

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 259 Powers of Attorney

**SPONSOR(S):** Civil Justice Subcommittee; Children, Families & Seniors Subcommittee; Rodrigues, R. and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	7 Y, 4 N, As CS	Tuszynski	Brazzell
2) Civil Justice Subcommittee	11 Y, 2 N, As CS	Robinson	Bond
3) Health Care Appropriations Subcommittee	9 Y, 3 N	Pridgeon	Pridgeon
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

Families are often confronted with circumstances, such as drug abuse, illness, unemployment, or homelessness, which, if not appropriately addressed, can lead to abuse, neglect, or abandonment of their children. Several programs in Florida are working to support such families in crisis. The programs assist parents with finding safe temporary placements for their children to ensure the children do not enter the child welfare system while parents work to reestablish a safe and stable living environment.

CS/CS/HB 259 creates s. 709.2209, F.S., entitled the "Temporary Care of Minor Children by Safe Families Act," as a means of preventing the entry of a child at risk of abuse or neglect into the child welfare system.

The bill authorizes the parent of a minor child, by executing a power of attorney, to delegate certain powers regarding the care and custody of the child to volunteer families screened and trained by certain nonprofit organizations. The delegation of care and custody does not change parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child.

The bill:

- Prohibits a parent or agent from receiving compensation related to the delegation of care and custody.
- Limits the delegation of care and custody to a period of 6 months.
- Requires both parents to consent to the delegation of care and custody, or, the provision of notice to a nonconsenting parent.
- Specifies requirements for the execution, form, and revocation of the power of attorney.
- Requires nonprofit organizations that assist with the temporary placement of the child to provide training to the volunteer families, conduct background screenings, provide support services to the families, maintain certain records, and notify the Department of Children and Families (DCF) if a family seeking services is the subject of an open child protective investigation.
- Requires DCF to provide information regarding temporary care programs to parents during a child protective investigation if appropriate.

The bill also exempts the nonprofit organization assisting with the placement, and the volunteer family serving as an agent under the power of attorney, from licensing and regulation by DCF. However, the bill does not prevent DCF or law enforcement from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.

The bill has no fiscal impact on local government. The bill has an indeterminate fiscal impact on state expenditures.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0259e.HCAS

DATE: 1/28/2016

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **BACKGROUND**

##### **Child Welfare System**

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be ameliorated, the child welfare system finds safe out-of-home placements for children, such as relative and non-relative caregivers, foster families, or adoptive families.<sup>1</sup> As of December 31, 2015, there were 22,668 children under the supervision of the Department of Children and Families (DCF) in out-of-home care.<sup>2</sup>

##### *Prevention*

DCF's Child Welfare Program works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.<sup>3</sup> DCF's practice model is based on the safety of the child within their home, utilizing in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in their home environment.

However, when it is determined that a child cannot safely remain in their own home, DCF works, through the involvement of the courts, toward guaranteeing the safety of the child out of home while providing services to reunify the child and family as soon as it is no longer unsafe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her in the family home, the child welfare system works to find a permanent home for that child through the adoption process.

##### *Types of placements and licensure*

For children who cannot safely remain in their own homes, the child welfare system finds an appropriate out-of-home placement. The placements range from temporary placement with a family member to a permanent adoptive placement with a family previously unknown to the child.

The following placements do not require licensure by DCF:

- Relative caregivers;
- Non-relative caregivers;
- An adoptive home which has been approved by DCF or by a licensed child-placing agency for children placed for adoption; and
- Persons or neighbors who care for children in their homes for less than 90 days.<sup>4</sup>

Placements that do require licensure and regulation include family foster homes, residential child-caring agencies, and child-placing agencies.<sup>5</sup>

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<sup>1</sup> See s. 39.001(1), F.S.

<sup>2</sup> "Out-of-home care" includes both children in board-paid foster care and those receiving protective supervision in the home of a relative or approved non-relative after a removal. Children under protective supervision in the home of a relative or approved non-relative after removal are considered "out-of-home," as they are entitled to the same safeguards as board-paid foster children. See Florida Department of Children and Families, *Performance Dashboard Application: Number of Children in out-of-home care*, <http://dcfdashboard.dcf.state.fl.us/index.cfm?page=details&id=M0297> (last visited January 19, 2016).

<sup>3</sup> S. 39.001(8), F.S.

<sup>4</sup> S. 409.175, F.S.

<sup>5</sup> S. 409.175, F.S.

Section 409.175(2)(d), F.S., defines a “child-placing agency” as any person, corporation or agency, public or private that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.

Section 409.175(2)(e), F.S., defines a “family foster home” as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include a person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption.

Licensure involves meeting rules and regulations pertaining to:

- The operation, conduct, and maintenance of these homes;
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served;
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served;
- The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of foster homes;
- The maximum number of children in the home; and
- The good moral character based upon screening, education, training, and experience requirements for personnel.<sup>6</sup>

### *Background Screening*

DCF is required to determine the good moral character of personnel of the child welfare system,<sup>7</sup> through level 2 background screenings, as provided for in ch. 435, F.S.<sup>8</sup> “Personnel” includes all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency.<sup>9</sup> Family members and persons between the ages of 12 and 18 residing with the owner or operator of a family foster home or agency must also undergo a delinquency record check, but such record check does not require fingerprinting.<sup>10</sup>

A level 2 background screening involves a state and national fingerprint-based criminal record check through the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI).<sup>11</sup> Level 2 background screenings require that no person has been arrested for and awaits final disposition, has been found guilty of, or entered a plea of nolo contendere to crimes related to sexual misconduct, child or adult abuse, murder, manslaughter, battery, assault, kidnapping, weapons, arson, burglary, theft, robbery, and exploitation.<sup>12</sup> The cost for a Level 2 background screening ranges from \$38 to \$75 depending upon the selected vendor.<sup>13</sup> DCF processes the background screenings through the Care Provider Background Screening Clearinghouse for individuals working in the child welfare system who are required by law to be background screened.

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<sup>6</sup> S. 409.175, F.S.

<sup>7</sup> S. 409.175(5)(a), F.S.

<sup>8</sup> S. 409.175(2)(k), F.S.

<sup>9</sup> S. 409.175(2)(i), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> S. 435.04, F.S.

<sup>12</sup> S. 435.04(2), F.S.

<sup>13</sup> Department of Children and Families, *Livescan Vendor Locations*, available at <http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp> (last visited November 5, 2015).

DCF may grant exemptions from disqualification of employment in certain circumstances,<sup>14</sup> such as felonies that are older than 3 years and offenses that were felonies when committed, but that are now classified as misdemeanors.<sup>15</sup>

### *Care Provider Background Screening Clearinghouse*

The Care Provider Background Screening Clearinghouse<sup>16</sup> (clearinghouse) is a statewide system that enables certain specified state agencies, such as DCF and the Agency for Persons with Disabilities, to submit requests for level 2 background screenings for certain statutorily-defined purposes, such as licensure or license-related employment. The level 2 screening results are provided to the requesting agency, not the individual or employer organization, and are also retained in the clearinghouse.

There are several benefits to utilizing the clearinghouse including significant cost savings due to use of existing screenings, access to a screened individual's Florida public criminal record, and immediate notification of an employee or licensee arrest in Florida due to the active monitoring of the record.

### **Alternatives to Child Welfare System**

Sometimes, parents are in crisis and are unable to adequately deal with both the crisis and parenting at the same time due to the lack of family or supportive relationships to help them through the crisis while caring for their child.<sup>17</sup> This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect.<sup>18</sup> Furthermore, homelessness, unemployment, domestic violence, illness, mental health issues, and substance addiction can all lead to situations in which a parent must choose between addressing the immediate crisis and adequate care of his or her child.<sup>19</sup>

### *Safe Families for Children (SFFC)*

In 2002, the Safe Families for Children (SFFC) program originated in Chicago as a ministry of the LYDIA Home Association, a Christian social service organization. The program created a model in which parents in crisis without family or support relationships had a place to go for help without entering the child welfare system and losing custody of their children.<sup>20</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, such as hospitalization, or a longer-term crisis, such as drug treatment or incarceration. 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>21</sup>

These private, voluntary placements require that the parent sign an agreement reciting the terms and conditions of the arrangement, including what the parent will need to do to be reunified with their children and how the program will respond if the parent is unable to complete performance.<sup>22</sup> The parent thereafter delegates care and custody of the child to the host volunteer family through a power of attorney.

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.<sup>23</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

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<sup>14</sup> S. 409.175(5)(a)6., F.S.

<sup>15</sup> S. 435.07, F.S.

<sup>16</sup> S. 435.12, F.S.

<sup>17</sup> Murray, K, et al., Safe Families for Children's Program Model and Logic Model Description Report, University of Maryland School of Social Work, 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> The Florida Senate, Committee on Children, Families, and Elder Affairs, *Issue Brief 2010-304: "Temporary Parents" as an Alternative to the Foster Care System (September 2009)*, at 2, available at [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-304cf.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-304cf.pdf) (last visited Jan. 8, 2016).

<sup>23</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 November 14, 2015).

average length of stay is 6 weeks (but may range 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>24</sup> Volunteers and families served often continue a relationship after reunification has occurred – the program does not consider this “recidivism”, as re-entry into the child welfare system is classified, but a normal and natural “re-use” of parental support and friendship.<sup>25</sup>

Programs based on the SFFC model are active throughout the country (54 active programs in 25 states),<sup>26</sup> with Oregon, Wisconsin, and Oklahoma codifying similar models in statute.<sup>27</sup> Florida currently has 4 areas where SFFC models operate: 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>28</sup>

### *Background Screenings for SFFC Volunteers*

Florida SFFC organizations currently perform background screening through the Volunteer and Employee Criminal History System (VECHS) program, offered by the Florida Department of Law Enforcement.<sup>29</sup>

VECHS 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>30</sup>

Unlike the clearinghouse, 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.

### *Liability and Insurance*

Should a child become ill or injured while in the care of a SFFC volunteer host family, the host family may have limited personal liability pursuant to the federal Volunteer Protection Act<sup>31</sup> (VPA) and Florida Volunteer Protection Act<sup>32</sup> (FVPA). The VPA provides that a volunteer of a nonprofit organization may not be liable for harm caused by his or her act or omission if:

- The volunteer was acting within the scope of his or her responsibilities for the organization; and

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<sup>24</sup> *Id.*

<sup>25</sup> The Florida Senate, Committee on Children, Families, and Elder Affairs, *Issue Brief 2010-304: “Temporary Parents” as an Alternative to the Foster Care System (September 2009)*, at 2, available at [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-304cf.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-304cf.pdf) (last visited January 8, 2016).

<sup>26</sup> *Supra* note 23.

<sup>27</sup> The Foundation for Government Accountability, *Safe Families in the States – 2016*, available at: <http://thefga.org/solutions/foster-care-reform/safe-families/> (last visited November 13, 2015).

<sup>28</sup> Safe Families for Children, *Location/Contact Us*, available at: [http://www.safe-families.org/whatis\\_locations.aspx](http://www.safe-families.org/whatis_locations.aspx) (last visited November 14, 2015).

<sup>29</sup> Email from Andrew Brown, Senior Fellow, Foundation for Government Accountability, RE: HB 259, (11/16/15).

<sup>30</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).

<sup>31</sup> Volunteer Protection Act of 1997, 42 U.S.C. § 14501 *et seq*

<sup>32</sup> S. 768.1355, F.S.

- The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.<sup>33</sup>

The FVPA also provides immunity from civil liability if the volunteer was acting with good faith within the scope of his or her duties, as an ordinary reasonable person would have acted under the same or similar circumstances, and the harm was not caused by wanton or willful misconduct.<sup>34</sup> Neither the VPA or the FVPA provide immunity to the nonprofit organization itself.

The Chicago SFFC program reported that it purchases liability insurance to cover the program volunteers and suggests that their volunteer families purchase an umbrella policy to provide additional protection.<sup>35</sup>

### **Powers of Attorney**

Powers of attorney are governed by Part II of ch. 709, F.S., the Florida Power of Attorney Act (FPAA). A power of attorney is a document that grants authority to an agent to act in the place of a principal.<sup>36</sup> The scope of the authority granted to an agent depends upon the specific language of the power of attorney. An agent may only exercise authority specifically granted in a power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority.<sup>37</sup> A power of attorney must be signed by the principal, by two subscribing witnesses, and be acknowledged by the principal before a notary public.<sup>38</sup> The power of attorney benefits and binds the principal to an agent's actions as if the principal had done them himself or herself.

Under federal law, all enlisted military members who have dependents and are either single or part of a dual-military couple must have a Family Care Plan,<sup>39</sup> which includes a military power of attorney for the care of the member's dependent children.<sup>40</sup> Such military powers of attorney are valid and must be accepted in Florida under the FPAA if executed in accordance with federal law.<sup>41</sup> However, current law is silent as to whether a power of attorney can be created and used for the delegation of the care and custody of a minor child under the FPAA.<sup>42</sup>

### **EFFECT OF PROPOSED CHANGES**

CS/CS/HB 259 creates s. 709.2209, F.S., entitled the "Temporary Care of Minor Children by Safe Families Act," which provides a framework for the operation of programs based upon the Safe Families for Children model.

#### *Safe Families Programs*

The bill establishes a number of requirements for qualified nonprofit organizations operating based on the SFFC model. A "qualified nonprofit organization" is defined as a charity or religious institution organized under s. 501(c)(3) of the Internal Revenue Code that, without compensation, assists parents

<sup>33</sup> 42 U.S.C. § 14503.

<sup>34</sup> S. 768.1355(1), F.S.

<sup>35</sup> *Supra* note 25, at 3.

<sup>36</sup> Chapter 709, F.S.

<sup>37</sup> S. 709.2201(1), F.S.

<sup>38</sup> S. 709.2105(2), F.S.

<sup>39</sup> A "family care plan" is the means by which a soldier plans in advance for the care of his family members when the soldier is deployed, TDY, or otherwise not available because of military duty. The plan includes DA Form 5305-R, Family Care Plan; DA Form 5841-R, Power of Attorney; DA Form 5840-R, Certificate of Acceptance as Guardian or Escort; DD Form 1172, Application for Uniformed Services Identification Card DEERS Enrollment; DD Form 2558, Authorization to start, stop, or change allotment, for Active Duty or Retired Personnel; and DA Form 5304-R, Family Care Plan Counseling Checklist.

<sup>40</sup> Department of Defense, Instruction No. 1342.19 (May 7, 2010) available at [www.dtic.mil/whs/directives/corres/pdf/134219p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/134219p.pdf) (last visited January 8, 2016).

<sup>41</sup> A military power of attorney is valid if it is executed in accordance with 10 U.S.C. s. 1044b, as amended. A deployment-contingent power of attorney may be signed in advance, is effective upon the deployment of the principal, and shall be afforded full force and effect by the courts of this state. S. 709.2106(4).

<sup>42</sup> However, s. 743.0645, F.S., recognizes the validity of a limited power of attorney to provide consent to medical care or treatment of a minor.

with the provision of voluntary temporary care of children pursuant to a power of attorney. The nonprofit organization must:

- Require disclosure of any open DCF investigation or involvement by a parent seeking to utilize its assistance with the temporary placement of child pursuant to a power of attorney. If the organization learns of undisclosed DCF involvement, the bill requires the organization to inform DCF.
- Ensure background screenings of employees and volunteers of the organization who will have unsupervised contact with a child placed by the organization with a volunteer family, including all members of the volunteer family household who are 12 years of age or older. The bill requires DCF to conduct such background screenings pursuant to its own screening procedures for out-of-home placements.<sup>43</sup> The department must inform the organization if such persons pass the background screening.
- Identify appropriate and safe placements for children based on the results of the background screenings and home visits.
- Train volunteer families that will serve as an agent under a power of attorney delegating the care and custody of a minor child.
- Provide ongoing services and resources to support the minor child, parents, and volunteer families.
- Maintain a record of each child placement facilitated by the organization for at least 5 years following the expiration of the power of attorney.

The bill excludes a qualified nonprofit organization from the definition of a “child-placing agency”<sup>44</sup> under ch. 409, F.S., thereby exempting the organization from DCF licensure requirements unless the qualified nonprofit organization pursues child-placing activities. Further, the bill provides that facilitating the temporary care of a child by a volunteer family through a power of attorney does not constitute placing the child in foster care and the agent is not required to be licensed as a family foster home.

#### *Power of Attorney for Temporary Care of Minor Child*

The bill authorizes a parent of a minor child to delegate the care and custody of the child to an agent through a power of attorney as required by many SFFC programs. An “agent” is defined as a natural person that is at least 18 years old who has successfully passed the training and background screening requirements. The bill prohibits the parent and the agent from receiving any compensation related to the delegation of care and custody.

The delegation of care and custody pursuant to the power of attorney may not:

- Delegate the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights of the child.
- Exceed a period of 6 months. However, the bill does not limit the number of times a power of attorney may be re-executed with the same or a different agent.

The power of attorney must:

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<sup>43</sup> S. 39.0138(1), F.S. provides in pertinent part: “the department shall conduct a records check through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other visitors to the home. An out-of-state criminal history records check must be initiated for any person 18 years of age or older who resided in another state if that state allows the release of such records. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.”

<sup>44</sup> “Child-placing agency” means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home. S. 409.175(2)(d), F.S.



- Be signed by both parents, if both parents are living and have shared custody of the child. If the parents do not have shared custody, the parent with sole custody may execute the power of authority but must notify the noncustodial parent at his or her last known address within 5 days. Notification is not required to a noncustodial parent whose parental rights have been terminated.
- Be signed by a representative of the nonprofit organization attesting that the agent has successfully completed the required training and background screening.
- Be executed in accordance with the Florida Power of Attorney Act.

The bill details the requirements of the power of attorney form to include the identity of the child and parent(s) delegating authority, the identity of the agent to whom the powers are delegated, a statement of delegated and non-delegated powers, and the expiration date.

Any parent of the child with custodial rights may revoke the power of attorney prior to its expiration and the agent must immediately return the child to the custody of the revoking parent.

The power of attorney is governed in all other respects by the requirements of the Florida Power of Attorney Act.

#### *Effect of Power of Attorney upon Parental Rights*

The bill further specifies that the execution of a power of attorney does not deprive a parent of parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child. Such rights include the ability to appoint a guardian under ch. 744, F.S. This provision may affect the ability of courts to modify custody and child support obligations established under ch. 61, F.S.

#### *Child Welfare Investigations*

The bill requires DCF, during a child protective investigation 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, such as SFFC programs, if deemed appropriate by a child protective investigator.

The execution of a power of attorney authorized by the bill after using such community services may not be construed as abandonment, abuse, or neglect as defined in s. 39.01, F.S. without other evidence or except as otherwise provided by law. However, the bill does not prevent DCF or law enforcement from investigating allegations of abuse, abandonment, neglect, unlawful desertion of a child, or human trafficking.

#### *Exclusions*

The bill does not apply to the delegation of the care and custody of a minor child pursuant to a military power of attorney executed under federal law.

### B. SECTION DIRECTORY:

- Section 1:** Amends s. 409.175, F.S., relating to licensure of family foster homes.
- Section 2:** Creates a new section of law, s. 709.2209, F.S. entitled "Power of attorney for temporary care of minor child."
- Section 3:** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:



None.

2. Expenditures:

The bill requires Level 2 background screening for employees and volunteers of a nonprofit agency that may have unsupervised contact with the children, the agent and any household members 12 and older. The number of individuals required to be screened by DCF is indeterminate, but most likely not significant. DCF indicates that additional costs may be incurred if the department must consider exemptions for disqualifying offenses, including costs related to the provision of an administrative hearing and department legal representation, however this impact is indeterminate, but most likely not significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires notarization of a power of attorney for the temporary care of a minor child. The cost of notarial services varies among notaries but is expected to be insignificant. Additionally, a custodial parent that is required to provide notice to a noncustodial parent of the delegation of care and custody may incur approximately \$6.74 in postage costs. The bill 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.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.<sup>45</sup> The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.<sup>46</sup>

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<sup>45</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

<sup>46</sup> *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).

These constitutional protections extend to the parenting interests of custodial and non-custodial parents alike.<sup>47</sup> To the extent that the bill authorizes delegation of the care and custody of a minor child to an agent through a power of attorney without the consent of both parents, such delegation may be unenforceable if challenged by a nonconsenting parent.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill does not require background screenings to be held in the Care Provider Background Screening Clearinghouse under s. 435.12, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 11, 2015, the Children, Families and Seniors Subcommittee adopted a strike-all amendment. The amendment made the following changes:

- Restructured the bill's sections for clarity and readability.
- Narrowed the definition of "agent" for purposes of this subsection to include only natural persons who do not receive payment and prohibits successor agents.
- Expands the definition of qualified nonprofit organization to include duties to train, identify appropriate and safe placements based on background screening and home visits, as well as provide services.
- Requires employees or volunteers who may have unsupervised contact with a child placed with an agent, including the agent and all members of the agent's household who are 12 years or older, to be background screened pursuant to s. 943.0542.
- Removes the requirement of sharing background screenings with a notary public, instead requiring a notarized letter signed by a representative of the qualified nonprofit organization attesting to the existence of favorable background screenings.
- Removes the requirement for DCF to share confidential information with a qualified nonprofit organization and instead requires the parent to inform the qualified nonprofit organization of any DCF involvement with the family.
- Clarifies that the section shall not be interpreted to prevent the department or law enforcement from investigating allegations of abuse, abandonment, neglect, or unlawful desertion of a child.
- Exempts the agents from foster care licensure requirements under s.409.175, F.S.
- Requires DCF to provide information to a parent regarding respite care services, voluntary temporary placement, or other support services for families in crisis if deemed appropriate by a child protective investigator.

On January 13, 2016, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Providing a short title for the bill, the "Temporary Care of Minor Children by Safe Families Act."
- Limiting the ability to delegate care and custody of a minor child by power of attorney to parents that use the services of a qualified nonprofit organization.
- Revising the definition of the term "agent" to specify that an agent under a power of attorney must be a natural person 18 years of age or older who has been trained and screened by a qualified nonprofit corporation.
- Prohibiting a parent, in addition to a nonprofit organization or agent, from receiving compensation related to delegating care and custody of the child.
- Shortening the allowable period of the power of attorney from one year to six months.

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<sup>47</sup> See *Stanley v. Illinois*, 405 U.S. 645(1972); *Caban v. Mohammed*, 441 U.S. 380 (1979).

- Requiring that both parents consent to the delegation of care and custody of the minor child, or that the custodial parent provide notice to a noncustodial parent under certain circumstances.
- Revising requirements for the execution, form, and revocation of the power of attorney.
- Requiring a nonprofit organization to maintain records related to child placements for at least 5 years.
- Providing that required background screening be conducted by DCF utilizing DCF screening standards for out-of-home placements rather than by a nonprofit organization through VECHS.
- Authorizing modification of custodial rights or support obligations of a parent delegating care and custody if determined by the court to be in the best interests of the child.
- Excluding military power of attorneys from the provisions of the bill and removing specific references and exceptions for “serving parents”.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.