

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 200

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Passidomo and others

SUBJECT: Temporary Respite Care of a Child

DATE: April 18, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 200 authorizes a qualified, private nonprofit organization (organization) to establish a program, through agreement or certification with a qualified association (association), to assist parents in providing respite care of a child for up to 90 days. Only children who are not part of the child welfare system are eligible for care under this program. The association will develop best practice standards and certification for operating a program that facilitates temporary respite care for children, while the organization will administer the program by matching parents and their children with a volunteer respite family.

The organization must, among other requirements:

- Verify that the Department of Children and Families has conducted required background screenings of certain persons;
- Supervise the volunteer respite family environment;
- Maintain records on each volunteer respite family involved in providing care of children;
- Immediately notify the Department of abuse, neglect, or other maltreatment; and
- Train volunteer respite families.

Contract for Care

The bill authorizes the parent of a minor child to enter into a contract for care with a volunteer respite family. Through signing a contract for care, the parent agrees to delegate certain powers to the volunteer respite family. Both parents (if neither parent has had his or her rights terminated) must sign the contract for care before a child may be placed with a volunteer respite

family. If one parent does not sign the contract for care, the organization must personally serve that parent with a petition for dependency, which will establish grounds that the parent has abandoned, abused, or neglected the child.

II. Present Situation:

Safe Families Model

A type of program that matches parents in crisis with a volunteer respite family has been in existence since 2002. The Safe Families for Children (SFFC) program, established by a religious organization, created a model in which parents in crisis without family or other support had a place to go for temporary help without entering the child welfare system.¹ The model involves placing a child with an unpaid volunteer host family, thereby enabling a parent the time and space to deal with a crisis. 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.²

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.³

Programs based on the SFFC model are active in 70 cities in the U.S., Canada, and the U.K.⁴ SFFC models operate in three Florida areas: Naples, Orlando, and Tampa Bay.⁵ Florida law does not regulate this sort of program.

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 Act⁶ (VPA) and the Florida Volunteer Protection Act⁷ (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 is acting within the scope of his or her responsibilities for the organization; and
- The harm is 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.⁸

The FVPA also provides immunity from civil liability if the volunteer was acting in 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

¹ Safe Families for Children, *available at*: <http://safe-families.org/> (last visited April 11, 2017).

² *Id.*

³ Safe Families for Children, Who we help, *available at*: <http://safe-families.org/about/how-safe-families-works/> (last visited April 11, 2017).

⁴ Safe Families for Children, About Us, *available at*: <http://safe-families.org/about/> (last visited April 11, 2017).

⁵ Safe Families for Children, Locations, *available at*: <http://safe-families.org/about/locations> (last visited April 11, 2017).

⁶ Volunteer Protection Act of 1997, 42 U.S.C. s. 14501 et seq.

⁷ Section 768.1355, F.S.

⁸ Volunteer Protection Act of 1997, 42 U.S.C. s. 14503.

misconduct.⁹ Neither the VPA nor the FVPA provide immunity to the nonprofit organization itself.

Licensure of Out-of-Home Placements

The Department of Children and Families (Department) licenses most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.¹⁰ The following placements, however, do not require licensure:

- Relative caregivers;
- Non-relative caregivers providing care for up to 90 days¹¹;
- An adoptive home that 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.¹²

A licensed out-of-home provider must meet rules and regulations pertaining to:

- The good moral character of personnel and foster parents based on background screening, education, training, and experience requirements;
- Operation, conduct, and maintenance of a home or agency;
- 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 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.¹³

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. The Department must issue a license for those homes and agencies that meet minimum licensure standards.¹⁴

Background Screening

Volunteer and Employee Criminal History System

The Volunteer and Employee Criminal History System (VECHS) program, implemented in 1999, 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 are not required by law to be background screened. Examples of organizations that may use VECHS are churches and

⁹ Section 768.1355(1), F.S.

¹⁰ Section 409.175, F.S.

¹¹ Section 409.175(2)(e), F.S.

¹² Section 409.175(1)(d), F.S.

¹³ Section 409.175(5)(a), F.S.

¹⁴ Section 409.176(6)(b), F.S.

volunteer organizations that are not licensed or contracted by the state but serve children, the elderly, or persons with disabilities.

Through the VECHS program, the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (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 vulnerable persons.¹⁵

Unlike screenings under the Care Provider Background Screening Clearinghouse in chapter 435, F.S., individuals who are screened 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. Organizations that request a background screening of an individual are not notified of any subsequent arrests or judicial actions.

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).¹⁶ And a Level 2 background screening may include local criminal records checks through local law enforcement agencies.¹⁷ The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for the Department. 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 the Department. The Department then determines if the screening contains any disqualifying information for employment by ensuring that the applicant has not been arrested for, found guilty, or entered a plea of *nolo contendere* to a prohibited offense. Prohibited offenses include crimes involving sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.¹⁸ If the person has any of these offenses in his or her history, the Department must disqualify him or her from employment under chapter 435, F.S.

III. Effect of Proposed Changes:

This bill would apply to programs such as the Safe Families for Children Program (SFCC). The bill authorizes a qualified, nonprofit organization (organization) to establish a program, through agreement or certification with a qualified association, to assist parents in providing respite care of a child for up to 90 days. Only children who are not part of the child welfare system are eligible for care under this program.

¹⁵ 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 April 11, 2017).

¹⁶ Section 435.04, F.S.

¹⁷ *Id.*

¹⁸ Section 435.04(2), F.S.

Qualified Association

A qualified association (association) is an association that develops best practice standards and certification for operating a program that facilitates temporary respite care for children. The association must file a copy of its standards with the Department of Children and Families (Department). The standards must be in substantial compliance with published minimum standards issued by the Department that similar licensed child-caring agencies or family foster homes must meet. Standards must also comply with uniform fire safety standards and personnel screening requirements.¹⁹

Qualified, Nonprofit Organization

A qualified, nonprofit organization is a Florida private nonprofit organization that helps parents find a volunteer respite family to provide temporary child care in their home.

The qualified, nonprofit organization (organization) must:

- Establish its program through agreement or certification with a qualified association;
- Verify that the Department has conducted required background screenings of certain persons;
- Provide supervision of the volunteer respite family environment;
- Maintain records on each volunteer respite family;
- Annually provide information to the Department and make available to the Department or association its records for inspection at any time;
- Provide information to the association showing compliance with best practices;
- Immediately notify the Department of abuse, neglect, or other maltreatment; and
- Train volunteer respite families.

Regarding training, the bill requires a qualified, nonprofit organization to provide training to volunteer respite families on rights, duties, and limits in providing temporary respite care; working with third-party service providers; safety requirements; constructive disciplinary practices; abuse and maltreatment reporting requirements; confidentiality; and engaging in a healthy relationship with the child's parents.

Eligibility of Children

A child is eligible for placement in a temporary respite care program if he or she:

- Has not been removed from the child's parent due to abuse or neglect;
- Is not the subject of an ongoing investigation by the Department for abuse, abandonment, or neglect;
- Has not been the subject of a verified report of abuse, abandonment, or neglect; or
- Is not in the protective supervision of the Department and part of an open court in-home dependency case.

¹⁹ Sections 409.176(5)(b) and 409.175, and chs. 435 and 633, F.S.

Contract for Care

The bill authorizes the parent of a minor child to enter into a contract for care with a volunteer respite family. Through signing a contract for care, the parent agrees to delegate certain powers regarding the care and custody of the child to the volunteer respite family. The delegation 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. However, parent(s) may separately consent to delegating to the volunteer respite family routine and emergency medical care decisions for the child.

The contract for care must contain:

- A statement that the contract does not deprive the parent any parental rights;
- A statement that the contract may be revoked or withdrawn by a parent at any time;
- Statements addressing basic services and accommodations provided to the child and the needs of the child;
- Identifying and contact information on the child, parent(s), organization, and volunteer respite family;
- A statement on disciplinary procedures;
- A statement on the minimum expected contact between the parent and the child; and
- An expiration date for the contract for care, not to exceed 90 days in duration.

The bill requires both parents (if neither parent has had his or her rights terminated) to sign the contract for care with a qualified association before a child may be placed with a volunteer respite family. Other persons who must sign the contract for care are: all members of the volunteer respite family who are 18 years of age or older; the organization representative, and two subscribing witnesses.

Unless a parent has had his or her rights terminated, if one parent does not sign the contract for care, the organization must personally serve the parent who did not sign the contract for care with a petition for dependency. A petition for dependency must set forth grounds to establish that the parent has abandoned, abused, or neglected the child.

Background Screening

Among its other duties, prior to placing a child, a respite care organization must verify that the Department has conducted required background screenings. The bill requires background screening of certain persons with whom a child may come in contact after temporary placement with a volunteer respite family. In so doing, the bill references Chapter 435, F.S., which provides for both Level 1 and Level 2 types of background screening, and also references s. 409.175, F.S., which addresses licensure and screening requirements for family foster homes. Section 409.175(2)(k), F.S., requires Level 2 background screenings for adult members of a family foster home.

Therefore, the bill appears to require Level 2 background screening for:

- Employees of the organization who will have direct contact with children; and
- Members of the volunteer respite family who are older than 18 years of age.

Although the bill appears to require members of the volunteer respite family who are between 12 and 18 years of age to undergo the heightened checks of a Level 2 background screening, the bill does not require them to be fingerprinted, which is identical to that required for family members and persons who are between 12 and 18 years of age and living in a foster care home.²⁰

The bill takes effect July 1, 2017.

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. The initial screening will cost \$38.75 per individual, and the retention of fingerprints will cost an annual fee of \$6 per individual.

C. Government Sector Impact:

The Department of Children and Families indicates that the fiscal impact is unknown. However, the fiscal impact of the bill on the Department will be based on the number of background screenings that will result from the bill.²¹

VI. Technical Deficiencies:

None.

²⁰ Section 409.175(2)(i), F.S.

²¹ Department of Children and Families, *2017 Agency Legislative Bill Analysis* (Jan. 6, 2017) (On file with the Senate Judiciary Committee).

VII. Related Issues:**Background Screening**

Regarding background screening, the bill references Chapter 435, F.S., which provides for both Level 1 and Level 2 types of background screening, and also references s. 409.175, F.S., which addresses licensure and screening requirements for adults of a family foster home. Section 409.175(2)(k), F.S., requires Level 2 background screenings for adults of a family foster home. Therefore, it appears that the intent of the bill is to require Level 2 background screenings for employees of the organizations who have direct contact with children, and family members older than 18 years of age. For clarity, the Legislature may wish to expressly specify that these persons are subject to a full Level 2 background screening.

Contract for Care

The bill requires both parents (if neither parent has had his or her rights terminated) to sign the contract for care with a qualified association before a child may be placed with a volunteer respite family. Unless a parent has had his or her rights terminated, if one parent does not sign the contract for care, the organization must personally serve the parent who did not sign the contract for care with a petition for dependency setting forth grounds to establish that the parent has abandoned, abused, or neglected the child. The bill, however, does not address how the non-initiating parent is notified about signing the contract for care. The bill sponsor may wish to establish in the bill a process for the non-initiating parent to be notified of the contract for care and to clarify that the requirements for an organization to initiate dependency proceedings apply only if there are grounds to do so.

VIII. Statutes Affected:

The bill creates s. 409.1761, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs Committee on April 3, 2017:

- Limits the length of time a child may be in temporary respite care to 90 days;
- Specifies the criteria making a child ineligible for care under this program;
- Expands and clarifies the duties of the qualified nonprofit organization;
- Removes the ability of legal guardians to contract for the care of a child;
- Expands and clarifies contents of a contract for care; and
- Provides for notification to a parent who does not sign a contract for care.

- B. **Amendments:**

None.