

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: CS/SB 260

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Unaccompanied Homeless Youth

DATE: March 5, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Favorable
2.	Lloyd	Stovall	HP	Favorable
3.	Davis	Cibula	JU	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 260 establishes the legal authority for an unaccompanied homeless youth to consent to certain medical procedures and care or consent to a forensic medical examination without a parent's permission.

To qualify as an unaccompanied homeless youth, the youth must be:

- At least 16 or 17 years old;
- Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to certain federal standards; or believed to qualify as an unaccompanied homeless youth, as defined in certain federal legislation, by an individual in one of five specified categories.

Once qualified as an unaccompanied homeless youth, the youth must be given a written certificate by the individual who makes the finding on his or her official letterhead stationery noting that status. The unaccompanied homeless youth may then present that certificate to the healthcare professional from whom he or she is seeking service as proof of the minor's authority to consent.

The youth may consent for himself or herself or his or her child if the youth is unmarried, the parent of the child, and has actual custody of the child.

The bill does not eliminate the requirement under the Parental Notice of Abortion Act that a parent be given advance notice of his or her child's intent to obtain an abortion.

II. Present Situation:

Legal Status of Minors

Under Florida law, minors, or persons younger than 18 years,¹ are not entitled to the full range of constitutional and statutory rights that adults enjoy. For example, minors cannot legally vote² or serve on a jury.³ Their ability to enter into marriage is restricted.⁴ The historical reasoning behind these diminished rights appears to be that a minor is not fully capable of making decisions in an informed and mature manner.⁵

This lack of legal capacity which flows from being a minor is referred to as the “disability of nonage.” The disability is removed in Florida for all persons who are 18 years or older except as provided in the Beverage Law.⁶

Removal of the Disability of Nonage or Emancipation

In 1946, the Florida Supreme Court concluded that the disability of nonage “may be removed or regulated by statute in any way that the Legislature may deem advisable.”⁷ Chapter 743 contains multiple provisions under which the disability of nonage may be removed and the minor is emancipated and independent of a parent. Some of those provisions permit the removal of the disability of nonage, with restrictions, for a youth in foster care for executing agreements for depository financial services,⁸ contracts for a residential lease,⁹ and agreements for utility services.¹⁰ Additional statutes permit the borrowing of money for higher educational purposes¹¹ and for the donation of blood without compensation.¹²

Several statutes also list circumstances under which minors may be treated for medical care without parental consent. Physicians may render emergency medical care or treatment when delay would endanger the life of the minor.¹³ An unwed pregnant minor may consent to services or care relating to her pregnancy, and an unwed minor mother may consent to care or services for her child.¹⁴ The disability of nonage for a minor adjudicated as an adult and in the custody of the

¹ Section 1.01(13), F.S.

² FLA. CONST. art. VI, s. 2.

³ Section 40.01, F.S.

⁴ Section 741.04, F.S.

⁵ See *L.S. v. State*, 120 So. 3d 55, 58-59 (Fla. 4th DCA 2013).

⁶ Section 743.07, F.S.

⁷ *In Re Brock*, 25 So. 2d 659, 660 (Fla. 1946).

⁸ Section 743.044, F.S.

⁹ Section 743.045, F.S.

¹⁰ Section 743.046, F.S.

¹¹ Section 743.05, F.S.

¹² Section 743.06, F.S.

¹³ Section 743.064, F.S.

¹⁴ Section 743.065, F.S.

Department of Corrections is removed for health care services, except for abortion or sterilization.¹⁵

A circuit court has jurisdiction to remove the disability of a minor who is 16 or 17 years old if a petition is filed by the minor's natural or legal guardian or a guardian ad litem. The petition must contain pertinent information about the minor and, if the court, after weighing all of the evidence, concludes that it is in the best interest of the minor, must issue an order removing the disabilities of nonage. That order has the effect of giving the minor adult status for purposes of all the criminal and civil laws of the state and authorizes the minor to exercise all of the rights and privileges of persons who are 18 years of age or older.¹⁶

Medical Services for Minors

In general terms, a minor cannot give consent to his or her own medical treatment because of the disability of nonage. Under common law, a doctor could be liable for battery if he or she touched a minor to render medical treatment without the parent's or representative's consent. This could also be deemed unprofessional conduct and the doctor's medical license could be suspended.¹⁷

The Homeless Population in Florida

According to the *2013 Report* prepared by the Florida Council on Homelessness and presented to Governor Scott, homelessness is a significant and growing concern in this state. The report noted that:

- Florida has the third largest homeless population in the nation and 8.7 percent of the nation's homeless people live in this state.
- Since 2007, Florida has registered the largest increase of homeless people.
- Approximately 7,107 more residents were homeless in 2012 than in 2007, an increase of 14.8 percent in the state while the national average decreased by 5.7 percent.
- Families with children is the fastest growing demographic of the homeless population.
- In the 2011-2012 school year, the state's school districts identified 63,685 students as homeless children and youth, which represents a 12 percent increase from the previous school year.
- Of the children and youth identified as homeless, 6,798 or 11 percent were classified as "unaccompanied youth," or not in the physical custody of a parent or guardian.¹⁸

Recent Legislative Action

In 2012, legislation was enacted which provided a mechanism for an unaccompanied youth to petition the court to have the disability of nonage removed.¹⁹ The statute authorizes an

¹⁵ Section 743.066, F.S.

¹⁶ Section 743.015, F.S.

¹⁷ Ann Bittinger, *Legal Hurdles to Leap to Get Medical Treatment for Children*, 80 FLA. B.J. 24, 27 (Jan. 2006).

¹⁸ Florida Council on Homelessness, *Council on Homelessness: 2013 Report*, www.myflfamilies.com/service-programs/homelessness. (June 30, 2013). Some of the data in the report was drawn from the *2012 Annual Homeless Assessment Report, Volume I*, issued by the U.S. Department of Housing and Urban Development.

¹⁹ Section 743.044, F.S.

unaccompanied youth, as defined in federal law, who is also a certified homeless youth, as defined in state statute, and who is 16 year or older, to petition the court for the removal of the disability of nonage in accordance with s. 743.015, F.S., as discussed above. The youth qualifies as a person who is not required to prepay costs and fees in judicial or administrative agency proceedings.

III. Effect of Proposed Changes:

This bill authorizes an unaccompanied homeless youth, under specified circumstances, to consent to certain health services or a forensic medical examination, even though the youth is a minor. The bill creates a new exception under which a minor may seek health care without the permission of a parent.

Qualifying as an “Unaccompanied Homeless Youth”

To qualify as an “unaccompanied homeless youth,” the youth must be at least 16 or 17 years old and:

- Be found by a school district’s liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act;²⁰ or
- Be believed to qualify as an unaccompanied homeless youth, as defined in the McKinney-Vento Homeless Assistance Act²¹ by the director of an emergency shelter program funded by the U.S. Department of Housing and Urban Development, or the director’s designee; the director of a runaway or homeless youth basic center or transitional living program funded by the U.S. Department of Health and Human Services, or the director’s designee; a clinical social worker licensed under ch. 491, which authorizes clinical, counseling, and psychotherapy services; or a circuit court.

Written Certificate

When the minor qualifies as an unaccompanied homeless youth, he or she shall be issued a written certificate documenting that status by the individual who makes the determination. The certificate must be issued on the finding individual’s letterhead stationery and must include the date of the finding, a citation to s. 743.067, F.S., which authorizes the process, and the signature of the person making the finding.

A health care provider may then accept the written certificate as proof of the minor’s status as an unaccompanied homeless youth and place a copy of the certificate in the youth’s medical file.

²⁰ 42 U.S.C. s. 11301 *et seq.* The McKinney-Vento Homeless Assistance Act of 1987 is a federal law that awards funds to homeless shelter programs. The act has evolved to incorporate protections for homeless children in public education.

²¹ 42 U.S.C. s. 11434a(2)(A) and (B) state that the term “homeless children and youths” means (generally) an individual who lacks a fixed, regular, and adequate nighttime residence and includes children and youth sharing the housing of other persons due to loss of housing and other reasons; who have a primary nighttime residence that is a public or private place not designed for sleeping; who are living in cars, parks, public spaces, abandoned buildings, or similar setting; and migratory children. The phrase “unaccompanied youth” includes a youth who is “not in the physical custody of a parent or guardian.” 42 U.S.C. s 11434a(6).

Consent for Health Care Services or a Forensic Medical Exam

The unaccompanied homeless youth may consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under ch. 394, the Florida Mental Health Act; ch. 395, Hospital Licensing and Regulation; or ch. 397, Substance Abuse Services. The youth may also consent to a forensic medical exam for the purpose of investigating any felony offense under ch. 784 (assault, battery, and culpable negligence), ch. 787 (kidnapping, false imprisonment, custody, and similar offenses), ch. 794 (sexual battery), ch. 800 (lewdness and indecent exposure), or ch. 827 (abuse of children).

The unaccompanied homeless youth may consent to care for:

- Himself or herself; or
- His or her child, if the unaccompanied youth is unmarried, is the parent of the child, and has actual custody of the child.

This bill does not eliminate the requirement under the Parental Notice of Abortion Act that a parent be given advance notice of his or her child's intent to obtain an abortion

The bill takes effect 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.

C. Government Sector Impact:

The Agency for Health Care Administration reports that rules relating to Florida Medicaid Handbooks for the following services will need to be modified to incorporate the changes in CS/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 modify the handbook.

VI. Technical Deficiencies:

An unaccompanied 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 Substantial Changes:**

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

CS/SB 260 by Judiciary on March 4, 2014

CS/SB 260 differs from SB 260 in the following manner:

- The committee substitute replaces the term “unaccompanied youths” with the term “unaccompanied homeless youths” and deletes the statutory reference to a “certified homeless youth.”
- To qualify as an unaccompanied homeless youth, a specified individual in one of five categories must either find or believe that the youth is an unaccompanied homeless youth according to certain federal guidelines.
- A written certificate must be issued to the youth stating that he or she has qualified as an unaccompanied homeless youth and the certificate must be on official letterhead stationery, include the date the finding is made, a reference to the statute involved, and contain the signature of the individual making the finding.
- The youth may also consent to forensic medical examinations for the purpose of investigating certain felonies.

- The health care provider may accept the written certificate as proof of the minor's status and may keep a copy of the certificate in the youth's medical file.

B. Amendments:

None.

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