

By the Committees on Appropriations; and Judiciary; and Senator Baxley

576-04680-21

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1 A bill to be entitled
2 An act relating to an elder-focused dispute resolution
3 process; creating s. 44.407, F.S.; providing
4 legislative findings; defining terms; authorizing the
5 courts to appoint an eldercaring coordinator and refer
6 certain parties and elders to eldercaring
7 coordination; prohibiting the courts from referring
8 certain parties to eldercaring coordination without
9 the consent of the elder and other parties to the
10 action; specifying the duration of eldercaring
11 coordinator appointments; requiring the courts to
12 conduct intermittent review hearings regarding the
13 conclusion or extension of such appointments;
14 providing qualifications and disqualifications for
15 eldercaring coordinators; requiring eldercaring
16 coordinators to document completed training that meets
17 certain requirements until the Florida Supreme Court
18 certifies a training program; requiring the applicant
19 to meet certain qualifications for background
20 screening, unless otherwise exempt; requiring
21 prospective eldercaring coordinators to submit
22 fingerprints for purposes of criminal history
23 background screening; providing for the payment and
24 cost of fingerprint processing; providing for the
25 removal and suspension of authority of certain
26 eldercaring coordinators; requiring that notice of
27 hearing on removal of a coordinator be timely served;
28 authorizing the courts to award certain fees and costs
29 under certain circumstances; requiring the court to

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30 appoint successor eldercaring coordinators under
31 certain circumstances; requiring the parties to
32 eldercaring coordination to pay an equal share of the
33 eldercaring coordinator's fees and costs under certain
34 circumstances; authorizing the courts to make certain
35 determinations based on the fees and costs of
36 eldercaring coordination; providing that all
37 eldercaring communications are confidential; providing
38 exceptions to confidentiality; providing remedies for
39 breaches of such confidentiality; providing
40 requirements for emergency reporting to courts under
41 certain circumstances; providing immunity from
42 liability for eldercaring coordinators under specified
43 circumstances; requiring the Florida Supreme Court to
44 establish certain minimum standards and procedures for
45 eldercaring coordinators; authorizing the court's
46 order of referral to address procedures governing
47 complaints until the minimum standards and procedures
48 are established; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Section 44.407, Florida Statutes, is created to
53 read:

54 44.407 Elder-focused dispute resolution process.—

55 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

56 (a) Denying an elder a voice in decisions regarding himself
57 or herself may negatively affect the elder's health and well-
58 being, as well as deprive the elder of his or her legal rights.

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59 Even if an elder is losing capacity to make major decisions for
60 himself or herself, the elder is still entitled to the dignity
61 of having his or her voice heard.

62 (b) In conjunction with proceedings in court, it is in the
63 best interest of an elder, his or her family members, and
64 legally recognized decisionmakers to have access to a
65 nonadversarial process to resolve disputes relating to an elder
66 which focuses on the elder's wants, needs, and best interests.
67 Such a process will protect and preserve the elder's exercisable
68 rights.

69 (c) By recognizing that every elder, including those whose
70 capacity is being questioned, has unique needs, unique
71 interests, and differing abilities, the Legislature intends for
72 this section to promote the public welfare by establishing a
73 unique dispute resolution option to complement and enhance, not
74 replace, other services, such as the provision of legal
75 information or legal representation; financial advice;
76 individual or family therapy; medical, psychological, or
77 psychiatric evaluation; or mediation, specifically for issues
78 related to the care and needs of elders. The Legislature intends
79 that this section be liberally construed to accomplish these
80 goals.

81 (2) DEFINITIONS.—As used in this section, the term:

82 (a)1. "Action" means a proceeding in which a party sought
83 or seeks a judgment or an order from the court to:

84 a. Determine, pursuant to s. 744.331, whether someone is or
85 is not incapacitated.

86 b. Appoint or remove a guardian or guardian advocate.

87 c. Review any actions of a guardian.

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88 d. Execute an investigation pursuant to s. 415.104.

89 e. Review an agent's actions pursuant to s. 709.2116.

90 f. Review a proxy's decision pursuant to s. 765.105.

91 g. Enter an injunction for the protection of an elder under
92 s. 825.1035.

93 h. Follow up on a complaint made to the Office of Public
94 and Professional Guardians pursuant to s. 744.2004.

95 i. At the discretion of the presiding judge, address any
96 other matters pending before the court which involve the care
97 and safety of an elder.

98 2. The term may be applied only to using eldercaring
99 coordination solely to address disputes regarding the care and
100 safety of the elder. The term does not include actions brought
101 under chapter 732, chapter 733, or chapter 736.

102 (b) "Care and safety" means the condition of the aging
103 person's general physical, mental, emotional, psychological, and
104 social well-being. The term does not include:

105 1. A determination of capacity by the court under s.
106 744.331(5) or (6); or

107 2. Unless the parties agree otherwise, matters relating to
108 the elder's estate planning, agent designations under chapter
109 709, or surrogate designations under chapter 765; trusts in
110 which the elder is a grantor, fiduciary, or beneficiary; or
111 other similar financially focused matters.

112 (c) "Elder" means a person 60 years of age or older who is
113 alleged to be suffering from the infirmities of aging as
114 manifested by a physical, mental, or emotional dysfunction to
115 the extent that the elder's ability to provide adequately for
116 the protection or care of his or her own person or property is

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117 impaired.

118 (d) "Eldercaring coordination" means an elder-focused
119 dispute resolution process during which an eldercaring
120 coordinator assists an elder, legally authorized decisionmakers,
121 and others who participate by court order or by invitation of
122 the eldercaring coordinator, in resolving disputes regarding the
123 care and safety of an elder by:

124 1. Facilitating more effective communication and
125 negotiation and the development of problem-solving skills.

126 2. Providing education about eldercare resources.

127 3. Facilitating the creation, modification, or
128 implementation of an eldercaring plan and reassessing it as
129 necessary to reach a resolution of ongoing disputes concerning
130 the care and safety of the elder.

131 4. Making recommendations for the resolution of disputes
132 concerning the care and safety of the elder.

133 5. With the prior approval of the parties to an action or
134 of the court, making limited decisions within the scope of the
135 court's order of referral.

136 (e) "Eldercaring coordination communication" means an oral
137 or written statement or nonverbal conduct intended to make an
138 assertion by, between, or among parties, participants, or the
139 eldercaring coordinator which is made during the course of an
140 eldercaring coordination activity, or before the activity if
141 made in furtherance of eldercaring coordination. The term does
142 not include statements made during eldercaring coordination
143 which involve the commission of a crime, the intent to commit a
144 crime, or ongoing abuse, exploitation, or neglect of a child or
145 vulnerable adult.

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146 (f) "Eldercaring coordinator" means an impartial third
147 person who is appointed by the court or designated by the
148 parties and who meets the requirements of subsection (5). The
149 role of the eldercaring coordinator is to assist parties through
150 eldercaring coordination in a manner that respects the elder's
151 need for autonomy and safety.

152 (g) "Eldercaring plan" means a continually reassessed plan
153 for the items, tasks, or responsibilities needed to provide for
154 the care and safety of an elder which is modified throughout
155 eldercaring coordination to meet the changing needs of the elder
156 and which takes into consideration the preferences and wishes of
157 the elder. The plan is not a legally enforceable document, but
158 is meant for use by the parties and participants.

159 (h) "Good cause" means a finding that the eldercaring
160 coordinator:

161 1. Is not fulfilling the duties and obligations of the
162 position;

163 2. Has failed to comply with any order of the court, unless
164 the order has been superseded on appeal;

165 3. Has conflicting or adverse interests that affect his or
166 her impartiality;

167 4. Has engaged in circumstances that compromise the
168 integrity of eldercaring coordination; or

169 5. Has had a disqualifying event occur.

170
171 The term does not include a party's disagreement with the
172 eldercaring coordinator's methods or procedures.

173 (i) "Legally authorized decisionmaker" means an individual
174 designated, either by the elder or by the court, pursuant to

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175 chapter 709, chapter 744, chapter 747, or chapter 765 who has
176 the authority to make specific decisions on behalf of the elder
177 who is the subject of an action.

178 (j) "Participant" means an individual who is not a party
179 and who joins eldercaring coordination by invitation of or with
180 the consent of the eldercaring coordinator but who has not filed
181 a pleading in the action from which the case was referred to
182 eldercaring coordination.

183 (k) "Party" includes the elder who is the subject of an
184 action and any other individual over whom the court has
185 jurisdiction related to that action.

186 (3) REFERRAL.—

187 (a) Upon agreement of the parties to an action, the court's
188 own motion, or the motion of a party to the action, the court
189 may appoint an eldercaring coordinator and refer the parties to
190 eldercaring coordination to assist in the resolution of disputes
191 concerning the care and safety of the elder who is the subject
192 of the action.

193 (b) The court may not refer a party who has a history of
194 domestic violence or exploitation of an elderly person to
195 eldercaring coordination unless the elder and other parties in
196 the action consent to such referral.

197 1. The court shall offer each party an opportunity to
198 consult with an attorney or a domestic violence advocate before
199 accepting consent to such referral. The court shall determine
200 whether each party has given his or her consent freely and
201 voluntarily.

202 2. The court shall consider whether a party has committed
203 an act of exploitation as defined in s. 415.102(8) or s.

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204 825.103(1) or domestic violence as defined in s. 741.28 against
205 another party or any member of another party's family; engaged
206 in a pattern of behaviors that exert power and control over
207 another party and that may compromise another party's ability to
208 negotiate a fair result; or engaged in behavior that leads
209 another party to have reasonable cause to believe that he or she
210 is in imminent danger of becoming a victim of domestic violence.
211 The court shall consider and evaluate all relevant factors,
212 including, but not limited to, the factors specified in s.
213 741.30(6)(b).

214 3. If a party has a history of domestic violence or
215 exploitation of an elderly person, the court must order
216 safeguards to protect the safety of the participants and the
217 elder and the elder's property, including, but not limited to,
218 adherence to all provisions of an injunction for protection or
219 conditions of bail, probation, or a sentence arising from
220 criminal proceedings.

221 (4) COURT APPOINTMENT.—

222 (a) A court appointment of an eldercaring coordinator is
223 for a term of up to 2 years, and the court shall conduct review
224 hearings intermittently to determine whether the term should be
225 concluded or extended. Appointments conclude upon expiration of
226 the term or upon discharge by the court, whichever occurs
227 earlier.

228 (b) The order of appointment issued by the court must
229 define the scope of the eldercaring coordinator's authority
230 under the appointment in the particular action, consistent with
231 this section.

232 (c) The order must specify that, notwithstanding the

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233 requirement for intermittent review hearings imposed under
234 paragraph (a), a party may move the court at any time during the
235 period of appointment for termination of the appointment. Upon
236 the filing of such a motion, the court shall timely conduct a
237 hearing to determine whether to terminate the appointment. Until
238 the court has ruled on the motion, the eldercaring coordination
239 process must continue. In making the determination, the court
240 shall consider, at a minimum:

241 1. The efforts and progress of eldercaring coordination in
242 the action to date;

243 2. The preference of the elder, if ascertainable; and

244 3. Whether continuation of the appointment is in the best
245 interests of the elder.

246 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.-

247 (a) The court shall appoint qualified eldercaring
248 coordinators who meet all of the following requirements:

249 1. Meet one of the following professional requirements:

250 a. Be licensed as a mental health professional under
251 chapter 491 and hold at least a master's degree in the
252 professional field of practice;

253 b. Be licensed as a psychologist under chapter 490;

254 c. Be licensed as a physician under chapter 458 or chapter
255 459;

256 d. Be licensed as a nurse under chapter 464 and hold at
257 least a master's degree;

258 e. Be certified by the Florida Supreme Court as a family
259 mediator and hold at least a master's degree;

260 f. Be a member in good standing of The Florida Bar; or

261 g. Be a professional guardian as defined in s. 744.102 and

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262 hold at least a master's degree.

263 2. Complete all of the following:

264 a. Three years of post-licensure or post-certification
265 practice;

266 b. A family mediation training program certified by the
267 Florida Supreme Court; and

268 c. An eldercaring coordinator training program certified by
269 the Florida Supreme Court. The training must total at least 44
270 hours and must include advanced tactics for dispute resolution
271 of issues related to aging, illness, incapacity, or other
272 vulnerabilities associated with persons 60 years of age or
273 older, as well as elder, guardianship, and incapacity law and
274 procedures and less restrictive alternatives to guardianship;
275 phases of eldercaring coordination and the role and functions of
276 an eldercaring coordinator; the elder's role within eldercaring
277 coordination; family dynamics related to eldercaring
278 coordination; eldercaring coordination skills and techniques;
279 multicultural competence and its use in eldercaring
280 coordination; at least 6 hours on the implications of elder
281 abuse, neglect, and exploitation and other safety issues
282 pertinent to this training; at least 4 hours of ethical
283 considerations pertaining to this training; use of technology
284 within eldercaring coordination; and court-specific eldercaring
285 coordination procedures. Pending certification of such a
286 training program by the Florida Supreme Court, the eldercaring
287 coordinator must document completion of training that satisfies
288 the hours and the elements prescribed in this sub-subparagraph.

289 3. Successfully pass a level 2 background screening as set
290 forth in s. 435.04(2) and (3) or be exempt from disqualification

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291 under s. 435.07. The prospective eldercaring coordinator must
292 submit a full set of fingerprints to the court or to a vendor,
293 entity, or agency authorized by s. 943.053(13). The court,
294 vendor, entity, or agency shall forward the fingerprints to the
295 Department of Law Enforcement for state processing, and the
296 Department of Law Enforcement shall forward the fingerprints to
297 the Federal Bureau of Investigation for national processing. The
298 prospective eldercaring coordinator shall pay the fees for state
299 and federal fingerprint processing. The state cost for
300 fingerprint processing shall be as provided in s. 943.053(3)(e)
301 for records provided to persons or entities other than those
302 specified as exceptions therein.

303 4. Have not been a respondent in a final order granting an
304 injunction for protection against domestic, dating, sexual, or
305 repeat violence or stalking or exploitation of an elder or a
306 disabled person.

307 5. Meet any additional qualifications the court may require
308 to address issues specific to the parties.

309 (b) A qualified eldercaring coordinator must be in good
310 standing or in clear and active status with all professional
311 licensing authorities or certification boards to which the
312 eldercaring coordinator is subject.

313 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
314 COORDINATORS.—

315 (a) An eldercaring coordinator must resign and immediately
316 report to the court if he or she no longer meets the minimum
317 qualifications or if any of the disqualifying circumstances
318 occurs.

319 (b) The court shall remove an eldercaring coordinator upon

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320 the eldercaring coordinator's resignation or disqualification or
321 a finding of good cause shown based on the court's own motion or
322 a party's motion.

323 (c) Upon the court's own motion or upon a party's motion,
324 the court may suspend the authority of an eldercaring
325 coordinator pending a hearing on the motion for removal. Notice
326 of hearing on removal must be timely served on the eldercaring
327 coordinator and all parties.

328 (d) If a motion was made in bad faith, a court may, in
329 addition to any other remedy authorized by law, award reasonable
330 attorney fees and costs to a party or an eldercaring coordinator
331 who successfully challenges a motion for removal.

332 (7) SUCCESSOR ELDERCARING COORDINATOR.—If an eldercaring
333 coordinator resigns, is removed, or is suspended from an
334 appointment, the court shall appoint a successor qualified
335 eldercaring coordinator who is agreed to by all parties or, if
336 the parties do not reach agreement on a successor, another
337 qualified eldercaring coordinator to serve for the remainder of
338 the original term.

339 (8) FEES AND COSTS.—Each party referred by the court to the
340 eldercaring coordination process shall pay an equal portion of
341 the eldercaring coordinator's fees and costs unless the court
342 determines that an unequal allocation is necessary based on the
343 financial circumstances of each party, including the elder. The
344 court's order of referral must specify which parties are ordered
345 to the process and the percentage of the eldercaring
346 coordinator's fees and costs which each party is required to
347 pay.

348 (a) A party who is asserting that he or she is unable to

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349 pay the eldercaring coordination fees and costs must complete a
350 financial affidavit form approved by the presiding court. The
351 court shall consider the party's financial circumstances,
352 including income; assets; liabilities; financial obligations;
353 and resources, including, but not limited to, whether the party
354 can receive or is receiving trust benefits, whether the party is
355 represented by and paying a lawyer, and whether paying the fees
356 and costs of eldercaring coordination would create a substantial
357 hardship.

358 (b) If a court finds that a party is indigent based upon
359 the criteria prescribed in s. 57.082, the court may not order
360 the party to eldercaring coordination unless funds are available
361 to pay the indigent party's allocated portion of the eldercaring
362 coordination fees and costs, which may include funds provided
363 for that purpose by one or more nonindigent parties who consent
364 to paying such fees and costs, or unless insurance coverage or
365 reduced or pro bono services are available to pay all or a
366 portion of such fees and costs. If financial assistance, such as
367 health insurance or eldercaring coordination grants, is
368 available, such assistance must be taken into consideration by
369 the court in determining the financial abilities of the parties.

370 (9) CONFIDENTIALITY; PRIVILEGE; EXCEPTIONS.—

371 (a) Except as provided in this section, all eldercaring
372 coordination communications are confidential. An eldercaring
373 coordination party, an eldercaring coordinator, or a participant
374 may not disclose an eldercaring coordination communication to a
375 person other than another eldercaring coordination party, an
376 eldercaring coordinator, or a participant, or a party's or
377 participant's counsel. A violation of this section may be

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378 remedied as provided in paragraph (g). If the eldercaring
379 coordination is court ordered, a violation of this section also
380 may subject the eldercaring coordination participant to
381 sanctions by the court, including, but not limited to, costs,
382 attorney fees, and eldercaring coordinator's fees.

383 (b) An eldercaring coordination party, an eldercaring
384 coordinator, or a participant has a privilege to refuse to
385 testify and to prevent any other person from testifying in a
386 subsequent proceeding regarding eldercaring coordination
387 communications.

388 (c) Notwithstanding paragraphs (a) and (b), confidentiality
389 or privilege does not attach to a signed written agreement
390 reached during eldercaring coordination, unless the parties
391 agree otherwise, or to any eldercaring coordination
392 communication that:

393 1. Is necessary to identify, authenticate, confirm, or deny
394 a written and signed agreement entered into by the parties
395 during eldercaring coordination.

396 2. Is necessary to identify an issue for resolution by the
397 court, including to support a motion to terminate eldercaring
398 coordination, without otherwise disclosing communications made
399 by any party, participant, or the eldercaring coordinator.

400 3. Is limited to the subject of a party's compliance with
401 the order of referral to eldercaring coordination, orders for
402 psychological evaluation, court orders or health care provider
403 recommendations for counseling, or court orders for substance
404 abuse testing or treatment.

405 4. Is necessary to determine the qualifications of an
406 eldercaring coordinator or to determine the immunity and

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407 liability of an eldercaring coordinator who has acted in bad
408 faith or with malicious purpose or in a manner exhibiting wanton
409 and willful disregard for the rights, safety, or property of the
410 parties under subsection (11).

411 5. The parties agree may be disclosed or for which
412 privilege against disclosure has been waived by all parties.

413 6. Is made in the event the eldercaring coordinator needs
414 to contact persons outside of the eldercaring coordination
415 process to give or obtain information that furthers the
416 eldercaring coordination process.

417 7. Must be reported pursuant to chapter 39 or chapter 415
418 solely for the purpose of making the mandatory report to the
419 entity requiring the report.

420 8. Is necessary to protect any person from future acts that
421 would constitute child abuse, neglect, or abandonment under
422 chapter 39; abuse, neglect, or exploitation of an elderly or
423 disabled adult under chapter 415 or chapter 825; or domestic
424 violence under chapter 741 or is necessary to further an
425 investigation conducted under s. 744.2004 or a review conducted
426 under s. 744.368(5).

427 9. Is offered, solely for the internal use of a body
428 conducting an investigation of professional misconduct, to
429 report, prove, or disprove such misconduct that is alleged to
430 have occurred during eldercaring coordination.

431 10. Is offered, solely for consideration in a professional
432 malpractice proceeding, to report, prove, or disprove
433 professional malpractice alleged to have occurred during
434 eldercaring coordination.

435 11. Is willfully used to plan a crime, commit or attempt to

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436 commit a crime, conceal ongoing criminal activity, or threaten
437 violence.

438 (d) An eldercaring coordination communication disclosed
439 under subparagraph (c)1., subparagraph (c)2., subparagraph
440 (c)5., subparagraph (c)8., or subparagraph (c)9. remains
441 confidential and is not discoverable or admissible for any other
442 purpose, unless otherwise authorized by this section.

443 (e) Information that is otherwise admissible or subject to
444 discovery is not inadmissible or protected from discovery by
445 reason of its disclosure or use in the eldercaring coordination
446 process.

447 (f) A party who discloses or makes a representation about a
448 privileged eldercaring coordination communication waives that
449 privilege, but only to the extent necessary for the other party
450 or parties to respond to the disclosure or representation.

451 (g)1. Any eldercaring coordination party or participant who
452 knowingly and willfully discloses an eldercaring coordination
453 communication in violation of this subsection, upon application
454 by any party to a court of competent jurisdiction, is subject to
455 remedies, including:

456 a. Equitable relief;

457 b. Compensatory damages;

458 c. Contribution to the other party's or parties' attorney
459 fees, the other party's or parties' portion of the eldercaring
460 coordinator fees, and the other party's or parties' portion of
461 the costs incurred in the eldercaring coordination process; and

462 d. Reasonable attorney fees and costs incurred in the
463 application for remedies under this section.

464 2. Notwithstanding any other law, an application for relief

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465 filed under this paragraph may not be commenced later than 2
466 years after the date on which the party had a reasonable
467 opportunity to discover the breach of confidentiality, but in no
468 case more than 4 years after the breach.

469 3. An eldercaring coordination party or participant may not
470 be subject to a civil action under this paragraph for lawful
471 compliance with s. 119.07.

472 (10) EMERGENCY REPORTING TO THE COURT.-

473 (a) An eldercaring coordinator must immediately inform the
474 court by affidavit or verified report, without notice to the
475 parties, if:

476 1. The eldercaring coordinator has or will be making a
477 report pursuant to chapter 39 or chapter 415; or

478 2. A party, including someone acting on a party's behalf,
479 is threatening or is believed to be planning to commit the
480 offense of kidnapping, as defined in s. 787.01(1), upon an elder
481 or wrongfully removes or is removing the elder from the
482 jurisdiction of the court without prior court approval or
483 compliance with the requirements of s. 744.1098. If the
484 eldercaring coordinator suspects that a party or family member
485 has relocated an elder within this state to protect the elder
486 from a domestic violence situation, the eldercaring coordinator
487 may not disclose the location of the elder unless required by
488 court order.

489 (b) An eldercaring coordinator shall immediately inform the
490 court by affidavit or verified report and serve a copy of such
491 affidavit or report on each party upon learning that a party is
492 the subject of a final order or injunction of protection against
493 domestic violence or exploitation of an elderly person or has

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494 been arrested for an act of domestic violence or exploitation of
495 an elderly person.

496 (11) IMMUNITY AND LIMITATION ON LIABILITY.—

497 (a) A person who is appointed or employed to assist the
498 body designated to perform duties relating to disciplinary
499 proceedings involving eldercaring coordinators has absolute
500 immunity from liability arising from the performance of his or
501 her duties while acting within the scope of his or her appointed
502 functions or duties of employment.

503 (b) An eldercaring coordinator who is appointed by the
504 court is not liable for civil damages for any act or omission
505 within the scope of his or her duties under an order of referral
506 unless such person acted in bad faith or with malicious purpose
507 or in a manner exhibiting wanton and willful disregard for the
508 rights, safety, or property of the parties.

509 (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme
510 Court shall establish minimum standards and procedures for the
511 qualification, ethical conduct, discipline, and training and
512 education of eldercaring coordinators who serve under this
513 section. The Florida Supreme Court may appoint or employ such
514 personnel as are necessary to assist the court in exercising its
515 powers and performing its duties under this section. Pending the
516 establishment of such minimum standards and procedures for the
517 discipline of eldercaring coordinators, the order of referral by
518 the court may address procedures governing complaints against
519 the appointed eldercaring coordinator consistent with this
520 section.

521 Section 2. This act shall take effect July 1, 2021.