

**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 Committee Children, Families, and Elder Affairs

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BILL: SB 1102

INTRODUCER: Senator Brandes

SUBJECT: Temporary Care of a Child

DATE: February 3, 2016

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Preston	Hendon	CF	<b>Pre-meeting</b>

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## I. Summary:

SB 1102 creates a process for providing a placement option for children to receive care pursuant to a power of attorney when a fit parent or legal guardian is unable to care for a child due to a temporary hardship.

The bill amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child placing agencies, to provide that an agent caring for children pursuant to a power of attorney under the newly created section of chapter 709, F.S., is not required to meet foster care licensing requirements and is not a family foster home.

The bill creates s. 709.2209, F.S., relating to power of attorney for temporary care of a child, to allow a parent or legal guardian to delegate the care of a child through a power of attorney due to a temporary hardship.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

### Safe Families Model

Sometimes, parents encounter a hardship and are unable to adequately deal with both that situation and parenting at the same time due to the lack of family or other support system.<sup>1</sup> This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect. Furthermore, homelessness, unemployment, domestic violence, illness, mental health issues, and substance addiction can all lead to situations in which

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<sup>1</sup> Safe Families for Children, *How Safe Families Works*, available at <http://safe-families.org/about/how-safe-families-works/> (last visited January 30, 2016).

a parent must choose between addressing the immediate situation and adequate care of his or her child.<sup>2</sup>

In 2002, the Safe Families for Children (SFFC) program created a model in which parents in crisis without family or other support had a place to go for help without entering the child welfare system.<sup>3</sup> The model includes placing a child with an unpaid volunteer host family, allowing a parent the time and space to deal with whatever issues brought them to SFFC. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.<sup>4</sup>

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.<sup>5</sup> SFFC reports that the hallmarks of the program are that parents retain full legal custody of children, volunteer families are extensively screened and supported, the average length of stay is 6 weeks (ranging from 2 days to 1 year), there is a close working relationship between the Safe Families organization, local churches, and the referring organization, and that the model is committed to reuniting the family as soon as possible.<sup>6</sup>

Programs based on the SFFC model are active throughout the country (54 active programs in 25 states),<sup>7</sup> with Oregon, Wisconsin, and Oklahoma codifying similar models in statute.<sup>8</sup> Florida currently has 4 areas where SFFC models operate<sup>9</sup> and these organizations currently perform background screening through the Volunteer and Employee Criminal History System (VECHS) program, offered by the Florida Department of Law Enforcement.

### **Powers of Attorney**

A power of attorney is a document that grants authority to an agent to act in the place of a principal. The person who creates a power of attorney is the principal, and the person to whom the authority to act is delegated is an agent of the principal. The power of attorney benefits and binds the principal to an agent's actions as if the principal had done them himself or herself.<sup>10</sup>

While Florida law is currently silent as to whether a power of attorney can be created and used for the care of a minor child, powers of attorney for a minor child are commonly used by parents during a temporary absence. Parents unavailable due to things like deployment, education,

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<sup>2</sup> Safe Families for Children, *Frequently Asked Questions*, available at <http://safe-families.org/about/faq/> (last visited January 30, 2016). Also see Safe Families for Children Movement Manual (on file with the Senate Committee on Children, Families and Elder Affairs).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Safe Families for Children, *Who we help*, available at: [http://www.safe-families.org/whatis\\_whoehelp.aspx](http://www.safe-families.org/whatis_whoehelp.aspx) (last visited January 31, 2016).

<sup>6</sup> *Id.*

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

<sup>8</sup> The Foundation for Government Accountability, *Safe Families in the States – 2016*, available at: <http://thefga.org/solutions/fostercare-reform/safe-families/> (last visited December 21, 2015).

<sup>9</sup> These areas are SFFC Southwest Florida in Naples, Bethany Christian Services of the Gulf Coast in Pensacola, Bethany Christian Services of Orlando, and Bethany Christian Services of Tampa Bay.

<sup>10</sup> Chapter 709, F.S.

vacation, illness or employment can use powers of attorney to provide for their children's care. Forms are readily available online.

### **Background Screening – Volunteer and Employee Criminal History System**

The Volunteer and Employee Criminal History System (VECHS) program was implemented in 1999 and is authorized by the National Child Protection Act (NCPA) and s. 943.0542, F.S. The VECHS program provides a means to background screen the employees and volunteers of organizations who work with vulnerable individuals but who are not required by law to be background screened. Examples of organizations that may use VECHS are churches and volunteer organizations that serve children, the elderly or persons with disabilities but are not licensed or contracted by the state.

Through the VECHS program, FDLE and the FBI provide state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals or state agencies) in Florida. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or persons with disabilities.<sup>11</sup>

Unlike screenings under the Care Provider Background Screening Clearinghouse in chapter 435, F.S., screenings through the VECHS program are not actively monitored. The screenings provide a snapshot in time of that particular employee or volunteer's criminal record at the time the screen is completed. Any arrest or judicial action after that screening is completed is unknown. Additionally, the organization receiving the screening results makes its own determination of whether to employ the individual or use the volunteer based on its own standards.

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

**Section 1** amends s. 39.302, F. S., relating institutional child abuse, abandonment, or neglect, to authorize DCF, during a child protective investigation of institutional abuse, abandonment, or neglect that does not result in an out-of-home placement, to provide information to a parent regarding respite care services, voluntary temporary placement, or other support services for families in crisis

**Section 2** amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child placing agencies, to provide that an agent caring for children pursuant to a power of attorney under chapter 709, F.S., is not required to meet foster care licensing requirements and is not a family foster home.

**Section 3** creates s. 709.2209, F.S., relating to power of attorney for temporary care of a child, to provide an alternative to the child welfare system for children to receive care when a fit parent or legal guardian is unable to care for a child due to a temporary hardship. Specifically, the bill:

- Creates definitions for the terms: “agent,” “department,” “qualified nonprofit organization,” and “serving parent.”

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<sup>11</sup> Florida Department of Law Enforcement, Volunteer and Employee Background checks, available at: <http://www.fdle.state.fl.us/Content/Background-Checks/Menu/VECHS.aspx> (last visited November 2, 2015)

- Authorizes a parent or legal guardian of a child to delegate to an agent, for the temporary care of a child, any of the powers regarding the care and custody of a child, for a period not to exceed one year unless the parent is on active duty. This delegation does not include the power to consent to marriage or adoption of the child, the performance or inducements of an abortion, or the termination of parental rights of the child.
- Clarifies that delegating powers to an agent does not deprive the parent or legal guardian of parental rights, obligations, or authority regarding custody, visitation, or support and does not limit the ability of a parent or legal guardian to appoint a guardian for a child under chapter 744, F.S.
- The bill provides that the execution of a power of attorney by a parent or legal guardian may not be construed as abandonment, abuse, or neglect as defined in s. 39.01, F.S., unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after one year.
- Authorizes the parent or legal custodian to revoke or withdraw the power of attorney at any time.
- Clarifies that an execution of a power of attorney does not constitute a placement of the child in foster care.
- Authorizes a qualified nonprofit organization to assist a parent or legal guardian in the delegation of power to the organization and provides that such organizations are not required to be licensed with an exception.
- Requires a qualified nonprofit organization to background screen all employees or volunteers that may have unsupervised contact with a child placed with an agent pursuant to s. 943.0542, F.S.
- Specifies the requirements of the power of attorney form to include the identity of the child and parents or legal guardians delegating authority, the identity of the attorney in fact to whom the powers are delegated, a statement of delegated and non-delegated powers, effective and expiration dates, time limits, signatures, and authorization of a notary public.
- Requires notarization of the power of attorney document, and that the parties to the power of attorney provide the notary public with a notarized letter from the qualified nonprofit organization that the required background checks were completed and favorable.

**Section 4** provides an effective date of July 1, 2016.

#### **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:**

The proposed legislation requires a qualified nonprofit organization to complete a criminal history record check on certain individuals at \$38.75 per individual. Also, additional fees may be charged by each live scan provider for their services. It requires the retention of fingerprints, which for each individual is a yearly fee of \$6.00. Lastly, the proposed legislation requires utilization of a notary public that will be an additional cost.<sup>12</sup>

The proposed legislation provides for temporary care of the child delegated to an agent by means of a power of attorney that would be an additional cost to the parent or legal guardian.<sup>13</sup>

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

- The bill amends s. 39.302, F.S., to authorize the department to provide information to the parent, legal guardian, or legal custodian about community service programs that provide respite care, voluntary guardianship, or other support services for families in crisis, but only when an investigation of institutional abuse, neglect, or abandonment does not result in an out-of-home placement. “Institutional child abuse or neglect” is defined in s. 39.01(32), F.S., as situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child’s care. The requirement is inappropriate for this section of statute.
- The proposed bill does not appear to require the assistance of a qualified nonprofit organization to execute a power of attorney pursuant to s.709.2209(3)(a), F.S. It is unclear how a parent, legal guardian or legal custodian of a child would complete the required child abuse and criminal background checks without the assistance of a qualified nonprofit organization.
- The bill requires the qualified organization to notify the department under certain specified circumstances. It is unclear how these notifications are to occur.
- The bill requires criminal history record checks pursuant to s. 943.0542 on employees and volunteers of the qualified nonprofit organization, including the agent and all members of the

<sup>12</sup> Florida Department of Children and Families, *2016 Agency Legislative Bill Analysis*, SB 1102, December 16, 2015. On file with the Senate Committee on Children, Families and Elder Affairs.

<sup>13</sup> *Id.*

agent's household who are 12 years of age or older. That criminal records check system is available only for employees and volunteers, and thus, cannot be used to determine the history of the agent or household members. Also, s. 943.0542, F.S., lacks any standard for a "favorable" or "unfavorable" screening, such as Level 2 Screening under Chapter 435. Since the bill also does not refer to any disqualifying criteria, there is no guidance to the qualified nonprofit organization as to what constitutes "a favorable screening." The determination of a "passing" or "failing" eligibility is determined solely in the judgment of the qualified nonprofit organization.

- The bill does not limit the number of times that a parent or legal guardian of a child can execute a power of attorney providing for the temporary care of a child.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends ss. 39.302 and 409.175 of the Florida Statutes.  
This bill creates s. 709.2209 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.