

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 Children, Families, and Elder Affairs

BILL: SB 200

INTRODUCER: Senator Passidomo

SUBJECT: Temporary Respite Care of a Child

DATE: March 31, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Preston | Hendon | CF | Pre-meeting |
| 2. | | | JU | |
| 3. | | | RC | |

I. Summary:

SB 200 authorizes qualified nonprofit organizations to establish programs to assist parents and legal guardians in providing respite care for a child in times of family hardship. Only children who are not part of the child welfare system are eligible for care under this program.

The bill defines the terms “qualified association,” “qualified nonprofit organization,” and “volunteer respite family,” provides a process for registering these qualified organizations in lieu of licensure, and requires level 2 background screening for employees of the organizations and family members who provide care. The bill requires the collection and retention of certain specified information.

The bill requires a contract for care of the child to be entered into between the parent or legal guardian and the qualified association for the provision of care for the child and enumerates requirements to be included in the contract.

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

The bill has an effective date of July 1, 2017.

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.¹ This

¹ Safe Families for Children, How Safe Families Works, available at: <http://safe-families.org/about/how-safe-families-works/> (last visited March 29, 2017).

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

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.³ 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.⁴

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.⁵ 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.⁶

Programs based on the SFFC model are active in 70 cities in the U.S., Canada, and the U.K.⁷ SFFC models operate in three Florida areas: Naples, Orlando, and Tampa Bay.⁸

Licensure

DCF licenses most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.⁹ The following placements do not require licensure:

- Relative caregivers;
- Non-relative caregivers;
- An adoptive home which has been approved by the department 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.¹⁰
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- Licensure involves meeting rules and regulations pertaining to:

² Safe Families for Children, Frequently Asked Questions, *available at:* <http://safe-families.org/about/faq/> (last visited March 29, 2017).

³ *Id.*

⁴ *Id.*

⁵ Safe Families for Children, Who we help, *available at:* http://www.safe-families.org/whatis_whoehelp.aspx. (last visited March 29, 2017).

⁶ *Id.*

⁷ Safe Families for Children, About Us, *available at:* <http://safe-families.org/about/> (last visited March 29, 2017).

⁸ Safe Families for Children, Locations, *available at:* <http://safe-families.org/about/locations/> / (last visited March 29, 2017).

⁹ Section 409.175, F.S.

¹⁰ *Id.*

- The good moral character of personnel and foster parents based on background screening, education, training, and experience requirements;
- Operation, conduct, and maintenance;
- 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.¹¹

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. DCF must issue a license for those homes and agencies that meet the minimum licensure standards.¹²

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.¹³

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.

¹¹ *Id.*

¹² *Id.*

¹³ Florida Department of Law Enforcement, Volunteer and Employee Background checks, *available at*: <http://www.fdle.state.fl.us/cms/Background-Checks/VECHS-Home.aspx>. (last visited March 29, 2017).

Level 2 Background Screening

A level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.¹⁴ The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for DCF. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DCF. DCF then determines if the screening contains any disqualifying information for employment. DCF must ensure that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any prohibited offense including, but not limited to, such crimes as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.¹⁵ If the department finds that an individual has a history containing any of these offenses, they must disqualify that individual from employment under chapter 435, F.S.

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 Act¹⁶ (VPA) and Florida Volunteer Protection Act¹⁷ (FVPA). The VPA provides that a volunteer of a nonprofit organization is not 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
- 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.¹⁸

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.¹⁹ Neither the VPA nor the FVPA provide immunity to the nonprofit organization itself.

III. Effect of Proposed Changes:

Section 1 creates s. 409.1761, relating to organizations providing temporary respite care for children not in the welfare system, to authorize qualified nonprofit organizations to establish programs to assist parents and legal guardians in providing respite care for a child in times of

¹⁴ Section 435.04, F.S.

¹⁵ *Id.*

¹⁶ Volunteer Protection Act of 1997, 42 U.S.C. s. 14501 et seq.

¹⁷ Section 768.1355, F.S.

¹⁸ 42 U.S.C. s. 14503.

¹⁹ Section 768.1355(1), F.S.

family hardship. Only children who are not part of the child welfare system are eligible for care under this program.

The bill defines the terms “qualified association,” “qualified nonprofit organization,” and “volunteer respite family,” provides a process for registering these qualified organizations in lieu of licensure, and requires level 2 background screening for employees of the organizations and family members who are providing care.

The bill requires a contract for care of the child to be entered into between the parent or legal guardian and the qualified association for the provision of care for the child and specifies requirements to be included in the contract.

Section 2 provides an effective date of July 1, 2017.

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:

The bill does not require the notification or consent of both parents in cases where the parents of the child may not be living together. 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.²⁰ 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.²¹

These constitutional protections extend to the parenting interests of custodial and non-custodial parents alike.²² To the extent that the bill authorizes delegation of the care and

²⁰ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

²¹ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

²² See *Stanley v. Illinois*, 405 U.S. 645(1972); *Caban v. Mohammed*, 441 U.S. 380 (1979).

custody of a minor child to a volunteer respite family through a contract for care without the consent of both parents, such delegation may be challenged by a nonconsenting parent.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates s. 409.1761 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.