides a means for youths under the age of 18 to obtain family planning services under Medicaid.

VI. Technical Deficiencies:

A certified homeless youth who is 16 years of age or older may consent to these services for his or her child if, among other things, the youth has actual custody of the child. In this context it is unclear whether actual custody refers to physical custody, legal custody, or something else.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 743.067 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.