

Tab 1	SB 130 by Berman (CO-INTRODUCERS) Book, Hutson, Garcia ; (Similar to CS/H 00097) Domestic Violence						
893018	A	S	RCS	JU, Berman	Delete L.201 - 202:	03/07 05:07 PM	
Tab 2	SB 164 by Polsky (CO-INTRODUCERS) Berman ; (Identical to H 00165) Controlled Substance Testing						
Tab 3	SB 508 by Rouson ; (Identical to H 01227) Problem-solving Courts						
Tab 4	SB 662 by Bradley ; (Identical to H 00699) Student Online Personal Information Protection						
Tab 5	SB 1098 by Burton ; (Identical to H 01119) Withholding or Withdrawal of Life-prolonging Procedures						
263154	A	S	RCS	JU, Burton	Delete L.83 - 126:	03/07 05:07 PM	
Tab 6	SB 494 by DiCeglie ; (Similar to H 00133) Fees in Lieu of Security Deposits						
265900	A	S	RCS	JU, DiCeglie	Delete L.75 - 156:	03/07 05:07 PM	
Tab 7	SB 218 by Harrell ; (Identical to H 00117) Genetic Counselors Using Telehealth						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Tuesday, March 7, 2023
TIME: 2:00—3:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators Albritton, Baxley, Book, Boyd, Broxson, DiCeglie, Harrell, Stewart, Thompson, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 130 Berman (Similar CS/H 97)	Domestic Violence; Citing this act as "Greyson's Law"; requiring the court with jurisdiction over the proceeding to consider certain factors in deciding whether shared parental responsibility is detrimental to the child; providing additional conduct regarding domestic violence which the court must consider when ordering a parenting plan; providing an additional factor that the court must consider in determining whether a petitioner of a domestic violence injunction is in imminent danger, etc. JU 03/07/2023 Fav/CS CF RC	Fav/CS Yeas 11 Nays 0
2	SB 164 Polsky (Identical H 165)	Controlled Substance Testing; Revising the definition of the term "drug paraphernalia" to exclude certain narcotic-drug-testing products, etc. CJ 02/14/2023 Favorable JU 03/07/2023 Favorable RC	Favorable Yeas 12 Nays 0
3	SB 508 Rouson (Identical H 1227)	Problem-solving Courts; Revising the responsibilities of coordinators of treatment-based drug court programs; requiring such programs to collect specified data and information for certain purposes; requiring such programs to annually report certain information and data to the Office of the State Courts Administrator; authorizing courts to determine how long a person may be admitted into certain programs; revising admission requirements for certain programs; revising eligibility requirements for voluntary admission into certain substance abuse programs, etc. JU 03/07/2023 Favorable ACJ FP	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 7, 2023, 2:00—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 662 Bradley (Identical H 699)	Student Online Personal Information Protection; Citing this act as the "Student Online Personal Information Protection Act"; prohibiting operators from knowingly engaging in specified activities relating to students' covered information; specifying the duties of an operator; providing circumstances under which an operator may disclose students' covered information, etc. JU 03/07/2023 Favorable ED RC	Favorable Yeas 11 Nays 0
5	SB 1098 Burton (Identical H 1119)	Withholding or Withdrawal of Life-prolonging Procedures; Authorizing the court to delegate the right to consent to the withholding or withdrawal of life-prolonging procedures of incapacitated persons in certain circumstances; requiring initial and annual guardianship plans, respectively, to state whether any power under the ward's preexisting order not to resuscitate or advance directive is revoked, modified, suspended, or transferred to the guardian; authorizing a guardian to petition a court for approval to consent to withhold or withdraw life-prolonging procedures under certain circumstances, etc. JU 03/07/2023 Fav/CS CF RC	Fav/CS Yeas 11 Nays 0
6	SB 494 DiCeglie (Similar H 133)	Fees in Lieu of Security Deposits; Authorizing a landlord to offer a tenant the option to pay a fee in lieu of a security deposit; requiring the landlord to notify the tenant of certain unpaid fees and costs within a specified time after the conclusion of the tenancy; requiring a written agreement signed by the landlord, or the landlord's agent, and the tenant if the tenant decides to pay a fee in lieu of the security deposit; specifying that certain fees, insurance products, and surety bonds are not security deposits; prohibiting a landlord from approving or denying an application for occupancy based on a prospective tenant's choice to pay a fee in lieu of a security deposit, etc. JU 03/07/2023 Fav/CS CA RC	Fav/CS Yeas 7 Nays 3
7	SB 218 Harrell (Identical H 117)	Genetic Counselors Using Telehealth; Revising the definition of the term "telehealth provider" to include persons licensed as genetic counselors, etc. HP 02/20/2023 Favorable JU 03/07/2023 Favorable RC	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 7, 2023, 2:00—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

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 130

INTRODUCER: Judiciary Committee and Senator Berman and others

SUBJECT: Domestic Violence

DATE: March 8, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 130 amends two statutes in an effort to refine the descriptions of what constitutes evidence or risks of domestic violence for use in child custody determinations and in domestic violence injunction proceedings.

Section 61.13, F.S., expands the list of factors a court must consider when determining whether shared parental responsibility, meaning shared authority to make decisions for a child, would be detrimental to a child. The new factors require the court to also consider:

- Evidence of domestic violence;
- Whether a parent, in the past or currently, has reasonable cause to believe that he or she or the minor child is or has been in imminent danger of becoming a victim of domestic violence or sexual violence by the other parent, even if no legal action has been brought or is currently pending in court;
- Whether either parent, in the past or currently, has reasonable cause to believe that the shared minor child is or has been in imminent danger of becoming a victim of abuse, abandonment, or neglect by the other parent, even if no legal action has been brought or is currently pending; and
- Any other relevant factors.

Additionally, when a parental responsibility or time-sharing schedule is established or modified by a court, the “best interest of the child” factors that the court must consider are expanded to

include evidence that a parent has or has had reasonable cause to believe that he or she or the minor child is in imminent danger of becoming a victim of domestic violence.

Section 741.30, F.S., expands the factors a court must consider when determining whether to issue a domestic violence injunction. The court must consider whether the respondent named in the petition has engaged in a pattern of abusive or threatening behaviors which demonstrates a continuing purpose and which reasonably causes the petitioner to believe that he or she or the minor shared child is in imminent danger of becoming a victim of an act of domestic violence.

The bill takes effect July 1, 2023.

II. Present Situation:

Greyson Kessler: A Victim of Domestic Violence

Greyson Kessler, a 4-year-old boy, was shot and killed by his father who then killed himself. Greyson's parents shared custody of their son, although his mother, Alison Kessler, witnessed many alarming indications that the father, John Stacey, was dangerous.

According to media reports, John Stacey regularly harassed Alison Kessler. He sent disturbing voice and text messages in which he called her degrading names and said she deserved to be decapitated and killed. He also installed a tracking device on her car and tracked her movements.¹

Alison Kessler became increasingly alarmed for Greyson's safety when she realized that Greyson's father would harm their son simply to hurt her. On Wednesday, May 19, 2021, Greyson's father picked him up for a visit. Alison tried making contact with the father but did not receive a response over the next two days. She feared for Greyson's safety and petitioned a court on Thursday for a permanent restraining order to keep the father away from their son. She cited the escalating nature of recent text messages.²

Alison learned that Greyson was absent from school on Thursday and Friday. On Friday, May 21, Alison Kessler's attorney filed a request for an emergency order to have local authorities pick up Greyson from his father. The attorney noted that the mother was justifiably concerned that Greyson could be injured while in the care of his father.³ Police found the bodies of Greyson and his father at the father's apartment on Friday night and believed the deaths may have occurred on Thursday.⁴

¹ See KC Baker, *Fla. Boy, 4, Killed by Dad in Murder-Suicide on Day Mom Asked Court to Keep Father Away From Him*, People (May 25, 2021), <https://people.com/crime/florida-boy-killed-by-dad-murder-suicide-mom-asked-court-keep-father-away/>.

² CBS Miami, *Police Confirm Murder-Suicide In Deaths of Father, 4-Year-Old Son Greyson Kessler Hours Before Emergency Pick-Up Order Was Denied* (May 25, 2021), <https://www.cbsnews.com/miami/news/emergency-pickup-order-denied-hours-before-greyson-kessler-father-dead-fort-lauderdale/>.

³ *Id.*

⁴ Peter Belfiore, DailyMail.com, *Father kills his son, 4, then himself after child's mother begged cops to check on him when he sent her threatening texts saying she 'deserved to have her head separated from her body'* (May 24, 2021), <https://www.dailymail.co.uk/news/article-9612843/Florida-woman-says-authorities-failed-act-4-year-old-sons-death-murder-suicide.html>.

According to one media report and the testimony of Alison Kessler, the judge denied the request for the domestic violence injunction. The judge stated that Alison failed to allege that any of the father's actions would constitute domestic violence under the current law because the threats were directed at her and not to the child.⁵

Chapter 61 – Dissolution of Marriage and Parenting Responsibilities

In general terms, chapter 61, F.S., contains the statutes that govern the dissolution of marriage, the distribution of assets and liabilities arising from the marriage, and the parents' responsibilities to support and care for their children, whether the parents are married or unmarried.

Parenting and Time-Sharing: Factors to Consider When Determining What Is Detrimental to a Child

Section 61.13, F.S., establishes a court's authority to order payments for child support and to approve, grant, or modify a parenting plan.⁶ When making a decision in these areas, the guiding principle a court must follow is the "best interests of the child" standard. Additionally, the public policy of the state is that each child have frequent and continuing contact with both parents unless the court finds that shared parental responsibility would be detrimental to the child. Shared parental responsibility refers to the authority of both parents, regardless of the time-sharing schedule, to make decisions for the child in matters such as education and health care.⁷ However, the following factors in s. 61.13(2)(c)2., F.S., create a rebuttable presumption of detriment to the child if the parent:

- Has been convicted of a first degree misdemeanor or higher involving domestic violence as defined in s. 741.28, F.S.,⁸ and chapter 775;
- Is incarcerated for a significant portion of the child's minority and has been convicted of serious violent or sexual offenses or the court finds clear and convincing evidence that harm would result from continuing the parent-child relationship;⁹ or
- Has been convicted of or had adjudication withheld for an offense that requires the person to register as a sexual offender,¹⁰ and was 18 years of age or older and the victim was under the age of 18 years or the parent believed the victim was under 18 years of age.

⁵ CBS Miami, *Police Confirm Murder-Suicide In Deaths of Father, 4-Year-Old Son Greyson Kessler Hours Before Emergency Pick-Up Order Was Denied* (May 25, 2021), <https://www.cbsnews.com/miami/news/emergency-pickup-order-denied-hours-before-greyson-kessler-father-dead-fort-lauderdale/>; Senate Committee on Judiciary, March 7, 2023, SB 130, Domestic Violence (Testimony of Alison Kessler at approximately 20.38 minutes). https://www.flsenate.gov/media/videoplayer?EventID=1_ky7xx6qg-202303071400&Redirect=true.

⁶ A parenting plan is the document that is created "to govern the relationship between the parents relating to the decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child."

Section 61.046(14) F.S.

⁷ See s. 61.13(2)(c)3., F.S.

⁸ "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

⁹ Under s. 39.806(1)(d), F.S., these matters constitute grounds for terminating the parental rights of an incarcerated parent.

¹⁰ Section 943.0435(1)(h)1.a., F.S., provides a lengthy list of criminal sexual offenses that require a person to register as a sexual offender with the Department of Law Enforcement.

If the presumption of detriment to the child is not rebutted by the convicted parent after being notified by the court that the presumption exists, shared parental responsibility, including time-sharing with the child and decisions made regarding the child, may not be granted to the convicted parent. The court must consider evidence of domestic violence or child abuse as evidence of detriment to the child, regardless of whether there is a conviction for those offenses. If a court determines that shared parental responsibility would be detrimental to the child, the court may order sole parental responsibility and make arrangements for time-sharing that will best protect the child or abused parent from further harm.¹¹

Factors to Consider When Determining the Best Interests of a Child in a Parenting Plan

Section 61.13(3), F.S., states that when a court establishes or modifies parental responsibility and creates, develops, approves, or modifies a parenting plan, including a time-sharing schedule,¹² the best interests of the child is the court's primary consideration. Parental responsibility, a parenting plan, or a time-sharing plan may not be modified unless there is a showing of a substantial, material, and unanticipated change in circumstances and there is a determination that the modification is in the best interests of the child. The statute then provides a list of twenty factors, although the list is not exhaustive, which a court should consider when determining the best interests of a child.¹³

¹¹ Section 61.13(2)(c)2., F.S.

¹² A time-sharing schedule means a timetable that must be included in the parenting plan that specifies the time, including overnights and holidays, that a minor child will spend with each parent. Section 61.046(14), F.S.

¹³ Those factors are:

- (a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.
- (b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- (c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.
- (d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- (e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.
- (f) The moral fitness of the parents.
- (g) The mental and physical health of the parents.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.
- (k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.
- (l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- (m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child

Chapter 741 – Marriage and Domestic Violence

Domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.¹⁴

Domestic Violence Statistics in Florida

In 2021, the most recent year for which complete statistics¹⁵ are available from the Department of Law Enforcement, Florida recorded 103,915 incidents of domestic violence. The primary offenses by category are:

Murder	192
Manslaughter	28
Simple Assault	82,735
Aggravated Assault	16,183
Rape	1,877
Threat/Intimidation	1,405
Fondling	958
Simple Stalking	396
<u>Aggravated Stalking</u>	<u>141</u>
Total	103,915

abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child’s school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child’s developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

¹⁴ Section 741.28(2), F.S.

¹⁵ Florida Department of Law Enforcement, *Crime in Florida Abstract, January – December 2021*, <http://www.fdle.state.fl.us/CJAB/UCR/UCR/2021/Annual/UCR-Crime-in-Florida-Abstract-Statewide-2021A.aspx>. According to FDLE, the source of this information is the Florida Uniform Crime Report, 2021. Statistics for 2022 will be available in April, 2023.

Of the 192 murders reported, the relationship between the victim and the offender was:

Spouse	32
Parent	28
Child	21
Sibling	11
Other Family Member	34
Cohabitant	56
<u>Other</u>	<u>10</u>
Total	192

Domestic Violence Injunctions

An injunction is a court order that commands or prevents an action. To receive a general injunction, the petitioner must show that there is no adequate remedy available at law and that he or she will suffer an irreparable injury if the injunction is not granted.¹⁶ To receive an injunction for protection against domestic violence, a petitioner must file a sworn statement in the circuit court declaring that he or she is either a victim of domestic violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence and state the reasons for that belief.¹⁷ The petition may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred.¹⁸ State law prohibits a filing fee from being charged against the petitioner.¹⁹ Once the petition is filed, the court must set a hearing for the earliest possible time.²⁰

Section 741.30(6)(b), F.S., establishes ten factors, listed in the footnote below, that a court must consider and evaluate when determining whether a petitioner who files for an injunction has stated reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.²¹ In broad terms, those factors involve: the history of offenses between the

¹⁶ BLACK'S LAW DICTIONARY (11th ed. 2019).

¹⁷ Section 741.30(1)(a) and (3)(a), F.S.

¹⁸ Section 741.30(1)(j), F.S.

¹⁹ Section 741.30(2)(a), F.S.

²⁰ Section 741.30(4), F.S.

²¹ Section 741.30(6)(b), F.S., lists these factors:

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

petitioner and the respondent and the respondent's threats and actions toward family, friends, and pets; the threat or use of weapons or physical restraints; a criminal history of violence; the issuance of orders of protection; the destruction of personal property; and actions that cause the petitioner to believe he or she is about to become a victim of domestic violence.

III. Effect of Proposed Changes:

Section 1 – Name of the Act

The bill names the act as “Greyson’s Law” in memory of Greyson Kessler.

Section 2 - Parenting and Time-Sharing: Factors to Consider When Determining What Is Detrimental to a Child

The bill prescribes additional factors a court must consider when determining what constitutes “detriment” to a minor child when determining whether to order shared parental responsibility. These factors are:

- Evidence of domestic violence as defined in s. 741.28;²²
- Whether either parent has or has had reasonable cause to believe that the parent or minor child or children are or have been in imminent danger of becoming victims of domestic violence²³ or sexual violence²⁴ by the other parent, regardless of whether a cause of action has been brought or is currently pending in court;
- Whether either parent has or has had reasonable cause to believe that the minor child or children are or have been in imminent danger of becoming victims of an act of abuse,²⁵ abandonment,²⁶ or neglect by the other parent against the child or children regardless of whether a cause of action has been brought or is currently pending in court; and

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

²² Domestic violence is defined in s. 741.28, F.S., as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

²³ *Id.*

²⁴ Sexual violence means any one incident of the following, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney: sexual battery, as defined in chapter 794; a lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787; sexual performance by a child, as described in chapter 827; or any other forcible felony wherein a sexual act is committed or attempted.

²⁵ Abuse is defined in s. 39.01(2), F.S., to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

²⁶ Abandonment is defined in s. 39.01(1), F.S., as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to

- Any other relevant factors.

Additionally, the bill amends s. 61.13(3)(m), F.S., to add one more factor that a court must consider when establishing or modifying parental responsibility or creating or modifying a parenting plan or time-sharing schedule. The additional factor is “evidence that a parent has or has had reasonable cause to believe that he or she or the minor child or children are in imminent danger of becoming victims of an act of domestic violence.”

Section 3 – Domestic Violence Injunctions

The bill adds an additional factor which the court must consider when determining whether a petitioner has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence and in need of a domestic violence injunction. The new factor is “whether the respondent has or had engaged in a pattern of abusive, threatening, intimidating, or controlling behavior that is composed of a series of acts, no matter how short of a period of time, which demonstrates a continuity of purpose and which reasonably cause the petitioner to believe that the petitioner or his or her minor child or children are in imminent danger of becoming victims of any act of domestic violence.”

The bill deletes existing language which provides that the court is not limited to those previously listed 10 factors when determining whether the petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. This deletion might be in error and is discussed in more detail in the “Technical Deficiencies” section of the analysis.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man’s acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered newborn infant as described in s. 383.50, F.S., a “child in need of services” as defined in chapter 984, or a “family in need of services” as defined in chapter 984. The absence of a parent, legal custodian, or caregiver responsible for a child’s welfare, who is a service member, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.13 and 741.30.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary Committee on March 7, 2023:

The committee adopted a technical amendment to restore to existing law the “flush left” language in s. 741.30(6)(b), F.S., and to conform a cross-reference.

B. Amendments:

None.



893018

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2023	.	
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The Committee on Judiciary (Berman) recommended the following:

Senate Amendment

Delete lines 201 - 202
and insert:
In making its determination under this paragraph, the court is
not limited to those factors enumerated in subparagraphs 1.-11.
~~1.-10.~~

By Senator Berman

26-00331-23

2023130__

A bill to be entitled

An act relating to domestic violence; providing a short title; amending s. 61.13, F.S.; requiring the court with jurisdiction over the proceeding to consider certain factors in deciding whether shared parental responsibility is detrimental to the child; making technical and conforming changes; providing additional conduct regarding domestic violence which the court must consider when ordering a parenting plan; amending s. 741.30, F.S.; providing an additional factor that the court must consider in determining whether a petitioner of a domestic violence injunction is in imminent danger; providing an effective date.

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

Section 1. This act may be cited as "Greyson's Law."

Section 2. Paragraph (c) of subsection (2) and paragraph (m) of subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26-00331-23

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and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Except as otherwise provided in this paragraph, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. In determining detriment to the child, the court shall consider:

a. Evidence of domestic violence, as defined in s. 741.28;

b. Whether either parent has or has had reasonable cause to believe that he or she or his or her minor child or children are or have been in imminent danger of becoming victims of an act of domestic violence as defined in s. 741.28 or sexual violence as defined in s. 784.046(1)(c) by the other parent against the parent or against the child or children whom the parents share in common regardless of whether a cause of action has been brought or is currently pending in the court;

c. Whether either parent has or has had reasonable cause to believe that his or her minor child or children are or have been in imminent danger of becoming victims of an act of abuse as defined in s. 39.01(2), abandonment as defined in s. 39.01(1),

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59 or neglect as defined in s. 39.01(50) by the other parent
 60 against the child or children whom the parents share in common
 61 regardless of whether a cause of action has been brought or is
 62 currently pending in the court; and

63 d. Any other relevant factors.

64 3. The following evidence creates a rebuttable presumption
 65 that shared parental responsibility is detrimental of detriment
 66 to the child:

67 a. A parent has been convicted of a misdemeanor of the
 68 first degree or higher involving domestic violence, as defined
 69 in s. 741.28 and chapter 775;

70 b. A parent meets the criteria of s. 39.806(1)(d); or

71 c. A parent has been convicted of or had adjudication
 72 withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and
 73 at the time of the offense:

74 (I) The parent was 18 years of age or older.

75 (II) The victim was under 18 years of age or the parent
 76 believed the victim to be under 18 years of age.

77
 78 If the presumption is not rebutted after the convicted parent is
 79 advised by the court that the presumption exists, shared
 80 parental responsibility, including time-sharing with the child,
 81 and decisions made regarding the child, may not be granted to
 82 the convicted parent. However, the convicted parent is not
 83 relieved of any obligation to provide financial support. If the
 84 court determines that shared parental responsibility would be
 85 detrimental to the child, it may order sole parental
 86 responsibility and make such arrangements for time-sharing as
 87 specified in the parenting plan as will best protect the child

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88 or abused spouse from further harm. Whether or not there is a
 89 conviction of any offense of domestic violence or child abuse or
 90 the existence of an injunction for protection against domestic
 91 violence, the court shall consider evidence of domestic violence
 92 or child abuse as evidence of detriment to the child.

93 ~~4.3-~~ In ordering shared parental responsibility, the court
 94 may consider the expressed desires of the parents and may grant
 95 to one party the ultimate responsibility over specific aspects
 96 of the child's welfare or may divide those responsibilities
 97 between the parties based on the best interests of the child.
 98 Areas of responsibility may include education, health care, and
 99 any other responsibilities that the court finds unique to a
 100 particular family.

101 ~~5.4-~~ The court shall order sole parental responsibility for
 102 a minor child to one parent, with or without time-sharing with
 103 the other parent if it is in the best interests of the minor
 104 child.

105 ~~6.5-~~ There is a rebuttable presumption against granting
 106 time-sharing with a minor child if a parent has been convicted
 107 of or had adjudication withheld for an offense enumerated in s.
 108 943.0435(1)(h)1.a., and at the time of the offense:

109 a. The parent was 18 years of age or older.

110 b. The victim was under 18 years of age or the parent
 111 believed the victim to be under 18 years of age.

112
 113 A parent may rebut the presumption upon a specific finding in
 114 writing by the court that the parent poses no significant risk
 115 of harm to the child and that time-sharing is in the best
 116 interests of the minor child. If the presumption is rebutted,

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117 the court ~~must shall~~ consider all time-sharing factors in
118 subsection (3) when developing a time-sharing schedule.

119 ~~7.6-~~ Access to records and information pertaining to a
120 minor child, including, but not limited to, medical, dental, and
121 school records, may not be denied to either parent. Full rights
122 under this subparagraph apply to either parent unless a court
123 order specifically revokes these rights, including any
124 restrictions on these rights as provided in a domestic violence
125 injunction. A parent having rights under this subparagraph has
126 the same rights upon request as to form, substance, and manner
127 of access as are available to the other parent of a child,
128 including, without limitation, the right to in-person
129 communication with medical, dental, and education providers.

130 (3) For purposes of establishing or modifying parental
131 responsibility and creating, developing, approving, or modifying
132 a parenting plan, including a time-sharing schedule, which
133 governs each parent's relationship with his or her minor child
134 and the relationship between each parent with regard to his or
135 her minor child, the best interest of the child shall be the
136 primary consideration. A determination of parental
137 responsibility, a parenting plan, or a time-sharing schedule may
138 not be modified without a showing of a substantial, material,
139 and unanticipated change in circumstances and a determination
140 that the modification is in the best interests of the child.
141 Determination of the best interests of the child shall be made
142 by evaluating all of the factors affecting the welfare and
143 interests of the particular minor child and the circumstances of
144 that family, including, but not limited to:

145 (m) Evidence of domestic violence, sexual violence, child

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146 abuse, child abandonment, or child neglect or evidence that a
147 parent has or has had reasonable cause to believe that he or she
148 or his or her minor child or children are in imminent danger of
149 becoming victims of an act of domestic violence, regardless of
150 whether a prior or pending action relating to those issues has
151 been brought. If the court accepts evidence of prior or pending
152 actions regarding domestic violence, sexual violence, child
153 abuse, child abandonment, or child neglect, the court must
154 specifically acknowledge in writing that such evidence was
155 considered when evaluating the best interests of the child.

156 Section 3. Paragraph (b) of subsection (6) of section
157 741.30, Florida Statutes, is amended to read:

158 741.30 Domestic violence; injunction; powers and duties of
159 court and clerk; petition; notice and hearing; temporary
160 injunction; issuance of injunction; statewide verification
161 system; enforcement; public records exemption.—

162 (6)

163 (b) In determining whether a petitioner has reasonable
164 cause to believe he or she is in imminent danger of becoming a
165 victim of domestic violence, the court shall consider and
166 evaluate all relevant factors alleged in the petition,
167 including, but not limited to:

- 168 1. The history between the petitioner and the respondent,
169 including threats, harassment, stalking, and physical abuse.
- 170 2. Whether the respondent has attempted to harm the
171 petitioner or family members or individuals closely associated
172 with the petitioner.
- 173 3. Whether the respondent has threatened to conceal,
174 kidnap, or harm the petitioner's child or children.

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175 4. Whether the respondent has intentionally injured or
176 killed a family pet.

177 5. Whether the respondent has used, or has threatened to
178 use, against the petitioner any weapons such as guns or knives.

179 6. Whether the respondent has physically restrained the
180 petitioner from leaving the home or calling law enforcement.

181 7. Whether the respondent has a criminal history involving
182 violence or the threat of violence.

183 8. The existence of a verifiable order of protection issued
184 previously or from another jurisdiction.

185 9. Whether the respondent has destroyed personal property,
186 including, but not limited to, telephones or other
187 communications equipment, clothing, or other items belonging to
188 the petitioner.

189 10. Whether the respondent has or had engaged in a pattern
190 of abusive, threatening, intimidating, or controlling behavior
191 composed of a series of acts over a period of time, however
192 short, which evidences a continuity of purpose and which
193 reasonably causes the petitioner to believe that the petitioner
194 or his or her minor child or children are in imminent danger of
195 becoming victims of any act of domestic violence.

196 11. Whether the respondent engaged in any other behavior or
197 conduct that leads the petitioner to have reasonable cause to
198 believe that he or she is in imminent danger of becoming a
199 victim of domestic violence.

200

201 ~~In making its determination under this paragraph, the court is~~
202 ~~not limited to those factors enumerated in subparagraphs 1. 10.~~

203 Section 4. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Clay Yarborough, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 19, 2023

I respectfully request that **Senate Bill #130**, relating to Domestic Violence/"Greyson's Law", be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Lori Berman" followed by a horizontal line.

Senator Lori Berman
Florida Senate, District 26

Cc: Senator Colleen Burton, Vice Chair
Tom Cibula, Staff Director

March 7, 2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB130

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Alison Kessler

Phone

954 6489107

Address

Street

Email

ali@greymarconsulting.com

City

State

Zip

33324

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

March 7, 2023

Meeting Date

SB 130

Bill Number or Topic

Deliver both copies of this form to Senate professional staff conducting the meeting

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Kasey Carter

Phone

561-275-8098

Address

5301 Redfield Ln

Email

kcarter109@hotmail.com

Street

Tampa

FL

33624

City

State

Zip

Reset Form

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

APPEARANCE RECORD

SB 130

3/7/23

Meeting Date

Bill Number or Topic

Judiciary

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Committee

Amendment Barcode (if applicable)

Name **Phil Wartenberg**

Phone **813.223.5351**

Address **651 E. Jefferson Street**

Email **pwartenberg@msn.com**

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Family Law Section

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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The Florida Senate

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130.
Greysons Law
Bill Number or Topic

3/7/2023

Meeting Date

Judiciary
Committee

Amendment Barcode (if applicable)

Name Melina C Markos

Phone 561-860-1061

Address 3208 Trafalgar Ct
Street

Email melinamom6@gmail.com

Jacksonville FL 32092
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

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Meeting Date

#130
Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name MINERVA GLIDDEN Phone 407-438-4145

Address 4913 Lake Millly Dr, ~~Orlando~~³²⁸³⁹ Email minervaglidden@gmail.com
Street
Orlando Fl 32839
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:
- I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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The Florida Senate APPEARANCE RECORD

130

Bill Number or Topic

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Amendment Barcode (if applicable)

Judiciary
Committee

Name

Deborah C. Deland

Phone

407 234-6408

Address

6278 Miramonte DR Unit 104

Email

dcdeland@att.net

Street

Orlando, FL 32835

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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The Florida Senate

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3-7-23

Meeting Date

130

Bill Number or Topic

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Judiciary

Committee

Amendment Barcode (if applicable)

Name

AMY GREENMAN

Phone

407-461-5411

Address

8646 SAVORY DR

Email

AMYGREENMAN1@gmail.com

Street

ORLANDO

FL

32825

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

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3-17-23

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Bill Number or Topic

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Judiciary

Committee

Amendment Barcode (if applicable)

Name

Barbara DeVane

Phone

850-251-4280

Address

625 E. Pensard St

Street

Email

barbaradevane1@flsen.gov

City

Tallahassee FL 32308

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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3/07/23

Meeting Date

SB 130

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Jennifer Adams obs Florida Protective Parents Phone 321-802-1414

Address P.O. Box 1687 Email Jennifer.FCCOPartnership@outlook.com

Winter Park, FL 32790

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[x] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Community Partnership

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

March 7, 2023

Meeting Date

The Florida Senate
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130

Bill Number or Topic

Judiciary

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Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Fla. Smart Justice

^ ...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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Meeting Date

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Jud.

Committee

Amendment Barcode (if applicable)

Name

Polly Kraus

Phone

727 709 9469

Address

1654 Sheffield Dr

Email

kraushond5@gmail.com

Street

Clearwater

FL

33764

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

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SB130

Bill Number or Topic

March 7, 2023

Meeting Date

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Judiciary

Committee

Amendment Barcode (if applicable)

Name Jennifer Moore

Phone 813-716-2423

Address 4722 Copper Canyon Blvd

Email moorejrose@aol.com

Street

Valrico FL 33594

City

State

Zip

Speaking: For

Against

Information

OR

Waive Speaking: In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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Meeting Date

SB 130

Bill Number or Topic

Judi

Committee

Amendment Barcode (if applicable)

Name

Gwendolyn SZAFRANSKI

Phone

813-654-7464

Address

1410 DUMONT DRIVE

Email

vongwend@aol.com

Street

VALRICO FL 33596

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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3/07/2023 Meeting Date

SB 130 Bill Number or Topic

Judiciary Committee

Amendment Barcode (if applicable)

Mary Armstrong Name

813 857-8054 Phone

4645 John Moore Blvd Address Street

maryarmstrong1982@gmail.com Email

Tampa FL 33511 City State Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

- [x] I am appearing without compensation or sponsorship. [] I am a registered lobbyist, representing: [] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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SB 130

Bill Number or Topic

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Meeting Date

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Judiciary

Committee

Amendment Barcode (if applicable)

Name

Patricia Farley

Phone

321-794-1955

Address

173 Coral Way

Street

Email

p.farley-101@hotmail.com

Indialantic

City

FL.

State

32903

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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SB 130

Bill Number or Topic

Amendment Barcode (if applicable)

3-7-23

Meeting Date

Judiciary

Committee

Name Jennifer Powell

Phone 352-215-2243

Address 6624 NW 27th Terr.
Street

Email acrypeace@gmail.com

Gainesville Fl. 32653
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:
- I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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: SB 164

INTRODUCER: Senators Polsky and Berman

SUBJECT: Controlled Substance Testing

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 164 amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog. If so amended, a person who possesses or uses a fentanyl test strip kit would not be subject to arrest and prosecution for any offense under s. 893.145, F.S.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Scheduling of Fentanyl as a Controlled Substance

State law¹ classifies controlled substances into five categories or classifications, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”² of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

¹ Section 893.03, F.S.

² Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

- Schedule I substances have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.³
- Schedule II substances have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.⁴
- Schedule III substances have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.⁵
- Schedule IV substances have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.⁶
- Schedule V substances have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.⁷

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”⁸ Fentanyl is a Schedule II controlled substance.⁹

“Synthetic opioids, including fentanyl, are now the most common drugs involved in drug overdose deaths in the United States.”¹⁰ According to Florida’s Statewide Drug Policy Advisory Council, the majority of overdose death in Florida in 2021 were related to opioids, and “[t]he most significant increases [in overdose deaths relative to the previous year] were deaths involving fentanyl which increased by 11 percent, and deaths caused by fentanyl increased by 9 percent.”¹¹

Controlled Substance Analog

A “controlled substance analog” is as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

³ Section 893.03(1), F.S.

⁴ Section 893.03(2), F.S.

⁵ Section 893.03(3), F.S.

⁶ Section 893.03(4), F.S.

⁷ Section 893.03(5), F.S.

⁸ National Institute on Drug Abuse, *Fentanyl DrugFacts*, <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on Mar. 3, 2023) (internal citations omitted). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[,]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” *Id.*

⁹ Section 893.03(2)(b)9., F.S.

¹⁰ National Institute on Drug Abuse, *supra* note 2.

¹¹ Statewide Drug Policy Advisory Council, *2022 Annual Report* (Dec. 1, 2022), 8, available at https://www.floridahealth.gov/provider-and-partner-resources/dpac/documents/2022_DPAC_Annual_Report.pdf.

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II.¹²

Fentanyl Test Strip Kit

According to the Centers for Disease Control and Prevention (CDC), fentanyl test strips (FTS) are “small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables).”¹³

The CDC outlines the steps to conduct the test:

- “Put a small amount (at least 10mg) of your drugs aside in a clean, dry container.”
- “Add water to the container and mix together.”
- “Place the wavy end of the test strip down in the water and let it absorb for about 15 seconds.”
- “Take the strip out of the water and place it on a flat surface for 2 to 5 minutes.”
- “Read results.”
 - “Positive results: A single pink line on the left-hand side indicates that fentanyl or a fentanyl analog has been detected in your drugs. If you receive a positive result, it is much safer to discard the batch. Using it could kill you. Illicitly manufactured fentanyl is extremely potent and can be deadly.”
 - “Negative results: Two pink lines indicate that fentanyl or a fentanyl analog has not been detected in your drugs. Remember that no test is 100% accurate and your drugs may still contain fentanyl or fentanyl analogs even if you receive a negative result. You should still take caution as FTS might not detect more potent fentanyl-like drugs, like carfentanil, and fentanyl might not be everywhere in your drugs and your test might miss it.”
 - “Invalid results: A single pink line on the right-hand side or no lines at all, indicates an invalid test. If you get an invalid result, test your drugs again using a new strip.”¹⁴

Drug Paraphernalia Statutes

“Drug paraphernalia” includes:

all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of [the chapter governing drug

¹² Section 893.0356(2)(a), F.S. (referencing Schedules I and II in s. 893.03, F.S.).

¹³ Centers for Disease Control and Prevention, *Fentanyl Test Strips: A Harm Reduction Strategy*, [https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20\(FTS\)%20are,%2C%20powder%2C%20and%20injectables](https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20(FTS)%20are,%2C%20powder%2C%20and%20injectables) (last visited on Mar. 3, 2023) (internal citations omitted).

¹⁴ *Id.*

abuse, prevention, and control] or [the statute prohibiting the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances]. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture.¹⁵

Drug paraphernalia includes testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.¹⁶

When determining in a criminal case whether an object constitutes drug paraphernalia, a jury or judge must consider, in addition to all other logically relevant factors, all of the following:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.¹⁷

It is a first degree misdemeanor¹⁸ to:

- Use, or possess with intent to use, drug paraphernalia to test a controlled substance.¹⁹
- Advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of objects designed or intended for use as drug paraphernalia.²⁰

It is a third degree felony²¹ to:

¹⁵ Section 893.145, F.S. (referencing ch. 893, F.S., and s. 877.111, F.S.) (emphases added).

¹⁶ Section 893.145(4), F.S.

¹⁷ Section 893.146, F.S.

¹⁸ A first degree misdemeanor is punishable by a term of imprisonment of not more than 1 year and a fine not exceeding \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

¹⁹ Section 893.147(1)(a), F.S.

²⁰ Section 893.147(5), F.S.

²¹ A third degree felony is generally punishable by a term of imprisonment of not more than five years and a fine not exceeding \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (providing for prison diversion).

- Deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to test a controlled substance.²²
- Use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance or contraband.²³

Immunity from Arrest, Charge, Prosecution, or Penalization

Under the immunity statute,²⁴ a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, a drug-related overdose may not be arrested, charged, prosecuted, or penalized for possession of a controlled substance, or the use or possession of drug paraphernalia.²⁵ Similar immunity is provided for the person who experiences, or has a good faith belief that he or she is experiencing, drug-related overdose and is in need of medical assistance.²⁶

The immunity statute appears to provide immunity from arrest, etc., for a violation of the use or possession statute,²⁷ provided an FTS kit was used or possessed and the criteria in the use or possession statute have otherwise been met. However, there are other offenses in the use or possession statute that might be applicable to an FTS kit and that might not qualify as immune from arrest, etc. under the immunity statute.

III. Effect of Proposed Changes:

The bill amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl²⁸ or a fentanyl analog. If so amended, a person who possesses or uses a fentanyl test strip kit would not be subject to arrest and prosecution for any offense under s. 893.145, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18 of the Florida Constitution.

²² Section 893.147(2), F.S.

²³ Section 893.147(4), F.S. (referencing the definition of contraband found in s. 932.701(2)(a)1., F.S.).

²⁴ See generally s. 893.21, F.S.

²⁵ Section 893.21(1), F.S.

²⁶ Section 893.21(2), F.S.

²⁷ Section 893.147(1), F.S.

²⁸ The bill references s. 893.03(2)(b)9., F.S., which is the scheduling reference for fentanyl in the controlled substance schedules.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).²⁹

According to the EDR, "per [Department of Corrections] in FY 18-19, there were 4 new commitments for drug paraphernalia violations under s. 893.147, F.S., and there was 1 new commitment in FY 19-20. In FY 20-21, there was 1 new commitment, and in FY 21-22, there were 2 new commitments. While it is not known how prison admissions will be impacted by this new language, the low number of commitments for the last four fiscal years indicate that there will not be a significant impact on the prison population."³⁰

VI. Technical Deficiencies:

None.

²⁹ Office of Economic and Demographic Research, *HB 165 – Controlled Substance Testing (Identical SB 164)*, (undated) (on file with the Senate Committee on Criminal Justice).

³⁰ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.145 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Polsky

30-00067B-23

2023164__

1 A bill to be entitled
 2 An act relating to controlled substance testing;
 3 amending s. 893.145, F.S.; revising the definition of
 4 the term "drug paraphernalia" to exclude certain
 5 narcotic-drug-testing products; providing an effective
 6 date.

8 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Subsection (4) of section 893.145, Florida
 11 Statutes, is amended to read:

12 893.145 "Drug paraphernalia" defined.—The term "drug
 13 paraphernalia" means all equipment, products, and materials of
 14 any kind which are used, intended for use, or designed for use
 15 in planting, propagating, cultivating, growing, harvesting,
 16 manufacturing, compounding, converting, producing, processing,
 17 preparing, testing, analyzing, packaging, repackaging, storing,
 18 containing, concealing, transporting, injecting, ingesting,
 19 inhaling, or otherwise introducing into the human body a
 20 controlled substance in violation of this chapter or s. 877.111.
 21 Drug paraphernalia is deemed to be contraband which shall be
 22 subject to civil forfeiture. The term includes, but is not
 23 limited to:

24 (4) Testing equipment used, intended for use, or designed
 25 for use in identifying, or in analyzing the strength,
 26 effectiveness, or purity of, controlled substances, excluding
 27 narcotic-drug-testing products that are used to determine
 28 whether a controlled substance contains fentanyl as described in
 29 s. 893.03(2)(b)9. or a controlled substance analog, as defined

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-00067B-23

2023164__

30 in s. 893.0356, of fentanyl.

31 Section 2. This act shall take effect July 1, 2023.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment,
and General Government
Appropriations Committee on Transportation, Tourism,
and Economic Development
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY
30th District

February 14, 2023

Chairman Clay Yarborough
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Yarborough,

I respectfully request that you place SB 164, relating to Controlled Substance Testing, on the agenda of the Committee on Judiciary, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky
Florida Senate, District 30

cc: Tom Cibula, Staff Director
Lisa Larson, Administrative Assistant

REPLY TO:

- 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
APPEARANCE RECORD

7 March 2023

Meeting Date

Judiciary

Committee

164

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Chris Stranburg

Phone

813-767-9667

Address

107 E College Ave

Email

cstranburg@afphg.org

Street

Tallahassee

State

FL

Zip

32301

City

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Americans for Prosperity

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/7/23

Meeting Date

Judiciary

Committee

164

Bill Number or Topic

Amendment Barcode (if applicable)

Name Row LaFace Phone

Address Street Email Ron@cccfla.com

City State Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

- [] I am appearing without compensation or sponsorship. [x] I am a registered lobbyist, representing: FL Assoc of Nurse Anethetists [] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FL Assoc of Nurse Anethetists

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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March 7, 2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

164

Bill Number or Topic

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Judiciary

Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Fla. Smart Justice

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S-001 (08/10/2021)

The Florida Senate

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3-07-2023 Meeting Date

SB164 Bill Number or Topic

Judiciary Committee

Amendment Barcode (if applicable)

Name Brittany Goad

Phone 386-295-0341

Address 357 Clifton Ave Street

Email magicnum12@gmail.com

Daytona Beach FL 32117 City State Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

- [x] I am appearing without compensation or sponsorship. [] I am a registered lobbyist, representing: [] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

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3/7/23

Meeting Date

SB1164

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Savannah Prince

Phone 904-495-5009

Address 33 Ranwood Ln

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Palm Coast FL 32164

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3-7-2023 Meeting Date

SB 164 Bill Number or Topic

Judiciary Committee

Amendment Barcode (if applicable)

Name Hope Walton

Phone 386 473 9702

Address 1535 Salvador AV Street

Email hope.walton15@gmail.com

Oeland FL 32720 City State Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

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3.7.23

Meeting Date

149

Bill Number or Topic

SUBSIDIARY

Committee

Amendment Barcode (if applicable)

Name

PAM BIRTOLLO

Phone

386 569 4310

Address

2550 LAKEHORE

Email

pambirtollo@me.com

Street

FLAGLER BCH FL 32136

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 104

March 7

Meeting Date

Bill Number or Topic

Judiciary

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name JENNIFER WEBB

Phone 727-320-6275

Address LIVE TAMPA BAY

Email jw@omnipublicglobal

Street

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 164

3/7/2023

Meeting Date

Bill Number or Topic

Senate Judiciary

Committee

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Amendment Barcode (if applicable)

Name Florida Cares Charity / Philippen

Phone 561-855-0833

Address 2048 Ponce De Leon Ave

Email laurette@florida-cares-charity.org

West Palm Beach, FL 33407

Street

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

SB 167

Meeting Date

Judiciary

Committee

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Bill Number or Topic

Amendment Barcode (if applicable)

Name

Aaron

Wayt

Florida Association
of Criminal
Defense Lawyers

Phone

Address

Street

Email

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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: SB 508

INTRODUCER: Senator Rouson

SUBJECT: Problem-solving Courts

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 508 revises three statutes that govern admission to, and participation in, the state’s “problem-solving courts.” The problem-solving courts are pre-trial intervention court programs that afford a defendant the opportunity to participate in getting the help he or she needs and avoid a criminal conviction. This bill expands eligibility for pretrial intervention programs, creates consistency within the criteria of the programs, and revises data reporting requirements for the programs.

The bill takes effect July 1, 2023.

II. Present Situation:

Problem-solving Courts

Florida’s “problem-solving courts” are unique among the trial and appellate courts in the state. They are specifically designed to address the root causes of why people are involved in the criminal justice system and to help those people receive the treatment they need to leave the system. Presently, there are more than 185 problem-solving courts operating in the state.¹ While participation in these court programs is voluntary, there is a list of factors, such as the commission of violent crimes, which can disqualify someone from participating.

Rather than operate in the traditional adversarial model, problem-solving courts provide non-adversarial proceedings with a dedicated judge who holds each participant accountable for his or her actions. The courts also provide a broad-based problem-solving team made up of case managers, attorneys, treatment professionals, even law enforcement and correctional officers,

¹ Office of the State Courts Administrator, *Florida Problem-Solving Courts Report, Pursuant to Section 43.51, F.S.* (Feb. 17, 2023). A map is attached at the end of this analysis showing the locations of these courts throughout the state.

and a guardian ad litem, if necessary.² The programs require regular court appearances by the participants and the length of the program is often, though not always, determined by the progress the participant makes as measured against specific guidelines.³

The problem-solving courts currently include adult drug courts, juvenile drug courts, dependency drug courts, veterans' courts, mental health courts, a community court, and a delinquency pretrial intervention court program.^{4,5}

Section 948.08, F.S., addresses *felony* pretrial intervention programs while s. 948.16, F.S., establishes *misdemeanor* pretrial intervention programs.

Treatment-based Drug Court Programs (Section 1)

Authorization, Admission, Disqualifying Criteria

Each county is authorized to fund a treatment-based drug court program for people in the justice system who have a substance abuse problem.⁶ Under current law, participation is voluntary, but admission is not guaranteed.

Previously Rejected Offer

Pursuant to s. 948.08(6)(c)1., F.S., the court or a state attorney may deny a defendant entry into the program if he or she was previously offered admission to the program and the defendant rejected that offer on the record.⁷

Dealing or Selling Controlled Substances

Pursuant to 948.08(6)(c)2., F.S., if the state attorney believes the defendant was involved in the dealing and selling of controlled substances, a court will hold a preadmission hearing. If the state attorney establishes by a preponderance of the evidence that the defendant was involved in dealing or selling controlled substances, the court is required to deny the defendant admission into the program.

Program Coordinator, Data Reporting Requirements

If the Legislature appropriates sufficient funding annually, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program within the state courts system. Among other assigned tasks, the coordinator is responsible for coordinating the responsibilities of the participating agencies and providers as well as provide program evaluation and accountability.

² Florida Courts, Office of the State Courts Administrator, *Office of Problem-Solving Courts*, <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts>.

³ Florida's 10th Judicial Circuit, *Problem Solving Court*, <https://www.jud10.flcourts.org/problem-solving-court#:~:text=Problem%20Solving%20Court%20programs%20are,random%20testing%20for%20substance%20use.>

⁴ This definition of "problem-solving court" is provided in s. 43.51, F.S., which requires the Office of the State Courts Administrator to provide an annual report to the President of the Senate and the Speaker of the House of Representatives detailing participant, service, and financial data.

⁵ Florida Courts, Office of the State Courts Administrator, Office of Problem-Solving Courts, *Defining Elements* <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts>.

⁶ Section 397.334(1), F.S.

⁷ Section 948.08(6)(c)1., F.S.

Each judicial circuit is required to report client-level and programmatic data to the Office of the State Court Administrator (OSCA) annually for program evaluation. Client-level data includes cataloguing primary offenses that resulted in drug court referral or sentence and other details. Programmatic data includes referral and screening procedures, eligibility criteria, and similar categories.

According to OSCA, it does not perform program evaluations such that it does not need to receive the client-level data from the circuits. OSCA has stated that requiring this data collection also puts an unnecessary burden on the circuits to report the data and an unnecessary burden on OSCA to collect the data.⁸

In contrast, the mental health court programs require each *program*, not each *circuit*, to gather client-level data and programmatic information for evaluation purposes. Of that information, only certain program information regarding client admissions and terminations are reported to OSCA each year.

Pretrial Intervention Program for *Felony* Offenses (Section 2)

Section 948.08, F.S., establishes three categories of pretrial intervention programs for felony offenses:

- Substance abuse education and treatment intervention, including a drug court program.
- Veterans treatment court program for veterans and servicemembers.
- Mental health court program.

Substance Abuse Education and Treatment Intervention Program

Program Duration – Not Less than 1 Year

Section 948.08(6)(b), F.S., states that a person admitted into a pretrial substance abuse education and treatment intervention program is admitted for a period “of not less than 1 year in duration” if he or she meets certain criteria.

Possible Disqualifying Criteria – Previously Violent Crime or Rejection of Previous Offer for Admission

Section 948.08(6)(b)3., F.S., lists an offense that will prohibit a defendant from entering a treatment-based drug court program: the defendant has been charged with a crime involving violence which includes, but is not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence.

As discussed above, pursuant to s. 948.08(6)(c)1., F.S., the court or a state attorney may deny a defendant entry into the program if he or she was previously offered admission to the program and the defendant rejected that offer on the record.

⁸ Office of the State Courts Administrator, *SB 508 Judicial Impact Statement*, (March 3, 2023) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=34341>.

Mental Health Court Program Eligibility

Section 948.08(8)(a), F.S., lists the requirements for a defendant to be eligible for voluntary admission into a pretrial mental health court program. The defendant must be identified as having a mental illness, not have been convicted of a felony, but is charged with certain crimes.

Pretrial Substance Abuse Education and Treatment Intervention Program for Misdemeanor Offenses (Section 3)

Section 948.16(1)(a), F.S., establishes the criteria for a defendant to participate in a misdemeanor pretrial substance abuse education and treatment program, misdemeanor pretrial veterans treatment intervention program, and a misdemeanor pretrial mental health court program. To qualify for admission into the substance abuse education and treatment intervention, a defendant may not have been convicted of a felony. In addition to being identified as having a substance abuse problem, these offenses, for which the defendant is currently charged, will permit him or her to be considered for admission into the program:

- A nonviolent, nontraffic-related misdemeanor;
- A misdemeanor possession of a controlled substance or drug paraphernalia under chapter 893, F.S.;
- Prostitution under s. 796.07, F.S.;
- Possession of alcohol while under 21 years of age under s. 562.111, F.S.;
- Possession of a controlled substance without a valid prescription under s. 499.03, F.S.

III. Effect of Proposed Changes:

The bill amends three statutes dealing with pretrial intervention programs. The bill makes the eligibility criteria provisions more consistent with each other, revises the data reporting requirements for treatment-based drug court programs, and expands the current eligibility requirements for admission into a misdemeanor pretrial treatment-based drug court program.

Treatment-based Drug Court Programs (Sections 1 & 2)

Admission for Participation is Expanded

Under existing law, a defendant may be denied an opportunity to be admitted into a pre-trial treatment-based drug court program by the court or the prosecution if he or she previously rejected the opportunity to do so before trial. Under the bill, persons who reject opportunities to participate are no longer subject to being barred from participation for that reason.

Data Reporting Requirements Shift from Circuit Responsibility to the Program

The bill adds a new provision that removes the responsibility of managing the collection of data from the circuits and places the responsibility on the treatment-based drug court program. In addition, each program is now required to annually report the programmatic information and the aggregate data regarding the number of admissions and terminations, by type of termination, to OSCA. The collection and reporting requirements will be consistent with the requirements placed on mental health court program reporting requirements.

Pretrial Intervention Program for *Felony* Offenses (Section 2)

Substance Abuse Education and Treatment Intervention Program

Duration Revised

The substance abuse education and treatment intervention program mandatory duration period “of not less than 1 year” is deleted and the court is given discretion as to how long a defendant needs to remain in the program, based upon his or her clinical needs. This makes the duration period consistent with the duration, described in s. 948.08(8)(a), F.S., for participation in a mental health court program .

Criteria – Previous Violent Crime Criteria Deleted

The bill deletes the language that excluded a defendant from participation for having been charged with a crime of violence. As revised, a defendant is excluded from participating only if he or she is currently charged with a crime of violence. By making this change, the statute becomes consistent with eligibility requirements contained in other problem-solving court statutes.

Mental Health Court Program Eligibility

The bill is amended to delete the provision that a defendant seeking admission to a pretrial mental health court program has not been convicted of a felony. This will expand the option for more people to enter the program who would previously be ineligible. The language would also be consistent with the criteria for entering a pretrial treatment-based drug court program.

Misdemeanor Pretrial Substance Abuse Education and Treatment Intervention Program (Section 3)

The bill expands who may be eligible for a misdemeanor pretrial substance abuse education and treatment intervention program. By eliminating the disqualifying offenses currently listed in statute and opening the criteria to any person charged with a misdemeanor, but who has not previously been convicted of a felony, more people will be eligible to participate in the program. This would make the eligibility criteria consistent with the criteria for pretrial misdemeanor veterans programs and mental health programs.

With the expanded eligibility criteria, the following previously barred persons may participate:

- Those charged with a misdemeanor for possession of a controlled substance or drug paraphernalia.
- Those charged with prostitution.
- Those charged with underage possession of alcohol.
- Those charged with the possession of a controlled substance without a valid prescription.

“Program Administrator” Terminology Change for Consistency with the Mental Health Statute

The term “program administrator” is added in ss. 948.08(6)(e), 948.08(7)(c), and 948.16(4), F.S., for consistent referencing to the person in charge of the problem-solving court programs in these statutes.

The effective date of the bill is July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

OSCA states that the changes to the data reporting requirements for the treatment-based drug court programs will reduce the workloads for the judicial circuits and OSCA. Additionally, by reducing how long a defendant must participate in the drug court program from the current 1-year period to a time based on his or her clinical needs would possibly reduce the courts' workload if participants complete the program in less than 1 year. Finally, OSCA does not expect the proposals that will increase the number of people who may become eligible to participate in the programs to increase court workload because admissions are discretionary and the capacity for the number of participants is limited.⁹

⁹ Office of the State Courts Administrator, *SB 508 Judicial Impact Statement*, (March 3, 2023) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=34341>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.334, 948.08, and 948.16

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

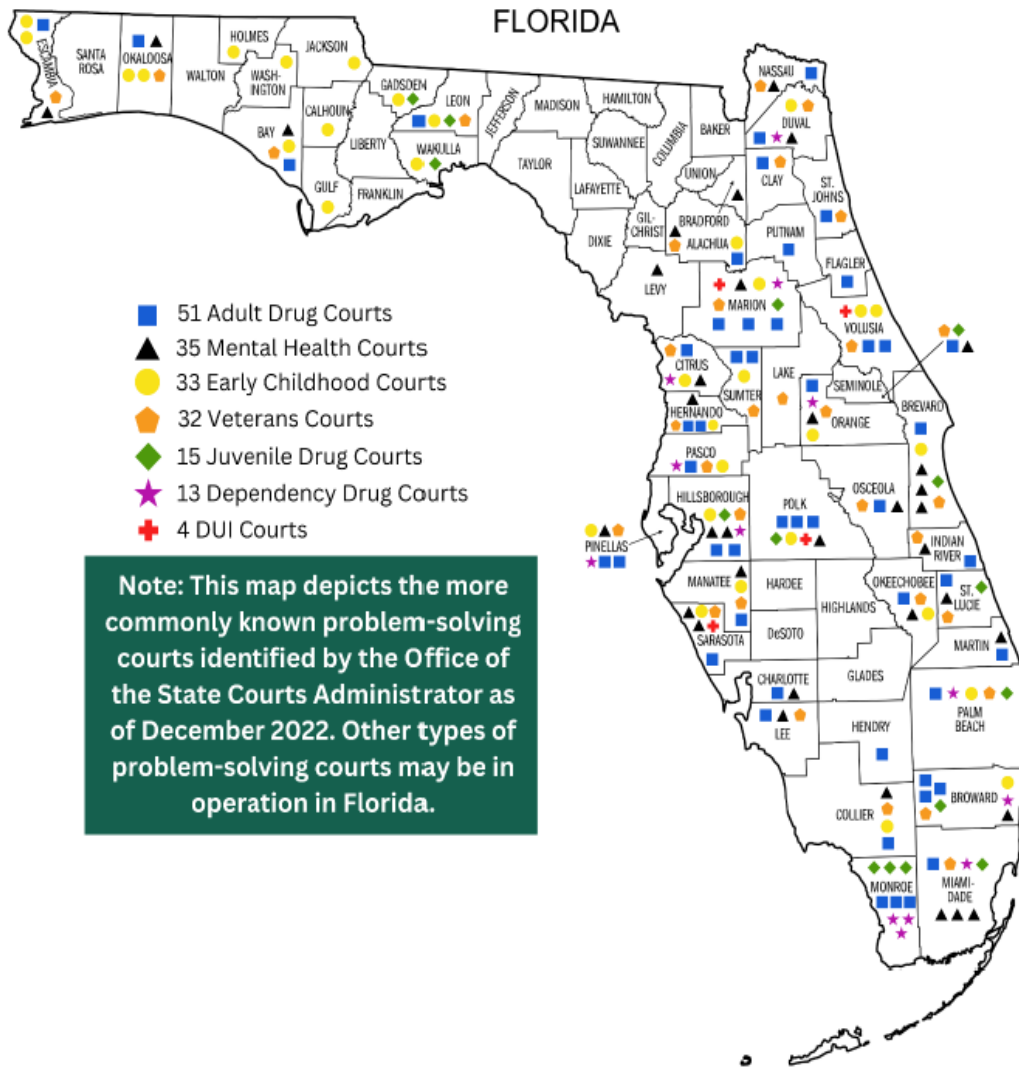
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FLORIDA'S PROBLEM-SOLVING COURTS¹⁰



¹⁰ Florida Courts, Office of the State Courts Administrator, Office of Problem-Solving Courts, Defining Elements <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts>.

By Senator Rouson

16-01452-23

2023508__

A bill to be entitled

An act relating to problem-solving courts; amending s. 397.334, F.S.; revising the responsibilities of coordinators of treatment-based drug court programs; requiring such programs to collect specified data and information for certain purposes; requiring such programs to annually report certain information and data to the Office of the State Courts Administrator; conforming provisions to changes made by the act; amending s. 948.08, F.S.; authorizing courts to determine how long a person may be admitted into certain programs; revising admission requirements for certain programs; conforming provisions to changes made by the act; amending s. 948.16, F.S.; revising eligibility requirements for voluntary admission into certain substance abuse programs; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (6) of section 397.334, Florida Statutes, are amended to read:

397.334 Treatment-based drug court programs.—

(2) Entry into any pretrial treatment-based drug court program shall be voluntary. When ~~neither~~ s. 948.08(6)(c)1. does not apply nor 2. applies, the court may order an eligible individual to enter into a pretrial treatment-based drug court program only upon written agreement by the individual, which

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shall include a statement that the individual understands the requirements of the program and the potential sanctions for noncompliance.

(6) (a) Contingent upon an annual appropriation by the Legislature, each judicial circuit shall establish, at a minimum, one coordinator position for the treatment-based drug court program within the state courts system to coordinate the responsibilities of the participating agencies and service providers. Each coordinator shall provide direct support to the treatment-based drug court program by providing coordination between the multidisciplinary team and the judiciary, providing case management, monitoring compliance of the participants in the treatment-based drug court program with court requirements, and managing the collection of data for ~~providing~~ program evaluation and accountability.

(b) Each treatment-based drug court program shall collect ~~circuit shall report~~ sufficient client-level data and programmatic information ~~data to the Office of State Courts Administrator annually~~ for purposes of program evaluation. Client-level data includes ~~include~~ primary offenses that resulted in the treatment-based drug court program referral or sentence, treatment compliance, completion status and reasons for failure to complete, offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Programmatic information includes ~~data include~~ referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources. Each treatment-based drug court program must annually report the programmatic information and aggregate data on the

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59 number of treatment-based drug court program admissions and
 60 terminations by type of termination to the Office of the State
 61 Courts Administrator.

62 Section 2. Paragraphs (b), (c), and (e) of subsection (6),
 63 paragraph (c) of subsection (7), and paragraph (a) of subsection
 64 (8) of section 948.08, Florida Statutes, are amended to read:

65 948.08 Pretrial intervention program.—

66 (6)

67 (b) Notwithstanding any provision of this section, a person
 68 is eligible for voluntary admission into a pretrial substance
 69 abuse education and treatment intervention program, including a
 70 treatment-based drug court program established pursuant to s.
 71 397.334, approved by the chief judge of the circuit, for a
 72 period to be determined by the court, based on the clinical
 73 needs of the defendant of not less than 1 year in duration, if
 74 he or she:

75 1. Is identified as having a substance abuse problem and is
 76 amenable to treatment.

77 2. Is charged with a nonviolent felony.

78 3. Is not also ~~Has never been~~ charged with a crime
 79 involving violence, including, but not limited to, murder,
 80 sexual battery, robbery, carjacking, home-invasion robbery, or
 81 any other crime involving violence.

82 4. Has two or fewer felony convictions, provided that the
 83 prior convictions are for nonviolent felonies.

84 (c) Upon motion of either party or the court's own motion,
 85 and with the agreement of the defendant, the court shall admit
 86 an eligible person into a pretrial substance abuse education and
 87 treatment intervention program, except:

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88 1. ~~If a defendant was previously offered admission to a~~
 89 ~~pretrial substance abuse education and treatment intervention~~
 90 ~~program at any time before trial and the defendant rejected that~~
 91 ~~offer on the record, the court or the state attorney may deny~~
 92 ~~the defendant's admission to such a program.~~

93 ~~2.~~ If the state attorney believes that the facts and
 94 circumstances of the case suggest the defendant's involvement in
 95 the dealing and selling of controlled substances, the court
 96 shall hold a preadmission hearing. If the state attorney
 97 establishes, by a preponderance of the evidence at such hearing,
 98 that the defendant was involved in the dealing or selling of
 99 controlled substances, the court shall deny the defendant's
 100 admission into a pretrial intervention program.

101 ~~2.3.~~ If the defendant has two or fewer prior felony
 102 convictions as provided in subparagraph (b)4., the court, in its
 103 discretion, may deny admission to such a program.

104 (e) At the end of the pretrial intervention period, the
 105 court shall consider the recommendation of the program
 106 administrator pursuant to subsection (5) and the recommendation
 107 of the state attorney as to disposition of the pending charges.
 108 The court shall determine, by written finding, whether the
 109 defendant has successfully completed the pretrial intervention
 110 program. Notwithstanding the coordinated strategy developed by a
 111 drug court team pursuant to s. 397.334(4), if the court finds
 112 that the defendant has not successfully completed the pretrial
 113 intervention program, the court may order the person to continue
 114 in education and treatment, which may include substance abuse
 115 treatment programs offered by licensed service providers as
 116 defined in s. 397.311 or jail-based treatment programs, or order

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117 that the charges revert to normal channels for prosecution. The
118 court shall dismiss the charges upon a finding that the
119 defendant has successfully completed the pretrial intervention
120 program.

121 (7)

122 (c) At the end of the pretrial intervention period, the
123 court shall consider the recommendation of the ~~treatment~~ program
124 administrator and the recommendation of the state attorney as to
125 disposition of the pending charges. The court shall determine,
126 by written finding, whether the defendant has successfully
127 completed the pretrial intervention program. If the court finds
128 that the defendant has not successfully completed the pretrial
129 intervention program, the court may order the person to continue
130 in education and treatment, which may include treatment programs
131 offered by licensed service providers or jail-based treatment
132 programs, or order that the charges revert to normal channels
133 for prosecution. The court shall dismiss the charges upon a
134 finding that the defendant has successfully completed the
135 pretrial intervention program.

136 (8) (a) Notwithstanding any provision of this section, a
137 defendant is eligible for voluntary admission into a pretrial
138 mental health court program established pursuant to s. 394.47892
139 and approved by the chief judge of the circuit for a period to
140 be determined by the court, based on the clinical needs of the
141 defendant, upon motion of either party or the court's own motion
142 if:

- 143 1. The defendant is identified as having a mental illness;
- 144 and
- 145 2. ~~The defendant has not been convicted of a felony; and~~

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146 ~~3.~~ The defendant is charged with:

147 a. A nonviolent felony that includes a third degree felony
148 violation of chapter 810 or any other felony offense that is not
149 a forcible felony as defined in s. 776.08;

150 b. Resisting an officer with violence under s. 843.01, if
151 the law enforcement officer and state attorney consent to the
152 defendant's participation;

153 c. Battery on a law enforcement officer under s. 784.07, if
154 the law enforcement officer and state attorney consent to the
155 defendant's participation; or

156 d. Aggravated assault, if the victim and state attorney
157 consent to the defendant's participation.

158 Section 3. Paragraph (a) of subsection (1) and subsection
159 (4) of section 948.16, Florida Statutes, are amended to read:

160 948.16 Misdemeanor pretrial substance abuse education and
161 treatment intervention program; misdemeanor pretrial veterans'
162 treatment intervention program; misdemeanor pretrial mental
163 health court program.-

164 (1) (a) A person who is charged with a ~~nonviolent,~~
165 ~~nontraffic-related~~ misdemeanor and identified as having a
166 substance abuse problem ~~or who is charged with a misdemeanor for~~
167 ~~possession of a controlled substance or drug paraphernalia under~~
168 ~~chapter 893, prostitution under s. 796.07, possession of alcohol~~
169 ~~while under 21 years of age under s. 562.111, or possession of a~~
170 ~~controlled substance without a valid prescription under s.~~
171 ~~499.03,~~ and who has not previously been convicted of a felony,
172 is eligible for voluntary admission into a misdemeanor pretrial
173 substance abuse education and treatment intervention program,
174 including a treatment-based drug court program established

16-01452-23

2023508__

175 pursuant to s. 397.334, approved by the chief judge of the
176 circuit, for a period based on the program requirements and the
177 treatment plan for the offender, upon motion of either party or
178 the court's own motion, except, if the state attorney believes
179 the facts and circumstances of the case suggest the defendant is
180 involved in dealing and selling controlled substances, the court
181 shall hold a preadmission hearing. If the state attorney
182 establishes, by a preponderance of the evidence at such hearing,
183 that the defendant was involved in dealing or selling controlled
184 substances, the court shall deny the defendant's admission into
185 the pretrial intervention program.

186 (4) At the end of the pretrial intervention period, the
187 court shall consider the recommendation of the ~~treatment~~ program
188 administrator and the recommendation of the state attorney as to
189 disposition of the pending charges. The court shall determine,
190 by written finding, whether the defendant successfully completed
191 the pretrial intervention program. Notwithstanding the
192 coordinated strategy developed by a drug court team pursuant to
193 s. 397.334(4) or by the veterans' treatment intervention team,
194 if the court finds that the defendant has not successfully
195 completed the pretrial intervention program, the court may order
196 the person to continue in education and treatment or return the
197 charges to the criminal docket for prosecution. The court shall
198 dismiss the charges upon finding that the defendant has
199 successfully completed the pretrial intervention program.

200 Section 4. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations, *Vice Chair*
Ethics and Elections, *Vice Chair*
Agriculture
Appropriations Committee on Criminal
and Civil Justice
Appropriations Committee on Health and
Human Services
Children, Families, and Elder Affairs
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR DARRYL ERVIN ROUSON

16th District

February 20, 2023

Senator Clay Yarborough
Chairman, Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Yarborough,

I write today respectfully requesting that SB 508, Problem-Solving Courts, be added to the agenda of a forthcoming meeting of the Committee on Judiciary for consideration. I look forward to the opportunity to present SB 508 to the committee. I am available for any questions you may have about this legislation. Thank you in advance for the committee's time and consideration.

Sincerely –

A handwritten signature in cursive script that reads "Darryl E. Rouson".

Senator Darryl E. Rouson
Florida Senate District 16

REPLY TO:

- 535 Central Avenue, Suite 302, St. Petersburg, Florida 33701 (727) 822-6828
- 212 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

March 7, 2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

508

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Judiciary

Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Fla. Smart Justice

^ ...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/7/2023

Meeting Date

508

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Caitlyn Clibbon

Phone (850)488-9071

Address 2473 Cane Dr.
Street

Email caitlync@disabilityrights
florida.org

TLH

City

FL

State

32308

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Disability Rights
Florida

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

March 7, 2023

Meeting Date

Judiciary Committee

Committee

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

SB 508

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Sean Burnfin**

Phone **(850) 922-0358**

Address **500 South Duval Street**

Email **burnfins@flcourts.org**

Street

Tallahassee

Florida

32309

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Steering Committee on Problem-Solving Courts

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flcourts.gov/2020-2022-Joint-Rules.pdf)

This is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

SB 508

Meeting Date

Judiciary
Committee

Deliver both copies of this form to
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Bill Number or Topic

Amendment Barcode (if applicable)

Name

Aaron Wayt
FL Association
of Criminal
Defense Lawyers

Phone

Address

Street

Email

City

State

Zip

Speaking:

For

Against

Information

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In Support

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S-001 (08/10/2021)

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: SB 662

INTRODUCER: Senator Bradley

SUBJECT: Student Online Personal Information Protection

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Favorable
2.			ED	
3.			RC	

I. Summary:

SB 662 creates the Student Online Personal Information Protection Act, which substantially restricts the operator of a website, online service, or online application that is used for K-12 school purposes from collecting, disclosing, or selling student data, or from using student data to engage in targeted advertising.

The bill prohibits operators from knowingly:

- Engaging in targeted advertising based on any information, including persistent unique identifiers, acquired through the use of their educational technology.
- Using any information, including persistent unique identifiers, gathered through their educational technology to create profiles of students, except for K-12 school purposes.
- Sharing, selling, or renting student information to third parties.
- Disclosing certain covered information, except under specified circumstances.

The bill requires operators to:

- Collect no more covered information than reasonably necessary to operate the educational technology.
- Implement and maintain reasonable security procedures and practices to protect covered information.
- Delete a student’s covered information if requested by the K-12 school or school district, unless a student or a parent or guardian consents to its maintenance.

The bill allows operators to disclose covered information if:

- Federal or state law requires disclosure.
- It is disclosed for legitimate research purposes, if not used for targeted advertising or profiling for purposes other than K-12 school purposes.

- It is disclosed to a state or local educational agency, including K-12 schools and school districts, for K-12 school purposes.

The bill takes effect July 1, 2023.

II. Present Situation:

Privacy of Student Information

Since the pandemic, schools have significantly increased their reliance upon Internet and online-based software and educational technologies. Classroom assignments and assessments are often delivered online via laptops or tablets, and teachers make regular use social media platforms, websites, and “free” apps in class.¹ In fact, a single educator will use, on average, 148 apps in a school year.² This increased reliance on Internet-based apps in schools risks compromising student privacy because it exposes students to online profiling and targeted advertising.

Profiling is the automated process of compiling personal data to evaluate certain personal aspects relating to a specific student.³ The operators of Internet-based apps can use persistent unique identifiers or third-party scripts to recognize and track students across third-party websites, then use this information to analyze or predict student interests for marketing or advertising purposes. Tracking students in this manner can result in unintended consequences such as the disclosure of sensitive data through unknown tracking processes.⁴

Targeted advertising collects generalized information about students from various sources, including their race, location, gender, age, school, or interests.⁵ This information is then interpreted in order to display products and services that may be more relevant (i.e. targeted) to students. Targeted advertising can also include the collection of specific information about individual students using cookies, beacons, tracking pixels, persistent unique identifiers, or other tracking technologies that provide more specific information about a student’s online behavior or activities over time. This information can then be sold to, or shared with, third-party advertisers, who are able to display even more targeted products and services to students than general targeted advertisements based on the highly-specific information they received from the student’s behavior while using the application or service.⁶

Targeted advertising is different than contextual advertising, which displays products and services to students based only on the content or webpage that they are currently viewing, and

¹ Parent Coalition for Student Privacy and the Network for Public Education, *The State Student Privacy Report Card: Grading the States on Protecting Student Data Privacy*, 1 (Jan. 2019), <https://studentprivacymatters.org/wp-content/uploads/2019/01/The-2019-State-Student-Privacy-Report-Card.pdf>.

² Rebecca Torchia, *What is Third-Party Risk, and What Do Schools Need to Know?* (Feb. 24, 2023), EdTech Focus On K-12, <https://edtechmagazine.com/k12/article/2023/02/what-third-party-risk-and-what-do-schools-need-know-perfcon> (citing LearnPlatform, *EdTech Top 40: Fall Report* (Sept. 2022), <https://learnplatform.com/top40>).

³ Girard Kelly, *How California’s Student Privacy Law Protects Against Targeted Advertising* (Apr. 26, 2018), *The Journal*, <https://thejournal.com/articles/2018/04/26/how-california-student-privacy-law-protects-against-targeted-advertising.aspx>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see also Wharton School, University of Pennsylvania, *Your Data Is Shared and Sold... What’s Being Done About It?* (Oct. 28, 2019), Knowledge at Wharton, <https://knowledge.wharton.upenn.edu/article/data-shared-sold-whats-done/>.

which does not collect any specific information about the student to determine which advertisements to display.⁷

There is significant unease about the privacy implications associated with the online collection and use of data.⁸ One international, pre-pandemic poll found that 71% of individuals worried about how tech companies collect and use their personal data.⁹ And in another poll, specifically with respect to the collection and use of K-12 student data, 93% of parents of K-12 students said it was important for schools to engage with them about the use of student data, but only 44% said that they had been asked for their input.¹⁰

State Student Privacy Legislation

At the state level, 42 states and the District of Columbia have passed more than 128 student privacy laws.¹¹ Indeed, most states have passed more than one student privacy law.¹²

States have generally approached the regulation of student data use in three ways:

- By regulating schools and state-level education agencies;
- By regulating companies that collect and use student data; and
- By combining the first two models.¹³

An example of the first approach is Oklahoma's Student Data Accessibility, Transparency, and Accountability Act of 2013 (the Student DATA Act), which addressed the permissible state-level collection, security, access, and uses of student data. Legislation following the Oklahoma model has limited data collection and use and defined how holders of student data can collect, safeguard, use, and grant access to data.¹⁴

An example of the second approach is California's Student Online Personal Information Protection Act (SOPIPA), which prevents online service providers from using student data for commercial purposes, while allowing specific beneficial uses such as personalized learning.

⁷ Kelly, *supra* at note 3.

⁸ See University of Texas at Austin, Center for Media Engagement, *Privacy versus Products in Targeted Digital Advertising*, <https://mediaengagement.org/research/privacy-versus-products-in-targeted-digital-advertising/> (last visited Feb. 28, 2023).

⁹ Amnesty International, *New poll reveals 7 in 10 people want governments to regulate Big Tech over personal data fears* (Dec. 4, 2019), <https://www.amnesty.org/en/latest/press-release/2019/12/big-tech-privacy-poll-shows-people-worried/>.

¹⁰ Adam Stone, *Understanding FERPA, CIPA, and Other K-12 Student Data Privacy Laws* (Apr. 28, 2022), EdTech Focus On K-12, <https://edtechmagazine.com/k12/article/2022/04/understanding-ferpa-cipa-and-other-k-12-student-data-privacy-laws-perfcon> (citing the Center for Democracy and Technology, *Sharing Student Data Across Public Sectors* (Dec. 2021), available at <https://cdt.org/wp-content/uploads/2021/12/12-01-2021-Civic-Tech-Community-Engagement-Full-Report-final.pdf>).

¹¹ *Id.* (citing a senior technologist with at the Future of Privacy Forum at <https://fpf.org/>).

¹² LearnPlatform, *Student Data Privacy Regulations Across the U.S.: A Look at How Minnesota, California and Others Handle Privacy*, <https://learnplatform.com/blog/edtech-management/student-data-privacy-regulations> (last visited Feb. 28, 2023); see also Student Privacy Compass, *State Student Privacy Laws*, <https://studentprivacycompass.org/state-laws/> (last visited Feb. 28, 2023) (maintaining a running list of state student privacy laws).

¹³ The Student Privacy Compass, *Policymakers: Student [State] Laws and Legislation*, <https://studentprivacycompass.org/audiences/policymakers/> (last visited Feb. 27, 2023).

¹⁴ *Id.*; see also State of Oklahoma, Department of Education, *Data Privacy and Security*, <https://sde.ok.gov/data-privacy-and-security> (last visited Feb. 28, 2023) (describing, among other things, certain important provisions of the Student DATA Act of 2013).

California supplemented SOPIPA by enacting AB 1584, a law that explicitly allows districts and schools to contract with third parties in order to manage, store, access, and use information in students' education records. An enforcement provision, AB 375, was also added to give the California Attorney General additional authority to fine companies that violate SOPIPA and AB 1584. This law has become a model for the regulation of educational technology vendors' use of student data; more than 20 states have since adopted similar laws.¹⁵

Examples of the third approach may be found in Georgia and Utah:

- To regulate its state longitudinal data system,¹⁶ Georgia chose to follow Oklahoma's lead in addressing three core issues regarding state education entities: which data is collected, how student data can be used securely and ethically, and who can access student data. Combined with SOPIPA-like regulation of third parties, this approach has allowed innovative uses of student data while establishing meaningful privacy protections for students.¹⁷
- Similarly, Utah has taken a modified hybrid approach by regulating districts, the state education agency, and companies. Utah took the additional step of creating and funding a Chief Privacy Officer and three additional privacy staff not only to carry out the law, but also to provide training for teachers and administrators and to create resources that help stakeholders ensure compliance.¹⁸

Since 2015, state legislation has tended to regulate data use rather than collection, and to focus laws on specific privacy topics such as data deletion, data misuse, biometric data, and breach notification.¹⁹

Federal Student Privacy Legislation

At the federal level, there are three laws that are most often referenced when it comes to student privacy and local schools or school districts:²⁰ the Family Educational Rights and Privacy Act,²¹ the Protection of Pupil Rights Amendment,²² and the Children's Online Privacy Protection Act (COPPA).²³

¹⁵ The Student Privacy Compass, *supra* note 13; *see also* State of California, Department of Justice, *Recommendations for the Ed Tech Industry to Protect the Privacy of Student Data*, 7-9 (Nov. 2016), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersecurity/ready-for-school-1116.pdf> (describing, among other things, SOPIPA's provisions).

¹⁶ In education, a longitudinal data system is a data system that collects and maintains detailed, high quality, student- and staff-level data; links these data across entities and over time, providing a complete academic and performance history for each student; and makes these data accessible through reporting and analysis tools. National Center for Education Statistics, U.S. Department of Education, *Traveling Through Time: The Forum Guide to Longitudinal Data Systems*, Ch. 2 LDS Basics, https://nces.ed.gov/forum/ldsguide/book1/ch_2_1.asp (last visited Feb. 28, 2023).

¹⁷ The Student Privacy Compass, *supra* note 13.

¹⁸ *Id.*

¹⁹ *Id.*; *see also* LearnPlatform, *supra* note 12 (discussing Minnesota, Illinois, and New York student data privacy legislation).

²⁰ LearnPlatform, *supra* note 12.

²¹ 20 U.S.C. s. 1232g; 34 C.F.R. pt. 99.

²² 20 U.S.C. s. 1232h; 34 C.F.R. pt. 98.

²³ 15 U.S.C. ss. 6501-06; 16 C.F.R. pt. 312.

Family Educational Rights and Privacy Act (FERPA)

FERPA protects the privacy of students' education records.²⁴ The law applies to any school that receives applicable funds from the U.S. Department of Education. FERPA grants parents certain rights respecting their child's education records, and this privacy right transfers to the student when he or she reaches age 18 or attends a post-secondary school (at which point he or she is known as an "eligible student").²⁵

Parents or eligible students have the right to inspect and review the student's education records maintained by the school. They also have the right to request that a school correct records that they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.²⁶

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- School officials having a legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- Persons authorized to receive the records pursuant to a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.²⁷

Schools may disclose, without consent, directory information, such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must allow parents and students to opt out of the disclosure of their directory information. Schools must give an annual notice about rights granted by FERPA to affected parties.²⁸

²⁴ U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)* (Aug. 25, 2021), <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Protection of Pupil Rights Amendment (PPRA)

PPRA applies to programs and activities that get their funding from the U.S. Department of Education.²⁹ It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

- Political affiliations or beliefs of the student or the student's parent;
- Mental or psychological problems of the student or the student's family;
- Sex behavior or attitudes;
- Illegal, anti-social, self-incriminating, or demeaning behavior;
- Critical appraisals of other individuals with whom respondents have close family relationships;
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- Religious practices, affiliations, or beliefs of the student or student's parent; or
- Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).³⁰

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under state law.³¹

Children's Online Privacy Protection Act (COPPA)

COPPA and its related rules regulate websites' collection and use of children's information.³² The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security. For purposes of COPPA, children are individuals under the age of 13.³³

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:

- First and last name;
- A home or other physical address including street name and name of a city or town;
- Online contact information;
- A screen or user name that functions as online contact information;
- A telephone number;
- A social security number;
- A persistent identifier that can be used to recognize a user over time and across different websites or online services;

²⁹ U.S. Department of Education, *What is the Protection of Pupil Rights Amendment (PPRA)?*, <https://studentprivacy.ed.gov/faq/what-protection-pupil-rights-amendment-ppra> (last visited Feb. 27, 2023).

³⁰ *Id.*

³¹ *Id.*

³² Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Feb. 27, 2023).

³³ *Id.*

- A photograph, video, or audio file, where such file contains a child's image or voice;
- Geolocation information sufficient to identify street name and name of a city or town; or
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.³⁴

Operators covered by the rule must:

- Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children;
- Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children;
- Give parents the choice of consenting to the operator's collection and internal use of a child's information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents);
- Provide parents access to their child's personal information to review or have the information deleted;
- Give parents the opportunity to prevent further use or online collection of a child's personal information;
- Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security;
- Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use; and
- Not condition a child's participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.³⁵

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the Federal Trade Commission.³⁶

Required Instruction in Florida Schools

The mission of Florida's K-20 education system is to allow its students to increase their proficiency by allowing them the opportunity to expand their knowledge and skills through rigorous and relevant learning opportunities.³⁷ Each district school board must provide appropriate instruction to ensure that students meet State Board of Education (SBE) adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.³⁸ Subject to the

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See id.*; *see also* 15 U.S.C. s. 6502(c); 16 C.F.R. s. 312.9.

³⁷ Section 1000.03(4), F.S.

³⁸ Section 1003.42(1), F.S.

rules of the SBE and the district school board, public school instructional staff³⁹ must also provide instruction in several other subject matters.⁴⁰

III. Effect of Proposed Changes:

SB 662 creates s. 1006.1494, F.S., entitled “Student online personal information protection.” The section generally limits and regulates the collection and use of K-12 student data by operators of Internet websites, online services, online applications, and mobile applications for K-12 school purposes. Among other things, the section prohibits operators from engaging in targeted advertising; places new and significant restrictions on operators’ collection and use of K-12 students’ data; prohibits operators from sharing, selling, or renting such data; and requires operators to adhere to new baseline privacy and security protections in connection with such data.

Definitions

The bill defines “covered information” to mean the personal identifying information or material of a student, or information linked to personal identifying information or material of a student, in any media or format that is not publicly available and is any of the following:

- Created by or provided to an operator by the student, or the student’s parent or legal guardian, in the course of the student’s, parent’s, or legal guardian’s use of the operator’s site, service, or application for K-12 school purposes.
- Created by or provided to an operator by an employee or agent of a K-12 school or school district for K-12 school purposes.
- Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including, but not limited to, information in the student’s educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

The bill defines “interactive computer service” to mean any information, service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

The bill incorporates by reference the existing definition for “K-12 school” in state law.⁴¹ K-12 schools include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be

³⁹ Instructional staff of charter schools are generally exempt from this section of law. Section 1002.33(16), F.S.

⁴⁰ Section 1003.42(2)(a)-(t), F.S. (listing a number of subject matters including, among others, the history of the U.S., the state, African Americans, and the Holocaust).

⁴¹ Section 1000.04(2), F.S.

operated under the control of district school boards; and lab schools operated under the control of state universities.

The bill defines “K-12 school purposes” to mean purposes directed by or that customarily take place at the direction of a K-12 school, teacher, or school district or that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or that are otherwise for the use and benefit of the school.

The bill defines “operator” to mean – to the extent that it is operating in this capacity – the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or online application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes.

The bill incorporates by reference the existing definition for “school district” in state law.⁴² “School district” means any of the 67 county school districts, including their respective district school boards.

The bill defines “targeted advertising” to mean presenting advertisements to a student which are selected on the basis of information obtained or inferred over time from that student’s online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon the student’s current visit to that location, or advertising presented in response to a student’s request for information or feedback, if the student’s online activities or requests are not retained over time for the purpose of targeting subsequent advertisements to that student.

Prohibitions

The bill prohibits operators from knowingly:

- Engaging in targeted advertising on the operator’s site, service, or application, or targeted advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, which the operator has acquired because of the use of that operator’s site, service, or application for K-12 purposes.
- Using information, including persistent unique identifiers, created or gathered by the operator’s site, service, or application to amass a profile of a student, except in furtherance of K-12 school purposes. The term “amass a profile” does not include the collection and retention of account information that remains under the control of the student or the student’s parent or guardian or K-12 school.
- Sharing, selling, or renting a student’s information, including covered information. This paragraph does not apply to the purchase, merger, or other acquisition of an operator by another entity, if the operator or successor entity complies with this section regarding previously acquired student information, or to a national assessment provider if the provider obtains the express written consent of the parent or student, given in response to clear and

⁴² Section 595.402(5), F.S.

conspicuous notice, solely to provide access to employment, educational scholarships or financial aid, or postsecondary educational opportunities.

- Disclosing covered information, except as otherwise provided in the bill, unless the disclosure is made for any of the following reasons:
 - In furtherance of the K-12 school purpose of the site, service, or application, if the recipient of the covered information that is disclosed does not further disclose the information, unless such disclosure is made to allow or improve operability and functionality of the operator's site, service, or application.
 - To ensure legal and regulatory compliance or protect against liability.
 - To respond to or participate in the judicial process.
 - To protect the safety or integrity of users of the site or others or the security of the site, service, or application.
 - For a school, educational, or employment purpose requested by the student or the student's parent or guardian, provided that the information is not used or further disclosed for any other purpose.
 - To a third party, if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

Requirements

The bill requires operators to:

- Collect no more covered information than is reasonably necessary to operate an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 purposes.
- Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information which are designed to protect it from unauthorized access, destruction, use, modification, or disclosure.
- Within a reasonable timeframe, delete a student's covered information if the K-12 school or school district requests deletion of covered information under the control of the K-12 school or school district, unless a student or a parent or guardian consents to the maintenance of the covered information.

Permitted Disclosures

The bill provides that an operator may use or disclose covered information of a student if:

- Federal or state law requires the operator to disclose the information, and the operator complies with federal or state law, as applicable, in protecting and disclosing that information.
- It is disclosed for legitimate research purposes, as required by state or federal law and subject to restrictions imposed thereunder, if covered information is not used for advertising or to amass a profile of the student for purposes other than K-12 school purposes; or as allowed by state or federal law and in furtherance of K-12 school purposes or postsecondary education purposes.

- The covered information is disclosed to a state or local educational agency, including K-12 schools and school districts, for K-12 school purposes, as allowed under state or federal law.

Permitted Activities

The bill provides that its terms do not prohibit an operator from:

- Using covered information to improve educational products, if that information is not associated with an identified student within the operator's site, service, or application, or other sites, services, or applications owned by the operator.
- Using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including use in their marketing.
- Sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications.
- Using recommendation engines to recommend to a student any of the following:
 - Additional content relating to an education, an employment, or any other learning opportunity purpose within an online site, service, or application, if the recommendation is not determined in whole or in part by payment or other consideration from a third party.
 - Additional services relating to an educational, an employment, or any other learning opportunity purpose within an online site, service, or application, if the recommendation is not determined in whole or in part by payment or other consideration from a third party.
- Responding to a student's request for information or feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

Unregulated Activities

The bill provides that it does not:

- Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order.
- Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes.
- Apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.
- Limit service providers from providing Internet connectivity to schools or students and their families.
- Prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents, if such marketing did not result from the use of covered information obtained by the operator through the provision of services covered under the bill.
- Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this bill on such software or applications.

- Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this bill by third-party content providers.
- Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents.

Effective Date

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Because the bill prohibits operators from engaging in targeted advertising; places new and significant restrictions on operators' collection and use of students' online personal information; and prohibits operators from sharing, selling, or renting such information, operators will no longer be able to financially benefit from such activities. Additionally, because the bill requires operators to adhere to new baseline privacy and security protections in connection with students' online personal information, operators will incur costs associated with implementing these measures and complying with the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1006.1494 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.

By Senator Bradley

6-00348A-23

2023662__

A bill to be entitled

An act relating to student online personal information protection; providing a short title; creating s. 1006.1494, F.S.; defining terms; prohibiting operators from knowingly engaging in specified activities relating to students' covered information; providing an exception; specifying the duties of an operator; providing circumstances under which an operator may disclose students' covered information; providing construction; providing an effective date.

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

Section 1. This act may be cited as the "Student Online Personal Information Protection Act."

Section 2. Section 1006.1494, Florida Statutes, is created to read:

1006.1494 Student online personal information protection.—

(1) As used in this section, the term:

(a) "Covered information" means personal identifying information or material of a student, or information linked to personal identifying information or material of a student, in any media or format that is not publicly available and is any of the following:

1. Created by or provided to an operator by the student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K-12 school purposes.

2. Created by or provided to an operator by an employee or

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agent of a K-12 school or school district for K-12 school purposes.

3. Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

(b) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(c) "K-12 school" has the same meaning as described in s. 1000.04(2).

(d) "K-12 school purposes" means purposes directed by or that customarily take place at the direction of a K-12 school, teacher, or school district or that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and

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59 collaboration between students, school personnel, or parents, or
60 that are otherwise for the use and benefit of the school.

61 (e) "Operator" means, to the extent that it is operating in
62 this capacity, the operator of an Internet website, online
63 service, online application, or mobile application with actual
64 knowledge that the site, service, or application is used
65 primarily for K-12 school purposes and was designed and marketed
66 for K-12 school purposes.

67 (f) "School district" has the same meaning as in s.
68 595.402.

69 (g) "Targeted advertising" means presenting advertisements
70 to a student which are selected on the basis of information
71 obtained or inferred over time from that student's online
72 behavior, usage of applications, or covered information. The
73 term does not include advertising to a student at an online
74 location based upon the student's current visit to that
75 location, or advertising presented in response to a student's
76 request for information or feedback, if the student's online
77 activities or requests are not retained over time for the
78 purpose of targeting subsequent advertisements to that student.

79 (2) An operator may not knowingly do any of the following:

80 (a) Engage in targeted advertising on the operator's site,
81 service, or application, or targeted advertising on any other
82 site, service, or application if the targeting of the
83 advertising is based on any information, including covered
84 information and persistent unique identifiers, which the
85 operator has acquired because of the use of that operator's
86 site, service, or application for K-12 school purposes.

87 (b) Use information, including persistent unique

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88 identifiers, created or gathered by the operator's site,
89 service, or application to amass a profile of a student, except
90 in furtherance of K-12 school purposes. The term "amass a
91 profile" does not include the collection and retention of
92 account information that remains under the control of the
93 student or the student's parent or guardian or K-12 school.

94 (c) Share, sell, or rent a student's information, including
95 covered information. This paragraph does not apply to the
96 purchase, merger, or other acquisition of an operator by another
97 entity, if the operator or successor entity complies with this
98 section regarding previously acquired student information, or to
99 a national assessment provider if the provider obtains the
100 express written consent of the parent or student, given in
101 response to clear and conspicuous notice, solely to provide
102 access to employment, educational scholarships or financial aid,
103 or postsecondary educational opportunities.

104 (d) Except as otherwise provided in subsection (4),
105 disclose covered information, unless the disclosure is made for
106 any of the following purposes:

107 1. In furtherance of the K-12 school purpose of the site,
108 service, or application, if the recipient of the covered
109 information disclosed under this subparagraph does not further
110 disclose the information, unless such disclosure is made to
111 allow or improve operability and functionality of the operator's
112 site, service, or application.

113 2. To ensure legal and regulatory compliance or protect
114 against liability.

115 3. To respond to or participate in the judicial process.

116 4. To protect the safety or integrity of users of the site

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117 or others or the security of the site, service, or application.

118 5. For a school, educational, or employment purpose
 119 requested by the student or the student's parent or guardian,
 120 provided that the information is not used or further disclosed
 121 for any other purpose.

122 6. To a third party, if the operator contractually
 123 prohibits the third party from using any covered information for
 124 any purpose other than providing the contracted service to or on
 125 behalf of the operator, prohibits the third party from
 126 disclosing any covered information provided by the operator with
 127 subsequent third parties, and requires the third party to
 128 implement and maintain reasonable security procedures and
 129 practices.

130 (e) This subsection does not prohibit an operator's use of
 131 information for maintaining, developing, supporting, improving,
 132 or diagnosing the operator's site, service, or application.

133 (3) An operator shall do all of the following:

134 (a) Collect no more covered information than is reasonably
 135 necessary to operate an Internet website, online service, online
 136 application, or mobile application with actual knowledge that
 137 the site, service, or application is used primarily for K-12
 138 school purposes and was designed and marketed for K-12 school
 139 purposes.

140 (b) Implement and maintain reasonable security procedures
 141 and practices appropriate to the nature of the covered
 142 information which are designed to protect it from unauthorized
 143 access, destruction, use, modification, or disclosure.

144 (c) Within a reasonable timeframe, delete a student's
 145 covered information if the K-12 school or school district

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146 requests deletion of covered information under the control of
 147 the K-12 school or school district, unless a student or a parent
 148 or guardian consents to the maintenance of the covered
 149 information.

150 (4) An operator may use or disclose covered information of
 151 a student under any of the following circumstances:

152 (a) If federal or state law requires the operator to
 153 disclose the information, and the operator complies with federal
 154 or state law, as applicable, in protecting and disclosing that
 155 information.

156 (b) If covered information is not used for advertising or
 157 to amass a profile of the student for purposes other than K-12
 158 school purposes, legitimate research purposes, as required by
 159 state or federal law and subject to restrictions imposed
 160 thereunder; or as allowed by state or federal law and in
 161 furtherance of K-12 school purposes or postsecondary educational
 162 purposes.

163 (c) If the covered information is disclosed to a state or
 164 local educational agency, including K-12 schools and school
 165 districts, for K-12 school purposes, as allowed under state or
 166 federal law.

167 (5) This section does not prohibit an operator from doing
 168 any of the following:

169 (a) Using covered information to improve educational
 170 products, if that information is not associated with an
 171 identified student within the operator's site, service, or
 172 application, or other sites, services, or applications owned by
 173 the operator.

174 (b) Using covered information that is not associated with

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175 an identified student to demonstrate the effectiveness of the
 176 operator's products or services, including use in their
 177 marketing.

178 (c) Sharing covered information that is not associated with
 179 an identified student for the development and improvement of
 180 educational sites, services, or applications.

181 (d) Using recommendation engines to recommend to a student
 182 any of the following:

183 1. Additional content relating to an educational, an
 184 employment, or any other learning opportunity purpose within an
 185 online site, service, or application, if the recommendation is
 186 not determined in whole or in part by payment or other
 187 consideration from a third party.

188 2. Additional services relating to an educational, an
 189 employment, or any other learning opportunity purpose within an
 190 online site, service, or application, if the recommendation is
 191 not determined in whole or in part by payment or other
 192 consideration from a third party.

193 (e) Responding to a student's request for information or
 194 feedback without the information or response being determined in
 195 whole or in part by payment or other consideration from a third
 196 party.

197 (6) This section does not do any of the following:

198 (a) Limit the authority of a law enforcement agency to
 199 obtain any content or information from an operator as authorized
 200 by law or under a court order.

201 (b) Limit the ability of an operator to use student data,
 202 including covered information, for adaptive learning or
 203 customized student learning purposes.

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204 (c) Apply to general audience Internet websites, general
 205 audience online services, general audience online applications,
 206 or general audience mobile applications, even if login
 207 credentials created for an operator's site, service, or
 208 application may be used to access those general audience sites,
 209 services, or applications.

210 (d) Limit service providers from providing Internet
 211 connectivity to schools or students and their families.

212 (e) Prohibit an operator of an Internet website, online
 213 service, online application, or mobile application from
 214 marketing educational products directly to parents, if such
 215 marketing did not result from the use of covered information
 216 obtained by the operator through the provision of services
 217 covered under this section.

218 (f) Impose a duty upon a provider of an electronic store,
 219 gateway, marketplace, or other means of purchasing or
 220 downloading software or applications to review or enforce
 221 compliance with this section on such software or applications.

222 (g) Impose a duty upon a provider of an interactive
 223 computer service to review or enforce compliance with this
 224 section by third-party content providers.

225 (h) Prohibit students from downloading, exporting,
 226 transferring, saving, or maintaining their own student data or
 227 documents.

228 Section 3. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Committee on Criminal
and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR JENNIFER BRADLEY
6th District

February 21, 2023

Senator Clay Yarborough, Chairman
Senate Committee on Judiciary
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Yarborough:

I respectfully request that Senate Bill 662 be placed on the committee's agenda at your earliest convenience. This bill relates to the student online personal information protection.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

cc: Tom Cibula, Staff Director
Lisa Larson, Administrative Assistant

REPLY TO:

- 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
- 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

03/07/2023

Meeting Date

The Florida Senate APPEARANCE RECORD

SB662 SOPIPA

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Judiciary

Committee

Amendment Barcode (if applicable)

Name **Cathryn Moering**

Phone

Address **3300 Henderson Blvd Ste. 201**

Email

Street

Tampa

FL

33609

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/7/2023

Meeting Date

662

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Caitlyn Clibborn

Phone (850) 488-9071

Address 2473 Care Dr.

Email caitlync@disabilityrightsflorida.org

TLH

FL

32308

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing: Disability Rights Florida

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3-7-23

Meeting Date

Judiciary

Committee

SB 0622

Bill Number or Topic

Amendment Barcode (if applicable)

Name Eileen Segal (FLORIDA PTA)

Phone 407-855-7604

Address 1747 Orlando Central Parkway

Email legislation@FPTA.org

Orlando City

FLA State

32809 Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flisenate.gov)

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S-001 (08/10/2021)

March 7, 2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

662

Bill Number or Topic

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Judiciary

Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Fla. Smart Justice

^ ...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

March 7, 2023

Meeting Date

Senate Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 662

Bill Number or Topic

Amendment Barcode (if applicable)

Name Lee Carden

Phone

Address 3300 Henderson Boulevard, Suite 201

Email lee@leecardenlaw.com

Street

Tampa

33609

City

State

Zip

Speaking: [] For [x] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 130

3/7/23

Meeting Date

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Senate professional staff conducting the meeting

Bill Number or Topic

Judiciary

893018***

Committee

Amendment Barcode (if applicable)

Name **Phil Wartenberg**

Phone **813.223.5351**

Address **651 E. Jefferson Street**

Email **pwartenberg@msn.com**

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Family Law Section

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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 1098

INTRODUCER: Judiciary Committee and Senator Burton

SUBJECT: Withholding or Withdrawal of Life-prolonging Procedures

DATE: March 8, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1098 regulates the authority of a court-appointed guardian to consent to withhold or withdraw life-prolonging procedures, or sign an order not to resuscitate, on behalf of a ward. The bill allows the ward's wishes to be followed without delay, but still requires court approval to withhold or withdraw life-prolonging procedures in some cases.

Specifically, the bill creates a statute that:

- Authorizes a guardian of a ward's person to petition a court for authority to consent to withhold or withdraw life-prolonging procedures, if the guardian lacks sufficient authority to consent or if the proposal is in conflict with the wishes of the ward or the ward's next of kin.
- Requires the court to hold a hearing on the petition if it has been notified of an objection or conflict, or if the court has insufficient information to determine whether the criteria for granting the requested authority has been met.
- Requires the court to hold a preliminary hearing within 72 hours after the petition is filed, if a hearing is required and exigent circumstances are alleged, and either rule on the requested relief immediately or conduct an evidentiary hearing within 4 days.
- Allows a guardian without vested authority to consent to the withholding or withdrawal of life-prolonging procedures, without a hearing or prior court approval, if the ward's death is likely to occur within 72 hours, there are no known objections to the petition, and the hospital ethics committee has met and agrees with the guardian's proposal.

The bill also amends existing statutes to:

- Require initial and annual guardianship plans to state whether an advance directive or an order to not resuscitate listed therein remains in effect, or state the extent to which their authority to make health care decisions has been transferred by the court to the guardian.
- Provide that a surrogate under an advance directive, or an agent under a durable power of attorney, who has retained the authority to make health care decisions under the initial and annual guardianship plans may exercise that authority without additional approval by the court.
- Provide that any authority to make health care decisions that has been transferred by the court to the guardian may be exercised by the guardian, consistent with the advance directive or the durable power of attorney, and without additional approval by the court, unless there is a conflict over or objection to the guardian's proposed exercise of that authority.

The bill takes effect on July 1, 2023.

II. Present Situation:

Guardians and Guardianship

A “guardian” is someone who has been given the legal duty and authority to care for another person or his or her property because of that person’s infancy, disability, or incapacity.¹ A “guardianship” is a trust relationship designed to protect vulnerable members of society who do not have the ability to protect themselves.² The person for whom a guardian is appointed in a guardianship is called a “ward.”³

Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.⁴ Guardianships are generally disfavored because the ward loses his or her individual and civil rights; a guardian may be appointed only if the court finds there is no less restrictive alternative to a guardianship.⁵

There are two main forms of guardianship: guardianship over the person, and guardianship over the property – each of which may be limited or plenary. For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage some or all of his or her own affairs.⁶ If the adult is competent, this can be accomplished voluntarily. However, if an individual’s mental competence is in question, an involuntary guardianship may be established through an adjudication of incompetence, which is determined by a court-appointed examination committee.⁷

¹ BLACK’S LAW DICTIONARY (11th ed., 2019).

² *See id.*

³ Section 744.102(22), F.S.

⁴ *See s.* 744.102(9), F.S.

⁵ Section 744.1012(1)-(2), F.S.; *see also* Disability Rights Florida, *Types of Guardianship*, https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Mar. 1, 2023).

⁶ *See generally*, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. Section 744.102(9)(b), F.S.

⁷ *See generally*, s. 744.102(12), F.S.; *see also* ch. 744, pt. V, F.S. (regarding the adjudication of incapacity and appointment of guardians).

A guardianship must be specific to the abilities and needs of the individual and should never be more restrictive than necessary.⁸ Consequently, state law recognizes different types of guardians and guardianship arrangements, including⁹ preneed guardians;¹⁰ voluntary guardianship;¹¹ emergency temporary guardianship;¹² limited guardianship;¹³ guardian advocates for individuals who have a developmental disability¹⁴ or for individuals receiving mental health treatment;¹⁵ and full (*i.e.* plenary) guardianship.¹⁶

Powers and Duties of Court-Appointed Guardians

The powers and duties of a court-appointed guardian include:

- Filing an initial plan and annual reports.¹⁷
- Making provision for the medical, mental, rehabilitative, and personal care of the person.¹⁸
- Making residential decisions on behalf of the person.¹⁹
- Advocating on behalf of the person in institutional and other residential settings.²⁰
- Making financial decisions on behalf of the person.²¹

On the other hand, certain actions require specific authority from the court before a guardian may take them.²² In particular, a guardian may not:

- Commit the ward to a facility, institution, or licensed service provider without formal placement proceedings pursuant to state law.
- Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure, or to the participation by the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if it is:
 - Of direct benefit to, and is intended to preserve the life of or prevent serious impairment to, the mental or physical health of the ward; or
 - Intended to assist the ward with developing or regaining his or her abilities.
- Initiate a petition for dissolution of marriage for the ward.
- Consent on behalf of the ward to termination of the ward's parental rights.
- Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.²³

⁸ Section 744.1012(2), F.S.; *see also* Disability Rights Florida, *supra* note 5.

⁹ *See generally* Disability Rights Florida, *supra* note 5.

¹⁰ Sections 744.3045 and 744.3046, F.S.

¹¹ Section 744.341, F.S.

¹² Section 744.3031, F.S.

¹³ Section 744.441(1), F.S.; *see also* s. 744.102(9)(a), F.S. (defining "limited guardian").

¹⁴ Sections 744.3085 and 393.12, F.S.

¹⁵ Sections 744.3085 and 394.4598, F.S.

¹⁶ Section 744.441(1), F.S.; *see also* s. 744.102(9)(b), F.S. (defining "plenary guardian").

¹⁷ Section 744.361(6)-(7), F.S.

¹⁸ Section 744.361(13)(f), F.S.

¹⁹ *See* s. 744.361(13)(h), F.S.

²⁰ Section 744.361(13)(i), F.S.

²¹ *See* s. 744.361(12), F.S.

²² *See* ss. 744.3725 and 744.3215(4), F.S.

²³ *Id.*

State courts have long recognized the relationship between a guardian and his or her ward is a fiduciary one.²⁴ A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of the other, upon matters within the scope of that relationship.²⁵ Such duties include, but are not limited to, duties to refrain from self-dealing, of loyalty, to not take unfair advantage of the ward and to act in the best interest of the ward, and to disclose material facts.²⁶

State law also imposes specific duties upon guardians consistent with the basic duties of a fiduciary, including protecting and preserving the property of the ward as well as his or her overall physical and social health.²⁷ For example, as noted above, guardians must file initial²⁸ and annual guardianship reports,²⁹ and an annual accounting of the ward's property, with the court;³⁰ such reports may be deemed evidence of a guardian's faithful execution of his or her fiduciary duties.³¹

An overriding concern of reviewing courts is that guardian fiduciaries not breach their duties to their wards or abuse their positions. If a guardian breaches his or her fiduciary duty, the court must take action to protect the ward and the ward's assets.³²

Initial and Annual Guardianship Plans

Guardians must file an initial guardianship report with the court. It must be filed within 60 days after appointment and, for a guardian of the person, include an initial guardianship plan.³³ Initial guardian plans must contain certain specified information regarding the ward. Among other things, the initial plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the ward; the kind of residential setting best suited for the needs of the ward; the provision of social and personal services for the welfare of the ward; and a list of any preexisting orders not to resuscitate or advance directives.³⁴

Guardians must also file an annual guardianship report with the court. The annual guardianship report must be filed within 90 days after the last day of the anniversary month of appointment. The annual plan must cover the coming fiscal year, ending on the last day in the anniversary month.³⁵ Similar to the initial guardianship report, the annual guardianship report for a guardian

²⁴ See, e.g., *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990) (noting that the guardian in that case was found to have violated his fiduciary duty as a guardian); *Denarii Systems, LLC v. Tellez*, 2011 WL 13322664 (S.D. Fla. 2011) (recognizing that fiduciary duties may be created by legal proceedings, such as in the case of a guardian and ward).

²⁵ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002) (internal citations omitted).

²⁶ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

²⁷ See generally s. 744.361, F.S.

²⁸ Section 744.362, F.S.

²⁹ Section 744.367, F.S.

³⁰ Section 744.3678, F.S.

³¹ See generally s. 744.368, F.S. (directing the clerk of the circuit court to review each initial and annual guardianship report to ensure it contains specified information about the ward).

³² Section 744.446(5), F.S.

³³ Sections 744.361(6) and 744.362(1), F.S.

³⁴ See s. 744.363(1)(a)-(f), F.S.

³⁵ Section 744.367(1), F.S.

of the person must include an annual guardianship plan³⁶ containing information regarding the medical and mental health conditions, treatment, and rehabilitation needs of the ward; the residence of the ward; the social condition of the ward; and a list of any preexisting orders not to resuscitate or advance directives.³⁷

Determining Incapacity

The process to determine incapacity and appoint a guardian begins with the filing of a petition in the appropriate circuit court. The petition must be served on, and read to, the allegedly incapacitated person. Notice and copies of the petition must also be provided to the attorney for the allegedly incapacitated person and served on all next of kin identified in the petition.³⁸

At hearing, the partial or total incapacity of the person must be established by clear and convincing evidence.³⁹ After finding that a person is incapacitated with respect to the potential exercise of one or more rights, the court must enter a written order of incapacity. A person is deemed incapacitated only as to those rights specified in the court's order.⁴⁰ If the order provides that the person is incapable of exercising delegable rights (described below), the court must next consider whether there are any alternatives to guardianship which will sufficiently address the incapacitated person's problems. If not, a guardian will be appointed.⁴¹

Rights of Incapacitated Persons

A person who has been determined to be incapacitated retains certain rights, regardless of the determination of incapacity, including the right to be treated humanely and with dignity and respect; the right to be protected against abuse, neglect, and exploitation; the right to receive visitors and communicate with others; and the right to privacy.⁴²

Certain rights may be removed from a person by an order determining incapacity, but not delegated to a guardian. They include the right to marry (if the right to enter into a contract has been removed, the right to marry is subject to court approval); the right to vote; the right to personally apply for government benefits; the right to have a driver license; the right to travel; and the right to seek or retain employment.⁴³

And certain other "delegable" rights may be removed from a person by an order determining incapacity, and also delegated to a guardian. They include the rights to:

- Contract.
- Sue and defend lawsuits.
- Apply for government benefits.
- Manage property or to make any gift or disposition of property.
- Determine his or her residence.

³⁶ Section 744.367(1) and (3)(a), F.S.

³⁷ Section 744.3675, F.S.

³⁸ Section 744.331(1), F.S.

³⁹ Section 744.331(5)(c), F.S.

⁴⁰ Section 744.331(6), F.S.

⁴¹ Section 744.331(6)(b), F.S.

⁴² See s. 744.3215(1)(a)-(o), F.S. (specifying all retained rights).

⁴³ Section 744.3215(2)(a)-(f), F.S.

- Consent to medical and mental health treatment.
- Make decisions about his or her social environment or other social aspects of his or her life.⁴⁴

Advance Directives

State law defines an advance directive as a witnessed, oral statement or written instruction that expresses a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.⁴⁵ Designation of each of these can serve different purposes and have their own unique requirements and specifications under the law.⁴⁶

One type of advance directive, an "order not to resuscitate" or a "do not resuscitate order," results in the withholding of cardiopulmonary resuscitation from an individual if the order is presented to the health care professional treating the patient.⁴⁷ For the order to be valid, it must be on the yellow form adopted by the Department of Health, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or agent under a durable power of attorney.⁴⁸

It is the responsibility of the Emergency Medical Services provider to ensure that the order form or the patient identification device, which is a miniature version of the form, accompanies the patient.⁴⁹ An order not to resuscitate may be revoked by the patient at any time, if signed by the patient, or the patient's health care surrogate, proxy, court-appointed guardian or a person acting under a durable power of attorney.⁵⁰

A power of attorney is a writing that grants authority to an agent to act in the place of the principal.⁵¹ A "durable" power of attorney is a kind of power of attorney that cannot be terminated by the principal's incapacity.⁵² Among many other things, a durable power of attorney may be used to allow another person to make health care decisions on behalf of an incapacitated principal.⁵³

⁴⁴ Section 744.3215(3)(a)-(g), F.S.

⁴⁵ Section 765.101(1), F.S.

⁴⁶ *See id.*

⁴⁷ *See* Fla. Admin. Code R. 64J-2.018(1).

⁴⁸ Section 401.45(3), F.S.; *see also* Fla. Admin. Code R. 64J-2.018(1)-(3).

⁴⁹ Fla. Admin. Code R. 64J-2.018(2)(b) and (4).

⁵⁰ Fla. Admin. Code R. 64J-2.018(6).

⁵¹ Section 709.2102(9), F.S.

⁵² Section 709.2102(4), F.S.; *see also* s. 709.2104 (specifying that a power of attorney is durable if it contains the words: "This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes," or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity).

⁵³ *See id.*; *see also* The Florida Bar, *Consumer Pamphlet: Florida Power of Attorney, About the Power of Attorney*, <https://www.floridabar.org/public/consumer/pamphlet13/#about> (last visited Mar. 1, 2023).

Hospital Ethics Committees

Hospital ethics committees discuss and make recommendations about clinical ethical issues in a hospital.⁵⁴ Such committees are a resource for medical staff and administrators in addressing the difficult ethical questions and compliance issues that arise in patient care, including the proper respect for patient confidentiality or concerns about a patient's refusal of life-saving treatment.⁵⁵ They are typically multi-disciplinary in nature, consisting of representatives from different departments of the facility, including medicine, nursing, law, pastoral care, and social work.⁵⁶

The Florida Bioethics Network is an organization dedicated to the understanding and resolution of ethical and legal problems arising in health care and research in the state's hospitals, hospices, nursing homes, managed care organizations and teaching institutions.⁵⁷

III. Effect of Proposed Changes:

In 2020, in response to reports that a professional guardian had signed an order not to resuscitate against her ward's wishes, the Legislature began requiring guardians to obtain court approval to sign orders not to resuscitate.⁵⁸ Some courts when even further, also requiring court approval for a guardian to consent to withhold or withdraw life-prolonging procedures. These requirements, however, may result in prolonged suffering and be inconsistent with the ward's wishes.

SB 1098 creates or amends several sections within the state's guardianship statutes⁵⁹ to regulate the authority of a court-appointed guardian to consent to withhold or withdraw life-prolonging procedures, or to sign an order not to resuscitate, on behalf of his or her ward. The bill allows a ward's wishes to be followed without delay, but still requires court approval to withhold or withdraw life-prolonging procedures in some cases.

Guardianship Powers Regarding Life-Prolonging Procedures

The bill creates s. 744.4431, F.S., entitled "Guardianship power regarding life-prolonging procedures."

The bill authorizes a guardian of a ward's person to petition a court pursuant to the Florida Probate Rules for authority to consent to withhold or withdraw life-prolonging procedures if:

⁵⁴ Alaska Regional Hospital, *Alaska Regional Hospital's Ethics Committee* (Apr. 16, 2018), <https://www.alaskaregional.com/blog/entry/alaska-regional-hospital-s-ethics-committee>; see also F. Hajibabae et al., *Hospital/clinical ethics committees' notion: an overview*, 9 J. MED. ETHICS HIST. MED. 17 (Dec. 18, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5432947/> (explaining that a healthcare ethics committee or hospital ethics committee is a body of persons established by a hospital or health care institution for the purpose of considering, debating, studying, taking action on, or reporting on ethical issues that arise in patient care).

⁵⁵ Alaska Regional Hospital, *supra* note 54.

⁵⁶ Thaddeus Mason Pope, *The Growing Power of Healthcare Ethics Committees Heightens Due Process Concerns*, 15 CARDOZO JOURNAL OF CONFLICT RESOLUTION 425 (2014), <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1278&context=facsch>.

⁵⁷ Florida Bioethics Network, *About Us*, <https://fbn.miami.edu/about-us/index.html> (last visited Feb. 8, 2023).

⁵⁸ Ch. 2020-35, s. 6, Laws of Fla.; see also Greg Angel, *DeSantis Signs Florida Guardianship Bill Into Law, Expanding Oversight of Program* (Jun. 19, 2020), Spectrum News 13, <https://www.mynews13.com/fl/orlando/news/2020/06/19/desantis-signs-florida-guardianship-bill-into-law>.

⁵⁹ Chapter 744, F.S.

- The right to consent to withhold or withdraw life-prolonging procedures has not been delegated to the guardian in the order appointing the guardian.
- Sufficient authority under the ward's preexisting advance directive or durable power of attorney has not been transferred to the guardian.
- The proposed withholding or withdrawal of life-prolonging procedures is in conflict with the wishes, as presently or previously expressed, of the ward, the ward's next of kin, or any interested person.

The bill requires the petition by the guardian to:

- Describe the proposed action for which court approval is sought and supply documentation of any existing authority for the guardian to make health care decisions for the ward.
- Notify the court of any known objections to the proposed action or of conflicts between the guardian's proposed action to withhold or withdraw life-prolonging procedures and the wishes, presently or previously expressed, of the ward, the ward's next of kin, or any interested person.
- Describe the circumstances or evidence and provide affidavits or supporting documentation showing that the proposed action satisfies the applicable criteria in the statutes providing for health care decision proxies⁶⁰ or governing individuals who are in a persistent vegetative state.⁶¹

The bill requires the guardian to serve notice of the petition, and of any hearing, upon interested persons and the ward's next of kin, unless waived by the court.

The bill requires the court to hold a hearing on the petition if it has been notified of an objection or conflict, or if the court has insufficient information to determine whether the criteria for granting the requested authority has been met. If a hearing is required and exigent circumstances are alleged, the court must hold a preliminary hearing within 72 hours after the petition is filed and do one of the following:

- Rule on the relief requested immediately after the preliminary hearing.
- Conduct an evidentiary hearing within 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

The bill provides that notwithstanding the requirements for court approval described in the bill, and if authority to withhold or withdraw life-prolonging procedures has not been vested in another person, the guardian may, without a hearing or prior court approval, consent to the withholding or withdrawal of life-prolonging procedures if:

- The ward is in a hospital and at least two of the ward's treating physicians state in writing that there is a substantial likelihood that the ward's death will occur within the next 72 hours;
- There is no known objection to the granting of a petition to withhold or withdraw life-prolonging procedures; and
- The hospital ethics committee has met and agrees with the guardian's proposal to withhold or withdraw life prolonging procedures. If the hospital does not have an ethics committee, it may arrange for this requirement to be satisfied by an ethics committee of another facility or a community-based ethics committee approved by the Florida Bioethics Network.

⁶⁰ See generally s. 765.401, F.S.

⁶¹ See generally s. 765.404, F.S.

Rights of Persons Determined Incapacitated

State law includes a list of rights that may be removed from a person by an order determining incapacity and which may be delegated to a guardian.⁶² The bill amends this list to include the right to consent to the withholding or withdrawal of life-prolonging procedures as defined in state law⁶³ and subject to court approval as provided in the bill, if there is a conflict over or objection to the proposed exercise of that authority.

Initial and Annual Guardianship Plans

The bill amends the statutes regulating the contents of initial⁶⁴ and annual⁶⁵ guardianship plans. Specifically, with respect to any signed orders not to resuscitate⁶⁶ or preexisting advance directives identified in the plans,⁶⁷ the bill requires the plan to state whether the order or the directive has been revoked, modified, or suspended by the court, or the extent to which authority under an order or directive has been transferred by the court to the guardian. The plan must also state the date of any revocation, modification, or suspension by the court.

The bill provides that either a surrogate designated by the ward in an advance directive, or an agent designated by the ward in a durable power of attorney, who retains authority to make health care decisions under the guardianship plan, may exercise that authority without additional approval by the court. Any authority of a surrogate or agent that has been transferred to a guardian may be exercised by the guardian, consistent with the advance directive or durable power of attorney, without additional approval by the court. And any power transferred to a guardian to execute an order not to resuscitate or to consent to withhold or withdraw life-prolonging procedures is subject to court approval pursuant to the new statute created by the bill (s. 744.4431, F.S.) if there is a conflict over or objection to a proposed exercise of that power.

Guardian Powers upon Court Approval

The bill also implements conforming changes to the statute providing for the powers of guardians upon court approval.⁶⁸

Effective Date

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶² Section 744.3215(3), F.S.

⁶³ Section 765.101(12), F.S.

⁶⁴ Section 744.363, F.S.

⁶⁵ Section 744.3675, F.S.

⁶⁶ See s. 401.45(3), F.S. (describing the requirements for issuance of a valid order not to resuscitate).

⁶⁷ See s. 765.101(1), F.S. (defining advance directives).

⁶⁸ Section 744.441, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under the bill, a surrogate under an advance directive, or an agent under a durable power of attorney, who has retained the authority to make health care decisions under the initial and annual guardianship plans may exercise that authority without additional approval by the court. Similarly, a guardian to whom the authority to make health care decisions has been transferred by the court may exercise that authority, consistent with the advance directive or the durable power of attorney and without additional approval by the court, unless there is a conflict over or objection to the guardian's proposed exercise of that authority. Accordingly, surrogates, agents, and guardians will in many cases be able to consent to the withholding or withdrawing of life-prolonging procedures, and sign orders to not resuscitate, without incurring the legal costs associated with seeking and obtaining court approval.

C. Government Sector Impact:

Under the bill, a surrogate under an advance directive, or an agent under a durable power of attorney, who has retained the authority to make health care decisions under the initial and annual guardianship plans may exercise that authority without additional approval by the court. Similarly, a guardian to whom the authority to make health care decisions has been transferred by the court may exercise that authority, consistent with the advance directive or the durable power of attorney and without additional approval by the court, unless there is a conflict over or objection to the guardian's proposed exercise of that authority. Accordingly, surrogates, agents, and guardians will in many cases be able to consent to the withholding or withdrawing of life-prolonging procedures, and sign orders to not resuscitate, without court approval, which will reduce the court's case load burden and costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.3215, 744.363, 744.3675, and 744.441.

This bill creates section 744.4431 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.)

CS by Judiciary on March 7, 2023:
Corrects two cross-references.

- B. **Amendments:**

None.



263154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2023	.	
	.	
	.	
	.	

The Committee on Judiciary (Burton) recommended the following:

Senate Amendment

Delete lines 83 - 126
and insert:

s. 744.4431 if there is a conflict over or objection to a proposed exercise of that authority.

Section 3. Present subsections (2), (3), and (4) of section 744.3675, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, paragraph (e) is added to subsection (1) and a new subsection (2) is added to that section, and paragraph (d) of subsection (1) of that section is amended, to



263154

12 read:

13 744.3675 Annual guardianship plan.—Each guardian of the
14 person must file with the court an annual guardianship plan
15 which updates information about the condition of the ward. The
16 annual plan must specify the current needs of the ward and how
17 those needs are proposed to be met in the coming year.

18 (1) Each plan for an adult ward must, if applicable,
19 include:

20 (d) 1. A list of any preexisting:

21 a. Orders not to resuscitate as described in ~~executed under~~
22 s. 401.45(3) and the date such orders were signed; or

23 b. ~~Preexisting~~ Advance directives, as defined in s. 765.101
24 and, the date such directives were signed. ~~an order or directive~~
25 was signed,

26 2. For each item listed under subparagraph 1., the plan
27 must state whether the ~~such~~ order or directive has been ~~revoked,~~
28 modified, or suspended by the court or the extent to which
29 authority under an order or directive has been transferred by
30 the court to the guardian. The plan must also state the date of
31 any revocation, modification, or suspension by the court.

32 (e) ~~, and~~ A description of the steps taken to identify and
33 locate a ~~the~~ preexisting order not to resuscitate or advance
34 directive.

35 (2) A surrogate designated by the ward in an advance
36 directive or an agent designated by the ward in a durable power
37 of attorney who retains authority to make health care decisions
38 under the guardianship plan may exercise retained authority
39 without additional approval by the court. Any authority of the
40 surrogate to carry out the instructions in the advance directive



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41 or authority of the agent under a durable power of attorney
42 which is transferred to the guardian may be exercised by the
43 guardian, consistent with the advance directive or durable power
44 of attorney, without additional approval by the court. Any
45 authority transferred to the guardian to execute an order not to
46 resuscitate or to consent to withhold or withdraw life-
47 prolonging procedures is subject to court approval pursuant to
48 s. 744.4431 if there is a conflict over or objection to a

By Senator Burton

12-00451B-23

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1 A bill to be entitled
 2 An act relating to withholding or withdrawal of life-
 3 prolonging procedures; amending s. 744.3215, F.S.;
 4 authorizing the court to delegate the right to consent
 5 to the withholding or withdrawal of life-prolonging
 6 procedures of incapacitated persons in certain
 7 circumstances; amending ss. 744.363 and 744.3675,
 8 F.S.; making technical changes; requiring initial and
 9 annual guardianship plans, respectively, to state
 10 whether any power under the ward's preexisting order
 11 not to resuscitate or advance directive is revoked,
 12 modified, suspended, or transferred to the guardian;
 13 requiring such plans to state the date of such action;
 14 establishing certain authority without additional
 15 court approval; requiring a guardian to obtain court
 16 approval to exercise transferred power to execute an
 17 order not to resuscitate or consent to withhold or
 18 withdraw life-prolonging procedures under certain
 19 circumstances; creating s. 744.4431, F.S.; authorizing
 20 a guardian to petition a court for approval to consent
 21 to withhold or withdraw life-prolonging procedures
 22 under certain circumstances; specifying requirements
 23 for the petition; requiring the guardian to serve
 24 certain notices; specifying procedures that must be
 25 followed by the court in acting on the petition;
 26 authorizing the guardian to withhold or withdraw life-
 27 prolonging procedures without a hearing or court
 28 approval under certain circumstances; amending s.
 29 744.441, F.S.; making technical changes; deleting

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 provisions regarding the authority of certain
 31 guardians to sign an order not to resuscitate;
 32 providing an effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

36 Section 1. Paragraph (h) is added to subsection (3) of
 37 section 744.3215, Florida Statutes, to read:

38 744.3215 Rights of persons determined incapacitated.—
 39 (3) Rights that may be removed from a person by an order
 40 determining incapacity and which may be delegated to the
 41 guardian include the right:

42 (h) To consent to the withholding or withdrawal of life-
 43 prolonging procedures as defined in s. 765.101, subject to court
 44 approval as provided in s. 744.4431 if there is a conflict over
 45 or objection to the proposed exercise of that authority.

46 Section 2. Present subsections (2) through (6) of section
 47 744.363, Florida Statutes, are redesignated as subsections (3)
 48 through (7), respectively, paragraph (g) is added to subsection
 49 (1) and a new subsection (2) is added to that section, and
 50 paragraph (f) of subsection (1) of that section is amended, to
 51 read:

52 744.363 Initial guardianship plan.—

53 (1) The initial guardianship plan shall include all of the
 54 following:

55 (f) 1. A list of any preexisting;

56 a. Orders not to resuscitate as described in ~~executed under~~
 57 s. 401.45(3) and the date such orders were signed; or

58 b. ~~Preexisting~~ Advance directives, as defined in s. 765.101

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59 ~~and~~, the date such directives were signed. ~~an order or directive~~
60 ~~was signed,~~

61 2. For each item listed under subparagraph 1., the plan
62 must state whether the ~~such~~ order or directive has been ~~revoked,~~
63 modified, or suspended by the court or the extent to which
64 authority under an order or directive has been transferred by
65 the court to the guardian. The plan must also state the date of
66 such action by the court.

67 (g) ~~and~~ A description of the steps taken to identify and
68 locate a ~~the~~ preexisting order not to resuscitate or advance
69 directive.

70 (2) A surrogate designated by the ward in an advance
71 directive or an agent designated by the ward in a durable power
72 of attorney who retains authority to make health care decisions
73 under the guardianship plan may exercise retained authority
74 without additional approval by the court. Any authority of the
75 surrogate to carry out the instructions in the advance directive
76 or authority of the agent under a durable power of attorney
77 which is transferred to the guardian may be exercised by the
78 guardian, consistent with the advance directive or durable power
79 of attorney, without additional approval by the court. Any
80 authority transferred to the guardian to execute an order not to
81 resuscitate or to consent to withhold or withdraw life-
82 prolonging procedures is subject to court approval pursuant to
83 s. 744.441 if there is a conflict over or objection to a
84 proposed exercise of that authority.

85 Section 3. Present subsections (2), (3), and (4) of section
86 744.3675, Florida Statutes, are redesignated as subsections (3),
87 (4), and (5), respectively, paragraph (e) is added to subsection

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88 (1) and a new subsection (2) is added to that section, and
89 paragraph (d) of subsection (1) of that section is amended, to
90 read:

91 744.3675 Annual guardianship plan.—Each guardian of the
92 person must file with the court an annual guardianship plan
93 which updates information about the condition of the ward. The
94 annual plan must specify the current needs of the ward and how
95 those needs are proposed to be met in the coming year.

96 (1) Each plan for an adult ward must, if applicable,
97 include:

98 (d) 1. A list of any preexisting:
99 a. Orders not to resuscitate ~~as described in~~ ~~executed under~~
100 s. 401.45(3) and the date such orders were signed; or

101 b. ~~Preexisting~~ Advance directives, as defined in s. 765.101
102 ~~and~~, the date such directives were signed. ~~an order or directive~~
103 ~~was signed,~~

104 2. For each item listed under subparagraph 1., the plan
105 must state whether the ~~such~~ order or directive has been ~~revoked,~~
106 modified, or suspended by the court or the extent to which
107 authority under an order or directive has been transferred by
108 the court to the guardian. The plan must also state the date of
109 any revocation, modification, or suspension by the court.

110 (e) ~~and~~ A description of the steps taken to identify and
111 locate a ~~the~~ preexisting order not to resuscitate or advance
112 directive.

113 (2) A surrogate designated by the ward in an advance
114 directive or an agent designated by the ward in a durable power
115 of attorney who retains authority to make health care decisions
116 under the guardianship plan may exercise retained authority

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 117 without additional approval by the court. Any authority of the
 118 surrogate to carry out the instructions in the advance directive
 119 or authority of the agent under a durable power of attorney
 120 which is transferred to the guardian may be exercised by the
 121 guardian, consistent with the advance directive or durable power
 122 of attorney, without additional approval by the court. Any
 123 authority transferred to the guardian to execute an order not to
 124 resuscitate or to consent to withhold or withdraw life-
 125 prolonging procedures is subject to court approval pursuant to
 126 s. 744.441 if there is a conflict over or objection to a
 127 proposed exercise of that authority.

Section 4. Section 744.4431, Florida Statutes, is created
 to read:

744.4431 Guardianship power regarding life-prolonging
procedures.—

(1) A guardian of a ward's person may petition a court
pursuant to the Florida Probate Rules for authority to consent
to withhold or withdraw life-prolonging procedures for any of
the following reasons:

(a) The right to consent to withhold or withdraw life-
prolonging procedures has not been delegated to the guardian in
the order appointing the guardian.

(b) Sufficient authority under the ward's preexisting
advance directive or durable power of attorney has not been
transferred to the guardian.

(c) The proposed withholding or withdrawal of life-
prolonging procedures is in conflict with the wishes, as
presently or previously expressed, of the ward, the ward's next
of kin, or any interested person.

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 146 (2) The petition by the guardian must contain all of the
 147 following:

(a) A description of the proposed action for which court
approval is sought and documentation of any existing authority
for the guardian to make health care decisions for the ward.

(b) A statement regarding any known objections to the
proposed action or of conflicts between the guardian's proposed
action to withhold or withdraw life-prolonging procedures and
the wishes, presently or previously expressed, of the ward, the
ward's next of kin, or any interested person.

(c) A description of the circumstances or evidence and
affidavits or supporting documentation showing that the proposed
action satisfies the applicable criteria in s. 765.401 or s.
765.404.

(3) The guardian must serve notice of the petition, and of
any hearing, upon interested persons and the ward's next of kin,
unless waived by the court.

(4) The court must hold a hearing on the petition if the
court has been notified of an objection or conflict or if the
court has insufficient information to determine whether the
criteria for granting the requested authority has been met.

(5) If a hearing is required and exigent circumstances are
alleged, the court must hold a preliminary hearing within 72
hours after the petition is filed and do one of the following:

(a) Rule on the relief requested immediately after the
preliminary hearing.

(b) Conduct an evidentiary hearing within 4 days after the
preliminary hearing and rule on the relief requested immediately
after the evidentiary hearing.

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175 (6) Notwithstanding the requirements for court approval
 176 imposed under this section, and if authority to withhold or
 177 withdraw life-prolonging procedures has not been vested in
 178 another person, the guardian may, without a hearing or prior
 179 court approval, consent to the withholding or withdrawal of
 180 life-prolonging procedures if all of the following apply:

181 (a) The ward is in a hospital and at least two of the
 182 ward's treating physicians state in writing that there is a
 183 substantial likelihood that the ward's death will occur within
 184 the next 72 hours.

185 (b) There is no known objection to the granting of a
 186 petition to withhold or withdraw life-prolonging procedures.

187 (c) The hospital ethics committee has met and agrees with
 188 the guardian's proposal to withhold or withdraw life-prolonging
 189 procedures. If the hospital does not have an ethics committee,
 190 it may seek approval by the ethics committee of another facility
 191 or a community-based ethics committee approved by the Florida
 192 Bioethics Network.

193 Section 5. Section 744.441, Florida Statutes, is amended to
 194 read:

195 744.441 Powers of guardian upon court approval.—After
 196 obtaining approval of the court pursuant to a petition for
 197 authorization to act,⁺

198 ~~(1)~~ a plenary guardian of the property, or a limited
 199 guardian of the property within the powers granted by the order
 200 appointing the guardian or an approved annual or amended
 201 guardianship report, may do all of the following:

202 (1) ~~(a)~~ Perform, compromise, or refuse performance of a
 203 ward's contracts that continue as obligations of the estate, as

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204 he or she may determine under the circumstances.

205 ~~(2) (b)~~ Execute, exercise, or release any powers as trustee,
 206 personal representative, custodian for minors, conservator, or
 207 donee of any power of appointment or other power that the ward
 208 might have lawfully exercised, consummated, or executed if not
 209 incapacitated, if the best interest of the ward requires such
 210 execution, exercise, or release.

211 ~~(3) (c)~~ Make ordinary or extraordinary repairs or
 212 alterations in buildings or other structures; demolish any
 213 improvements; or raze existing, or erect new, party walls or
 214 buildings.

215 ~~(4) (d)~~ Subdivide, develop, or dedicate land to public use;
 216 make or obtain the vacation of plats and adjust boundaries;
 217 adjust differences in valuation on exchange or partition by
 218 giving or receiving consideration; or dedicate easements to
 219 public use without consideration.

220 ~~(5) (e)~~ Enter into a lease as lessor or lessee for any
 221 purpose, with or without option to purchase or renew, for a term
 222 within, or extending beyond, the period of guardianship.

223 ~~(6) (f)~~ Enter into a lease or arrangement for exploration
 224 and removal of minerals or other natural resources or enter into
 225 a pooling or unitization agreement.

226 ~~(7) (g)~~ Abandon property when, in the opinion of the
 227 guardian, it is valueless or is so encumbered or in such
 228 condition that it is of no benefit to the estate.

229 ~~(8) (h)~~ Pay calls, assessments, and other sums chargeable or
 230 accruing against, or on account of, securities.

231 ~~(9) (i)~~ Borrow money, with or without security, to be repaid
 232 from the property or otherwise and advance money for the

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233 protection of the estate.

234 ~~(10)(f)~~ Effect a fair and reasonable compromise with any
235 debtor or obligor or extend, renew, or in any manner modify the
236 terms of any obligation owing to the estate.

237 ~~(11)(h)~~ Prosecute or defend claims or proceedings in any
238 jurisdiction for the protection of the estate and of the
239 guardian in the performance of his or her duties. Before
240 authorizing a guardian to bring an action described in s.
241 736.0207, the court shall first find that the action appears to
242 be in the ward's best interests during the ward's probable
243 lifetime. There shall be a rebuttable presumption that an action
244 challenging the ward's revocation of all or part of a trust is
245 not in the ward's best interests if the revocation relates
246 solely to a devise. This subsection ~~paragraph~~ does not preclude
247 a challenge after the ward's death. If the court denies a
248 request that a guardian be authorized to bring an action
249 described in s. 736.0207, the court must ~~shall~~ review the
250 continued need for a guardian and the extent of the need for
251 delegation of the ward's rights.

252 ~~(12)(i)~~ Sell, mortgage, or lease any real or personal
253 property of the estate, including homestead property, or any
254 interest therein for cash or credit, or for part cash and part
255 credit, and with or without security for unpaid balances.

256 ~~(13)(m)~~ Continue any unincorporated business or venture in
257 which the ward was engaged.

258 ~~(14)(n)~~ Purchase the entire fee simple title to real estate
259 in this state in which the guardian has no interest, but the
260 purchase may be made only for a home for the ward, to protect
261 the home of the ward or the ward's interest, or as a home for

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262 the ward's dependent family. If the ward is a married person and
263 the home of the ward or of the dependent family of the ward is
264 owned by the ward and spouse as an estate by the entirety and
265 the home is sold pursuant to the authority of subsection (12)
266 ~~paragraph (1)~~, the court may authorize the investment of any
267 part or all of the proceeds from the sale toward the purchase of
268 a fee simple title to real estate in this state for a home for
269 the ward or the dependent family of the ward as an estate by the
270 entirety owned by the ward and spouse. If the guardian is
271 authorized to acquire title to real estate for the ward or
272 dependent family of the ward as an estate by the entirety in
273 accordance with the preceding provisions, the conveyance must
274 ~~shall~~ be in the name of the ward and spouse and ~~shall~~ be
275 effective to create an estate by the entirety in the ward and
276 spouse.

277 ~~(15)(e)~~ Exercise any option contained in any policy of
278 insurance payable to, or insuring to the benefit of, the ward.

279 ~~(16)(p)~~ Pay reasonable funeral, interment, and grave marker
280 expenses for the ward from the ward's estate.

281 ~~(17)(q)~~ Make gifts of the ward's property to members of the
282 ward's family in estate and income tax planning procedures.

283 ~~(18)(r)~~ When the ward's will evinces an objective to obtain
284 a United States estate tax charitable deduction by use of a
285 split interest trust (as that term is defined in s. 736.1201),
286 but the maximum charitable deduction otherwise allowable will
287 not be achieved in whole or in part, execute a codicil on the
288 ward's behalf amending said will to obtain the maximum
289 charitable deduction allowable without diminishing the aggregate
290 value of the benefits of any beneficiary under such will.

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291 (19)~~(s)~~ Create or amend revocable trusts or create
292 irrevocable trusts of property of the ward's estate which may
293 extend beyond the disability or life of the ward in connection
294 with estate, gift, income, or other tax planning or in
295 connection with estate planning. The court shall retain
296 oversight of the assets transferred to a trust, unless otherwise
297 ordered by the court.

298 (20)~~(t)~~ Renounce or disclaim any interest by testate or
299 intestate succession or by inter vivos transfer.

300 (21)~~(u)~~ Enter into contracts that are appropriate for, and
301 in the best interest of, the ward.

302 (22)~~(v)~~ As to a minor ward, pay expenses of the ward's
303 support, health, maintenance, and education, if the ward's
304 parents, or either of them, are alive.

305 ~~(2) A plenary guardian or a limited guardian of a ward may
306 sign an order not to resuscitate as provided in s. 401.45(3).
307 When a plenary guardian or a limited guardian of a ward seeks to
308 obtain approval of the court to sign an order not to
309 resuscitate, if required by exigent circumstances, the court
310 must hold a preliminary hearing within 72 hours after the
311 petition is filed, and:~~

312 ~~(a) Rule on the relief requested immediately after the
313 preliminary hearing; or~~

314 ~~(b) Conduct an evidentiary hearing not later than 4 days
315 after the preliminary hearing and rule on the relief requested
316 immediately after the evidentiary hearing.~~

317 Section 6. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Judiciary, *Vice Chair*
Appropriations Committee on Education
Appropriations Committee on Health
and Human Services
Banking and Insurance
Fiscal Policy
Rules
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR COLLEEN BURTON
12th District

February 28, 2023

The Honorable Clay Yarborough
404 South Monroe Street
308 Senate Building
Tallahassee, Florida 32399

Chair Yarborough,

I respectfully request SB 1098: Withholding or Withdrawal of Life-prolonging Procedures be put on the Judiciary Committee agenda at your earliest convenience.

Thank you for your consideration.

Regards,

A handwritten signature in cursive script that reads "Colleen Burton".

Colleen Burton
State Senator, District 12

CC: Tom Cibula, Staff Director
Lisa Larson, Administrative Assistant

REPLY TO:

- 100 South Kentucky Avenue, Suite 260, Lakeland, Florida 33801 (863) 413-1529
- 318 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

03/07/2023

Meeting Date

Judiciary

Committee

Name Karen Murillo

Phone 850-567-0414

Address 215 S. Monroe St.

Email kmurillo@aarp.org

Street

Tallahassee

FL

32308

City

State

Zip

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1098

Bill Number or Topic

263154

Amendment Barcode (if applicable)

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP Florida

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

DUPLICATE

3-7-23

Meeting Date

The Florida Senate APPEARANCE RECORD

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1098

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Rey Contreras

Phone

352-665-7397

Address

4 Palm Ln

Email

ReyEMIAMITRIAL.com

Street

Porte Veda Fl 32082

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/7/23

Meeting Date

SB 1098

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Karen Campbell

Phone

850-487-4609

Address

1425 E. Piedmont Dr.

Email

Karen.Campbell@northfloridaopg.org

Street

Tallahassee

FL

32308

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

Public Guardian Coalition

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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3-7-23

Meeting Date

Judiciary

Committee

The Florida Senate APPEARANCE RECORD

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1098

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Bryan Cherry

Phone

(850) 544-5673

Address

110 E. College Ave. STE 110

Email

bryan@pinpointresults.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Public Guardian Coalition

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

03/07/2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 1098

Bill Number or Topic

Judiciary

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Karen Murillo

Phone 850-567-0414

Address 215 S. Monroe St.

Email kmurillo@aarp.org

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP Florida

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

1098

DUPLICATE

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 494

INTRODUCER: Judiciary Committee and Senator DiCeglie

SUBJECT: Fees in Lieu of Security Deposits

DATE: March 7, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 494 amends and expands the Florida Residential Landlord and Tenant Act. The bill provides that a landlord may offer a tenant the option to pay a fee, or monthly fees, in lieu of paying the traditional security deposit for a rental unit. The bill also establishes criteria that govern disclosures and agreements for a fee in lieu of a deposit. The bill specifies, in part that:

- A tenant who pays a fee in lieu of a security deposit has the option to pay the security deposit instead of the fee at any time;
- The fee is nonrefundable;
- A landlord's use of the fee to purchase an insurance product does not affect the tenant's liability for rent, damages, or other amounts owed.
- The landlord has exclusive discretion whether to offer tenants the option to pay a fee in lieu of a deposit.
- A landlord may not submit an insurance claim for a tenant's unpaid rent, fees, or other obligations or damages to premises until 15 days after the landlord notifies the tenant of the amounts owed.
- The provisions apply to rental agreements entered into or renewed on or after July 1, 2023.

The bill takes effect July 1, 2023.

II. Present Situation:

Security Deposits

Background Information

The Florida Residential and Tenant Act, contained in chapter 83, F.S., regulates rental agreements for dwelling units.¹ Generally, before a landlord enters into a rental agreement with a tenant, the landlord requires the tenant to make a payment, known as a security deposit. Florida law, however, does not specifically require the payment of a security deposit for a residential lease. Once paid, the security deposit is then held by the landlord as security for the performance of the rental agreement and to cover any monetary damage the landlord may suffer if the tenant breaches the lease before the lease expires² or to cover the costs to repair any damage caused by the tenant.

Current law does not place limits on the amount that a landlord may require for a security deposit. However, most landlords generally require a deposit equal to at least 1-month's rent while some may require as much as 3-months' rent.³

The landlord must preserve the security deposit during the tenancy and either return the entire amount within 15 days after the tenant vacates the premises at the end of the lease or, within 30 days after the end of the lease, provide the tenant with a written notice stating why the landlord will impose a claim, either in full or in part, against the deposit. If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim against the security deposit.⁴ If the tenant does not object within 15 days to the landlord's notice of intention to impose a claim, the landlord may deduct the amount of the claim and return the remaining balance to the tenant within 30 days after date of the notice.⁵

Less Expensive Options to Paying a Security Deposit

The ability to provide a security deposit is difficult for some families and students. For example, if someone lives in a rental property and chooses to move to another rental property, the new security deposit is often due before the last deposit has been refunded to the tenant. As companies have realized that many families cannot afford to pay the up-front costs of security deposits, they have developed other payment options. Although these options are available to tenants, they do not afford tenants the statutory protections required for security deposits found in the Florida Residential Landlord and Tenant Act.

Security Deposit Insurance

Florida law does not address the issue of "security deposit insurance" for residential leases. This insurance product, which has been called "lease insurance," "rent insurance," "tenant insurance," or "landlord insurance," generally protects the landlord from damage to the property or loss of

¹ Sections 83.40 and 83.41, F.S.

² Section 83.43(12), F.S.

³ Apartments.com, *How Much Is a Security Deposit?* (Nov. 6, 2020) <https://www.apartments.com/rental-manager/resources/article/how-much-to-charge-for-a-security-deposit>

⁴ Section 83.49(3)(a), F.S.

⁵ Section 83.49(3)(b), F.S.

rent. As a creative alternative to security deposits, some companies have begun to offer security deposit insurance in which renters pay \$5 to \$10 per month for coverage in lieu of a security deposit.⁶

Security Bond

Another option is the security bond, a three-party agreement, in which the tenant pays a surety company a percentage of the security deposit. If the tenant damages the apartment or does not make a required rental payment, the surety bond covers the reimbursement costs due to the landlord, if the landlord files a claim. The tenant is then responsible for reimbursing the surety company for the expenses it has paid, as well as any non-refundable fees.⁷

While security deposits are refundable up to the total amount paid by the tenant, security deposit insurance and security bonds are not refundable to the tenant.

III. Effect of Proposed Changes:

This bill creates section 83.491, F.S., which states that landlords may offer potential tenants the option of paying a fee instead of a rental security deposit. While the bill authorizes the use of fees, it also establishes specific criteria that must be met if fees are paid.

Subsection (1) – Authorization

This subsection provides that a landlord may offer a tenant the option of paying a fee in lieu of the commonly required security deposit, if the rental agreement requires a security deposit.

Subsection (3) – Written Offers to Pay a Fee Instead of a Security Deposit

When a landlord provides the tenant with an option to pay a fee in lieu of a security deposit, the landlord must notify the tenant in writing that:

- The tenant has an option to pay a security deposit instead of the fee at any time.
- The tenant may terminate the fee agreement at any time and instead pay a security deposit as listed in the rental agreement. If the security deposit amount was not specified in the rental agreement, then the deposit must be the same amount offered to new tenants for a substantially similar dwelling unit on the date the tenant terminates the agreement.
- Whether any additional charges apply.
- The amount of the payments required for each option offered by the landlord.
- The fee:
 - Is nonrefundable.
 - Is only for securing occupancy by the tenant without paying the required security deposit.
 - Does not reduce or alter the tenant's obligation to pay rent and fees or limit or change the tenant's obligation to pay for damage repairs beyond normal wear and tear.

⁶ Adam Kovacevich, THE TALLAHASSEE DEMOCRAT, *Security Deposit Alternatives Can Help/Opinion* (March 6, 2022) <https://www.tallahassee.com/story/opinion/2022/03/06/floridas-renters-need-relief-security-deposit-alternatives-can-help-opinion/9367488002/>.

⁷ Dawn M. Smith, Angi.com, *What Is a Surety Bond and Should I use it to Rent an Apartment?* (April 26, 2022) <https://www.angi.com/articles/what-surety-bond-apartment.htm>.

- If the landlord uses any portion of the fee to purchase insurance, the tenant is not insured and is not a beneficiary of the landlord's coverage, nor does the insurance change the tenant's obligations to pay rent, fees, or damage repairs in accordance with the rental agreement.

Subsection (4) – Written Agreement Required

If the tenant decides to pay a fee rather than a security deposit, a written agreement to collect the fee must be signed by the landlord, or his or her agent, and the tenant. The written agreement may not contain clauses that contradict s. 83.45, F.S., pertaining to unconscionable rental agreements or provisions, or s. 83.47, F.S., pertaining to prohibited provisions in rental agreements.

At a minimum, the written fee agreement must specify:

- The amount of the fee, which may not be increased during the term of the rental agreement.
- How and when the fee is to be collected.
- The process and timeframe for the tenant to pay the security deposit, if the tenant defaults on paying the fee, and that the default will not adversely affect the tenant's credit rating if the deposit is paid on time.
- That it may be terminated at any time as long as the tenant pays the amount of the security deposit specified in the rental agreement.
- If the tenant pays the security deposit amount specified in the rental agreement, then the tenant's default on paying the fee or termination of the written agreement may not adversely impact his or her credit report.

The written agreement to pay a fee instead of a security deposit must contain a disclosure in substantially the following form:

FEE IN LIEU OF SECURITY DEPOSIT

THIS FEE IS NOT A SECURITY DEPOSIT, AND PAYMENT OF THE FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT OR HIS OR HER GUESTS MAY CAUSE.

THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME AND STOP PAYING THE FEE AND INSTEAD PAY THE SECURITY DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA STATUTES.

THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY BOTH PARTIES, AND THE TENANT AGREES TO PAY THE LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES. IF THE LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO PURCHASE INSURANCE, THE TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF SUCH COVERAGE, AND THE

INSURANCE DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS UNDER THE RENTAL AGREEMENT.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

Subsection (5) – When the Fee Payment is Due

The fee paid in lieu of the security deposit may be a recurring monthly fee, payable when rent is due, or it may be payable upon a schedule that the tenant and landlord agree to as specified in the written agreement.

Subsection (6) – The Fee, Insurance Product, or Surety Bond is Not a Security Deposit

This subsection clarifies that a fee that is collected, or an insurance product or a surety bond that is accepted by a landlord in lieu of a security deposit, is not a security deposit as defined in s. 83.43(12), F.S.

Subsection (2) – Written Notice, Conclusion of the Tenancy, Disbursement of Fees, Claims

If a tenant enters into an agreement to pay a fee instead of paying a security deposit, the landlord is required to notify the tenant within 30 days after the tenancy ends if there are any costs or fees due. These items can arise from unpaid rent and other obligations, including the costs of repairing damage to the premises that are beyond the normal wear and tear that is expected.

Before a landlord may submit a loss claim to an insurer in an attempt to recover any losses caused by the tenant, the landlord must wait 15 days after providing the tenant with written notice of any costs or fees as discussed above. The landlord must provide the insurer with an itemized list of the items in question, dates, cost of repairs, and any objections or a report of communications raised by the tenant.

If an insurer pays a claim and has subrogation rights, he or she has 1 year after the tenancy ends to seek reimbursement from the tenant for the amounts paid to the landlord. However, if the insurer seeks reimbursement, the insurer must provide the tenant with all documents for losses that the landlord submitted to support the claim and a copy of the settlement statement demonstrating that the insurer paid the landlord's claim.

The tenant retains any defenses against the insurer which the tenant would have against the landlord. Additionally, the landlord is prohibited from collecting loss payments from the tenant and the insurer for the same items.

Subsection (7) – The Landlord's Discretion to Offer a Fee Rather than a Security Deposit

A landlord may not be required to offer tenants the option to pay a fee instead of a security deposit. However, if a landlord offers a tenant the option to pay a fee, the landlord may not use the tenant's choice to pay a fee in lieu of paying a security deposit as a criteria when determining

whether to approve or deny a tenant's application. Additionally, the landlord must also offer all new tenants on the same premises the option of paying a fee in lieu of a security deposit, unless he or she chooses to prospectively terminate the fee option for all new rental agreements.

Subsection (8) – What the Bill Does Not Do

The provisions of the bill do not:

- Require a fee collected in lieu of a deposit to be used to purchase an insurance product or a surety bond.
- Prohibit a tenant from being offered or sold an insurance product or surety bond if the offer or sale of the insurance product or surety bond complies with state laws.

If a landlord accepts an insurance product or a surety bond purchased or procured by a tenant, a landlord, or an agent of the landlord, that conduct may not be considered an offer on the landlord's part to allow a tenant to pay a fee in lieu of a security deposit.

Subsection (9) –Application

The provisions created in s. 83.491, F.S., apply to rental agreements entered into or renewed on or after July 1, 2023.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Individuals who cannot afford to rent a dwelling because they cannot afford the initial and more expensive security deposits might be able to rent a dwelling by paying a less expensive fee in lieu of a security deposit. The bill, by validating the use of fees in lieu of a security deposit, may encourage landlords to purchase insurance to cover the losses normally covered by a security deposit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.491 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.)

CS by Judiciary Committee on March 7, 2023:

The committee substitute makes four changes to the underlying bill. The committee substitute:

- Corrects an incorrect reference to an “insurer” and replaces that phrase with the word “tenant” to clarify that the tenant retains defenses against the insurer and landlord.
- Clarifies that the tenant, at any time, has the option to pay a security deposit instead of the fee.
- Clarifies that the amount of a fee, paid in lieu of a security deposit, may not be increased during the term of the rental agreement.
- Reorganizes language contained in the written disclosure that the landlord must provide to the tenant but does not make significant changes to the substance of the disclosure.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



265900

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2023	.	
	.	
	.	
	.	

The Committee on Judiciary (DiCeglie) recommended the following:

Senate Amendment

Delete lines 75 - 156
and insert:
which the tenant would otherwise have against the landlord.

3. A landlord may not accept payment from both a tenant and an insurer for amounts associated with the same rent, fees, or damages.

(3) If a landlord offers a tenant the option to pay a fee in lieu of a security deposit, the landlord must notify the tenant in writing of all of the following:



265900

- 12 (a) That the tenant has the option to pay a security
13 deposit instead of the fee at any time.
- 14 (b) That the tenant may, at any time, terminate the
15 agreement to pay the fee in lieu of the security deposit and
16 instead pay a security deposit as listed in a rental agreement
17 between landlord and tenant or, if a security deposit was not
18 agreed upon in a rental agreement between the landlord and
19 tenant, in the amount that is otherwise offered to new tenants
20 for a substantially similar dwelling unit on the date that the
21 tenant terminates the agreement.
- 22 (c) Whether any additional charges apply for the options
23 provided in paragraphs (a) and (b).
- 24 (d) The amount of the payments required for each option the
25 landlord offers.
- 26 (e) That the fee is nonrefundable, if applicable.
- 27 (f) That the fee is only for securing occupancy without
28 paying a required security deposit.
- 29 (g) That the fee payment does not limit or change the
30 tenant's obligation to pay rent and fees, if any, under the
31 rental agreement or limit or change the tenant's obligation to
32 pay the costs of repairing damage to the premises beyond normal
33 wear and tear.
- 34 (h) That if the landlord uses any portion of the fee to
35 purchase insurance, the tenant is not insured and is not a
36 beneficiary of the landlord's insurance coverage, and that the
37 insurance does not limit or change the tenant's obligations to
38 pay rent and fees under the rental agreement or change the
39 tenant's obligation to pay the costs of repairing damage to the
40 premises beyond normal wear and tear.



265900

41 (4) (a) If a tenant decides to pay a fee in lieu of a
42 security deposit, a written agreement to collect the fee must be
43 signed by the landlord, or the landlord's agent, and the tenant.
44 The written agreement may not contain any clause that
45 contradicts s. 83.45 or s. 83.47. The written agreement must, at
46 a minimum, specify all of the following:

47 1. The amount of the fee, which may not be increased during
48 the term of the rental agreement.

49 2. How and when the fee is to be collected.

50 3. The process and timeframe during which a tenant must pay
51 the security deposit specified in the rental agreement if the
52 tenant defaults on paying the fee, and that such default will
53 not adversely affect the tenant's credit rating if the security
54 deposit is timely paid.

55 4. That the written agreement may be terminated at any time
56 as long as the tenant pays the amount of the security deposit
57 specified in the rental agreement.

58 5. If the tenant pays the amount of the security deposit
59 specified in the rental agreement, then the tenant's default on
60 paying the fee or termination of the written agreement may not
61 adversely impact the tenant's credit report.

62 (b) The written agreement specified under paragraph (a)
63 must also include a disclosure in substantially the following
64 form:

65 FEE IN LIEU OF SECURITY DEPOSIT

66 THIS FEE IS NOT A SECURITY DEPOSIT, AND PAYMENT OF THE
67 FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS
68
69



265900

70 UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION
71 TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND
72 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT
73 OR HIS OR HER GUESTS MAY CAUSE.

74
75 THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME
76 AND STOP PAYING THE FEE AND INSTEAD PAY THE SECURITY
77 DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA
78 STATUTES.

79
80 THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY
81 BOTH PARTIES, AND THE TENANT AGREES TO PAY THE
82 LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS
83 AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES. IF
84 THE LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO
85 PURCHASE INSURANCE, THE TENANT IS NOT INSURED AND IS
86 NOT A BENEFICIARY OF SUCH COVERAGE, AND THE INSURANCE
87 DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS
88 UNDER THE RENTAL AGREEMENT.

By Senator DiCeglie

18-00249-23

2023494__

1 A bill to be entitled
 2 An act relating to fees in lieu of security deposits;
 3 creating s. 83.491, F.S.; authorizing a landlord to
 4 offer a tenant the option to pay a fee in lieu of a
 5 security deposit; requiring the landlord to notify the
 6 tenant of certain unpaid fees and costs within a
 7 specified time after the conclusion of the tenancy;
 8 prohibiting the landlord from filing an insurance
 9 claim within a specified period of time; providing
 10 requirements for the landlord and insurer if an
 11 insurance claim to recover certain losses is filed;
 12 prohibiting the landlord from accepting certain
 13 payments; requiring the landlord to provide certain
 14 written notice to the tenant; requiring a written
 15 agreement signed by the landlord, or the landlord's
 16 agent, and the tenant if the tenant decides to pay a
 17 fee in lieu of the security deposit; prohibiting the
 18 written agreement from contradicting specified laws;
 19 requiring that the written agreement contain certain
 20 information; requiring a specified disclosure in the
 21 written agreement; providing options for paying the
 22 fee; specifying that certain fees, insurance products,
 23 and surety bonds are not security deposits; specifying
 24 that landlords have exclusive discretion as to whether
 25 to offer tenants the option to pay a fee in lieu of a
 26 security deposit; prohibiting a landlord from
 27 approving or denying an application for occupancy
 28 based on a prospective tenant's choice to pay a fee in
 29 lieu of a security deposit; requiring that landlords

Page 1 of 7

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2023494__

30 that offer a tenant the fee option offer it to all new
 31 tenants renting a dwelling unit on the same premises;
 32 providing an exception; providing construction;
 33 providing applicability; providing an effective date.
 34
 35 Be It Enacted by the Legislature of the State of Florida:
 36
 37 Section 1. Section 83.491, Florida Statutes, is created to
 38 read:
 39 83.491 Fee in lieu of security deposit.-
 40 (1) If a rental agreement requires a security deposit, a
 41 landlord may offer a tenant the option to pay a fee in lieu of a
 42 security deposit.
 43 (2) (a) If a tenant agrees to pay a fee in lieu of a
 44 security deposit, the landlord must notify the tenant within 30
 45 days after the conclusion of the tenancy if there are any costs
 46 or fees due resulting from unpaid rent, fees, or other
 47 obligations under the rental agreement, including, but not
 48 limited to, costs required for repairing damage to the premises
 49 beyond normal wear and tear.
 50 (b) A landlord may not submit a claim to an insurer to
 51 recover the landlord's losses associated with unpaid rent, fees,
 52 or other obligations under the rental agreement, including, but
 53 not limited to, costs required for repairing damage to the
 54 premises beyond normal wear and tear, until at least 15 days
 55 after providing the tenant with the required notice under
 56 paragraph (a).
 57 1. The landlord must include an itemized list of any unpaid
 58 amounts and the dates such amounts were due, documentation

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59 supporting any itemized damages and costs of repairs, and a copy
 60 of any written objection or report of any communication of
 61 objection by the tenant when the landlord submits a claim to an
 62 insurer.

63 2. If an insurer pays a claim that was submitted under this
 64 subsection to a landlord and the insurer has subrogation rights,
 65 the insurer may, within 1 year after the tenancy that was the
 66 subject of the claim ends, seek reimbursement from the tenant
 67 for the amounts paid to the landlord. If the insurer seeks
 68 reimbursement from the tenant, the following apply:

69 a. The insurer must provide the tenant with all
 70 documentation for losses which the landlord provided to the
 71 insurer in support of the landlord's claim and a copy of the
 72 settlement statement documenting the insurer's payment of the
 73 landlord's claim.

74 b. The tenant retains any defenses against the insurer
 75 which the insurer would otherwise have against the landlord.

76 3. A landlord may not accept payment from both a tenant and
 77 an insurer for amounts associated with the same rent, fees, or
 78 damages.

79 (3) If a landlord offers a tenant the option to pay a fee
 80 in lieu of a security deposit, the landlord must notify the
 81 tenant in writing of all of the following:

82 (a) That the tenant has the option to pay a security
 83 deposit instead of the fee.

84 (b) That the tenant may, at any time, terminate the
 85 agreement to pay the fee in lieu of the security deposit and
 86 instead pay a security deposit as listed in a rental agreement
 87 between landlord and tenant or, if a security deposit was not

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88 agreed upon in a rental agreement between the landlord and
 89 tenant, in the amount that is otherwise offered to new tenants
 90 for a substantially similar dwelling unit on the date that the
 91 tenant terminates the agreement.

92 (c) Whether any additional charges apply for the options
 93 provided in paragraphs (a) and (b).

94 (d) The amount of the payments required for each option the
 95 landlord offers.

96 (e) That the fee is nonrefundable, if applicable.

97 (f) That the fee is only for securing occupancy without
 98 paying a required security deposit.

99 (g) That the fee payment does not limit or change the
 100 tenant's obligation to pay rent and fees, if any, under the
 101 rental agreement or limit or change the tenant's obligation to
 102 pay the costs of repairing damage to the premises beyond normal
 103 wear and tear.

104 (h) That if the landlord uses any portion of the fee to
 105 purchase insurance, the tenant is not insured and is not a
 106 beneficiary of the landlord's insurance coverage, and that the
 107 insurance does not limit or change the tenant's obligations to
 108 pay rent and fees under the rental agreement or change the
 109 tenant's obligation to pay the costs of repairing damage to the
 110 premises beyond normal wear and tear.

111 (4) (a) If a tenant decides to pay a fee in lieu of a
 112 security deposit, a written agreement to collect the fee must be
 113 signed by the landlord, or the landlord's agent, and the tenant.
 114 The written agreement may not contain any clause that
 115 contradicts s. 83.45 or s. 83.47. The written agreement must, at
 116 a minimum, specify all of the following:

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- 117 1. The amount of the fee.
 118 2. How and when the fee is to be collected.
 119 3. The process and timeframe during which a tenant must pay
 120 the security deposit specified in the rental agreement if the
 121 tenant defaults on paying the fee, and that such default will
 122 not adversely affect the tenant's credit rating if the security
 123 deposit is timely paid.
 124 4. That the written agreement may be terminated at any time
 125 as long as the tenant pays the amount of the security deposit
 126 specified in the rental agreement.
 127 5. If the tenant pays the amount of the security deposit
 128 specified in the rental agreement, then the tenant's default on
 129 paying the fee or termination of the written agreement may not
 130 adversely impact the tenant's credit report.
 131 (b) The written agreement specified under paragraph (a)
 132 must also include a disclosure in substantially the following
 133 form:

134 FEE IN LIEU OF SECURITY DEPOSIT

137 THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY
 138 BOTH PARTIES, AND THE TENANT AGREES TO PAY THE
 139 LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS
 140 AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES.
 141 THIS FEE IS NOT A SECURITY DEPOSIT, AND PAYMENT OF THE
 142 FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS
 143 UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION
 144 TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND
 145 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT

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146 OR HIS OR HER GUESTS MAY CAUSE. IF THE LANDLORD USES
 147 ANY PORTION OF THE TENANT'S FEE TO PURCHASE INSURANCE,
 148 THE TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF
 149 SUCH COVERAGE. SUCH INSURANCE DOES NOT LIMIT OR CHANGE
 150 THE TENANT'S OBLIGATION TO PAY RENT AND FEES, IF ANY,
 151 UNDER THE RENTAL AGREEMENT OR TO PAY THE COSTS AND
 152 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT
 153 OR HIS OR HER GUESTS MAY CAUSE. THE TENANT MAY
 154 TERMINATE THIS AGREEMENT AT ANY TIME AND STOP PAYING
 155 THE FEE AND INSTEAD PAY A SECURITY DEPOSIT AS PROVIDED
 156 IN SECTION 83.491, FLORIDA STATUTES.

157 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
 158 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
 159 RIGHTS AND OBLIGATIONS.

161 (5) A fee in lieu of a security deposit may be:
 162 (a) A recurring monthly fee, payable on the same date that
 163 the rent payment is due under the rental agreement; or
 164 (b) Payable upon a schedule that the landlord and tenant
 165 choose and as specified in the written agreement.

166 (6) A fee collected under this section, or an insurance
 167 product or a surety bond accepted, by a landlord in lieu of a
 168 security deposit is not a security deposit as defined in s.
 169 83.43(12).

170 (7) A landlord has exclusive discretion as to whether to
 171 offer tenants the option to pay a fee in lieu of a security
 172 deposit and is not required to offer such fee option to tenants.
 173 However, if a landlord offers a tenant an option to pay a fee in
 174 lieu of a security deposit, the fee shall not be considered a

Page 6 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2023494__

175 lieu of a security deposit, the landlord may not use a
176 prospective tenant's choice to pay, or offer to pay, a fee in
177 lieu of a security deposit as criteria in the determination to
178 approve or deny an application for occupancy, and the landlord
179 must also offer all new tenants renting a dwelling unit on the
180 same premises the option to pay a fee in lieu of a security
181 deposit, unless the landlord chooses to prospectively terminate
182 the fee option for all new rental agreements.

183 (8) (a) This section does not:

184 1. Require a fee collected in lieu of a security deposit to
185 be used to purchase an insurance product or a surety bond; or
186 2. Prohibit a tenant from being offered or sold an
187 insurance product or a surety bond to present to the landlord in
188 lieu of a security deposit if the offer or sale of such
189 insurance product or surety bond complies with the laws of this
190 state.

191 (b) Acceptance by a landlord of an insurance product or a
192 surety bond that is purchased or procured by a tenant, a
193 landlord, or an agent of the landlord may not be considered an
194 offer on the part of the landlord to allow a tenant to pay a fee
195 in lieu of a security deposit for the purposes of subsection
196 (7).

197 (9) This section applies to rental agreements entered into
198 or renewed on or after July 1, 2023.

199 Section 2. This act shall take effect July 1, 2023.



THE FLORIDA SENATE
SENATOR NICK DICEGLIE
District 18

Kathleen Passidomo
President of the Senate

Dennis Baxley
President Pro Tempore

February 27, 2023

Dear Chair Yarborough,

I respectfully request that **SB 494 – Fees in Lieu of Security Deposits** be placed on the agenda of the Judiciary Committee at your earliest convenience. If my office can be of any assistance to the committee please do not hesitate to contact me at DiCeglie.Nick@flsenate.gov or (850) 487-5018. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Nick DiCeglie".

Nick DiCeglie

State Senator, District 18

CC: Staff Director: Tom Cibula
Administrative Assistant: Lisa Larson

Proudly Serving Pinellas County

Transportation Committee, Chair ~ Banking and Insurance Committee, Vice Chair ~
Commerce and Tourism Committee ~ Fiscal Policy Committee ~ Judiciary Committee ~
Rules Committee ~ Joint Legislative Auditing Committee

The Florida Senate

APPEARANCE RECORD

3-7-23

Meeting Date

SB 494

Bill Number or Topic

265900

Amendment Barcode (if applicable)

Judiciary
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Name Pete Dunbar

Phone 999-4100

Address 106 E College, Suite 1200
Street

Email pdunbar@deanread.com

Tallahassee

City

32301

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Real Property, Probate & Trust Law Section, Fla Bar

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 494

3/7/2023

Meeting Date

Bill Number or Topic

Judiciary

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Jon Potter

Phone

202-494-5444

Address

14 Windermere Ct

Email

jon@therxgroup.com

Street

Rockville, MD

20852

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Lease/ock

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/7/23

Meeting Date

The Florida Senate APPEARANCE RECORD

SB 494

Bill Number or Topic

Deliver both copies of this form to
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Judiciary
Committee

Amendment Barcode (if applicable)

Name Tyler Foerst

Phone 352-318-3018

Address 3318 NW 60th Ave
Street

Email g+2089@gmail.com

City Gainesville FL

Zip 32608

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/07/23

Meeting Date

494

Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name Brett Farren Farrell

Phone 352-615-4886

Address 501 SW Burchi Glen
Street

Email _____

Fort White
City

FL
State

32038
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3-7-2023

Meeting Date

SB 444

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name David A Dosey Sr

Phone 352-502-5247

Address 6790 E Hwy 318

Email DDosey@gmail.com

City C. Ha

State FL

Zip 32113

Speaking: [] For [] Against [] Information OR Waive Speaking: [] In Support [x] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

3-07-23

Meeting Date

494

Bill Number or Topic

Judiciary
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Brandon Perez

Phone (954) 336-8374

Address 3904 NW 21st Ter.

Email Brandonperez1992@gmail.com

Street

Gainesville

FL

32605

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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3-7-23

Meeting Date

Judiciary

Committee

SB 494

Bill Number or Topic

Amendment Barcode (if applicable)

Name Nick Mangoni

Phone 941 932 3913

Address 320 SE 3rd St Apt D12
Street

Email Nickmangoni@gmail.com

Gainesville
City

FL
State

32601
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/7/23

The Florida Senate
APPEARANCE RECORD

494
484

Meeting Date

Bill Number or Topic

Judiciary

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Michael Nelson

Phone 352 497 8041

Address 1628 SW 4th ST
Street

Email 7obigmike45@yahoo.com

Ocala
City

FL
State

34471
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

3.7.23

The Florida Senate
APPEARANCE RECORD

494

Meeting Date

Bill Number or Topic

Judiciary

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Sarah Suskey

Phone

850.222.8900

Address

204 S Monroe

Email

Sarah@tapfla.com

Street

TLH

FL

32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

LeaseLock

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

March 7, 2023

Meeting Date

Judiciary

Committee

Pamela Burch Fort

Name

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

494

Bill Number or Topic

Amendment Barcode (if applicable)

850-425-1344

Phone

104 South Monroe Street

Address

TcgLobby@aol.com

Email

Street

Tallahassee

FL

32301

City

State

Zip

Reset Form

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

NAACP Florida State Conference

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/7/23

The Florida Senate APPEARANCE RECORD

SB 494

Meeting Date

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Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Jennifer Powell

Phone 352-215-2243

Address 6624 NW 27th Terr.

Email ACRYPEACE@gmail.com

Street

Gainesville Fl. 32653

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 494

3/7/23

Meeting Date

Bill Number or Topic

Judiciary

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Jackson Oberlink

Phone 772-532-1371

Address 10800 Biscayne Blvd. Suite 1050

Email jackson@floridaforall.vote

Street

Miami

City

FL

State

33161

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Rising

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

3/7/23
Meeting Date

SB 494
Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Phone 850-224-6926

Address 135 S Monroe
Street

Email

Tallahassee
City

FL
State

32301
Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Florida AFL-CIO

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

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: SB 218

INTRODUCER: Senator Harrell

SUBJECT: Genetic Counselors Using Telehealth

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Favorable
2.	Collazo	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 218 amends the definition of a telehealth provider in s. 456.47, F.S., to allow licensed genetic counselors to provide healthcare and related services using telehealth.

The bill takes effect on July 1, 2023.

II. Present Situation:

Telehealth

Section 456.47, F.S., defines the term “telehealth” as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.¹

In a general sense, “synchronous” telehealth happens in live, real-time settings where the patient interacts with a provider, usually via phone or video. Providers and patients communicate directly, often resulting in a diagnosis, treatment plan, or prescription. Synchronous telehealth can include additional at-home devices such as a blood pressure or heart rate monitors, thermometers, oximeters, cameras, or scales to help the provider more accurately assess the patient’s health status.²

¹ Section 456.47(1)(a), F.S.

² TELEHEALTH.HHS.GOV, *Synchronous direct-to-consumer telehealth*, <https://telehealth.hhs.gov/providers/direct-to-consumer/synchronous-direct-to-consumer-telehealth/> (last visited Mar. 2, 2023).

“Asynchronous” telehealth, also known as “store-and-forward,” is often used for patient intake or follow-up care. For example, a patient sends a photo of a skin condition that is later reviewed by a dermatologist who recommends treatment.³

Section 456.47, F.S., also authorizes out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the applicable board,⁴ or the Department of Health if there is no board, and meet certain eligibility requirements.⁵ A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients, but such providers are prohibited from opening an office in Florida, and from providing in-person health care services to patients located in Florida, without first becoming licensed by the state.⁶

A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II⁷ of the state law establishing standards and schedules for controlled substances⁸ unless the controlled substance is prescribed for the following:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a licensed hospital;
- The treatment of a patient receiving hospice services; or
- The treatment of a resident of a nursing home facility.⁹

A telehealth provider must document in the patient’s medical record the health care services rendered using telehealth according to the same standard as used for in-person services. Medical records, including video, audio, electronic, or other records generated as a result of providing such services, are confidential.¹⁰

The website of an out-of-state telehealth provider registered under s. 456.47, F.S., must prominently display a hyperlink to the department’s website, and the department’s website must publish a list of all out-of-state registrants and include the following information for each:

- Name.
- Health care occupation.
- Health care training and education, including completion dates and any certificates or degrees obtained.

³ TELEHEALTH.HHS.GOV, *Asynchronous direct-to-consumer telehealth*, <https://telehealth.hhs.gov/providers/direct-to-consumer/asynchronous-direct-to-consumer-telehealth/> (last visited Mar. 2, 2023).

⁴ Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the department’s Division of Medical Quality Assurance (MQA).

⁵ See generally s. 456.47(4), F.S.

⁶ See s. 456.47(4)(f), F.S.

⁷ Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous. Some examples of Schedule II drugs are: combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin. U.S. Drug Enforcement Administration, *Drug Scheduling*, <https://www.dea.gov/drug-information/drug-scheduling> (last visited Mar. 2, 2023).

⁸ Section 893.03, F.S.

⁹ Section 456.47(2)(c), F.S.

¹⁰ Section 456.47(3), F.S. (referencing ss. 395.3025(4) and 456.057, F.S., in connection with confidentiality).

- Out-of-state health care licenses, including license numbers.
- Florida telehealth provider registration number.
- Specialty, if any.
- Board certification, if any.
- Five-year disciplinary history, including sanctions imposed and board actions.
- Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in Florida.
- The name and address of the registered agent designated for service of process in Florida.¹¹

A health care professional may not register under s. 456.47, F.S., if his or her license to provide health care services is subject to a pending disciplinary investigation or action, or has been revoked in any state or jurisdiction. A registered health care professional must notify the appropriate board, or the department if there is no board, of any restrictions placed on his or her license to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. This notification must be provided within 5 business days after the restriction is placed or the disciplinary action is initiated or taken.¹²

The board, or the department if there is no board, may take disciplinary action against an out-of-state telehealth provider registered under s. 456.47, F.S., if the registrant:

- Fails to notify the applicable board, or the department if there is no board, of any adverse actions taken against his or her license;
- Has restrictions placed on, or disciplinary action taken against, his or her license in any state or jurisdiction;
- Violates any of the requirements of s. 456.47, F.S.; or
- Commits any act that constitutes grounds for disciplinary action for Florida-licensed providers.¹³

Disciplinary action taken by the applicable board, or the department if there is no board, may include suspension or revocation of the provider's registration, or the issuance of a reprimand or letter of concern. A suspension may be accompanied by a corrective action plan as determined by the board, or the department if there is no board, the completion of which may lead to the suspended registration being reinstated according to rules adopted by the board, or the department if there is no board.¹⁴

Venue for civil or administrative actions initiated by the department, the appropriate board, or a patient who receives telehealth services from an out-of-state telehealth provider may be located in the patient's county of residence or in Leon County.¹⁵

A health care professional who is not licensed to provide health care services in Florida, but who holds an active license to provide health care services in another state or jurisdiction, and who

¹¹ Section 456.47(4)(c) and (4)(h), F.S.

¹² Section 456.47 (4)(d), F.S.

¹³ Section 456.47(4)(i), F.S. (referencing s. 456.072(1), F.S. or the applicable practice act, as the grounds for disciplinary action).

¹⁴ *Id.*

¹⁵ Section 456.47(5), F.S.

provides such services using telehealth to a patient located in Florida, is not subject to the registration requirement under s. 456.47, F.S., if the services are provided:

- In response to an emergency medical condition; or
- In consultation with a health care professional licensed in Florida who has ultimate authority over the diagnosis and care of the patient.¹⁶

Genetic Counselors

In 2021, the Legislature established a new licensed and regulated practice, genetic counseling, within the department in chapter 483, part III, F.S., and authorized the new practice act to be cited as the “Genetic Counseling Workforce Act” (Act).¹⁷ The Legislature also amended state law to include genetic counselors in the definition of “health care practitioner.”¹⁸

The Act includes legislative findings and intent to establish the new practice of genetic counseling.¹⁹ With respect to the scope of that practice, the Act defines it as the process of advising an individual or a family affected by, or at risk of, genetic disorders in the following ways:

- Obtaining and evaluating individual, family, and medical histories to determine the genetic risk for genetic or medical conditions and diseases in a patient, his or her offspring, and other family members;
- Discussing the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;
- Identifying, ordering, and coordinating genetic laboratory tests and other diagnostic studies as appropriate for a genetic assessment;
- Integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases;
- Explaining the clinical implications of genetic laboratory tests and other diagnostic studies and their results;
- Evaluating the client’s or family’s responses to the condition or risk of recurrence and providing client-centered counseling and anticipatory guidance;
- Identifying and using community resources that provide medical, educational, financial, and psychosocial support and advocacy;
- Providing written documentation of medical, genetic, and counseling information for families and health care professionals; and
- Referring patients to a physician for diagnosis and treatment.²⁰

A person desiring to be licensed as a genetic counselor must apply to the department, and the department must issue a two-year license to each applicant who:

¹⁶ Section 456.47(6), F.S. (referencing s. 395.002, F.S., in connection with emergency medical conditions).

¹⁷ Ch. 2021-133, Laws of Fla.; ss. 483.911-483.919, F.S. Notably, however, genetic counselling is not listed as one of the department’s divisions or boards in s. 20.43, F.S., pursuant to which the department derives its general regulatory authority. *See* s. 20.43, F.S.

¹⁸ Ch. 2021-133, s. 2, Laws of Fla.; s. 465.001(4), F.S.

¹⁹ Section 483.912, F.S.

²⁰ Section 483.913(3)(a)-(i), F.S.

- Is of good moral character.
- Provides satisfactory documentation of having earned:
 - A master’s degree from a genetic counseling training program or its equivalent as determined by the Accreditation Council of Genetic Counseling or its successor or an equivalent entity; or
 - A doctoral degree from a medical genetics training program accredited by the American Board of Medical Genetics and Genomics or the Canadian College of Medical Geneticists.
- Has passed the examination for certification as:
 - A genetic counselor by the American Board of Genetic Counseling, Inc., the American Board of Medical Genetics and Genomics, or the Canadian Association of Genetic Counsellors; or
 - A medical or clinical geneticist by the American Board of Medical Genetics and Genomics or the Canadian College of Medical Geneticists.²¹

The Act also establishes grounds for disciplinary action and penalties²² and creates exemptions from genetic counseling regulation for:

- Commissioned medical officers of the U.S. Armed Forces or Public Health Service while on active duty or while acting within the scope of their military or public health responsibilities.
- Health care practitioners, other than genetic counselors, who are practicing within the scope of their education, training, and licensure.²³

The Act includes a “conscience clause” allowing a genetic counselor to refuse to participate in counseling that conflicts with his or her deeply held moral or religious beliefs. The license of a genetic counselor may not be contingent upon participation in such counseling. A genetic counselor’s refusal to participate in counseling that conflicts with his or her deeply held moral or religious beliefs may also not form the basis for any claim of damages or for any disciplinary action against a genetic counselor, provided:

- The genetic counselor informs the patient that he or she will not participate in such counseling; and
- Offers to direct the patient to the online health care practitioner license verification database maintained by the department.²⁴

Genetic Counseling and Telehealth

According to the Division of Medical Quality Assurance 2021-2022 Annual Report, since the genetic counseling program’s inception, the department has licensed 532 genetic counselors with 107 (20%) active licensees living in-state and 425 (80%) active licenses living out-of-state.²⁵

²¹ Section 483.914(2), F.S.

²² Section 483.917, F.S.

²³ Section 483.919, F.S. (referencing s. 456.001(4), F.S., for the definition of health care practitioner under state law).

²⁴ Section 483.918, F.S.

²⁵ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan: Fiscal Year 2021-22*, 14 (Table 1: Summary of Licensed Practitioners), available at <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html>.

There are 31 states, including Florida, regulating licensure for genetic counselors and 13 states with bills in progress. All other states regulating the profession authorize genetic counselors to provide telehealth services.²⁶

The profession of genetic counseling is young compared to other medical specialties. For this reason, there are only a few thousand genetic counselors employed in the U.S., which makes telehealth a common practice for the profession. Genetic counseling is unique in that evaluating a patient's health and family history with genetic test results could be done almost entirely through telehealth services. According to the department, genetic counselors could conceivably deliver equally effective services whether someone is in-person or several time zones away.²⁷

III. Effect of Proposed Changes:

SB 218 amends the definition of a telehealth provider in s. 456.47, F.S., to include licensed genetic counselors so that they may practice their profession using telehealth.

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ Department of Health, *2023 Agency Legislative Bill Analysis for SB 218* (Jan. 11, 2023), 2-3 (on file with the Senate Committee on Judiciary).

²⁷ *Id.*

B. Private Sector Impact:

The bill may reduce the costs to patients receiving genetic counseling services by not requiring patients to travel long distances to receive test results or follow-up counseling.

C. Government Sector Impact:

The department anticipates there will be a minimal increase in revenues collected at initial application in the amount of \$5.00 per applicant. There will also be an impact to the department's workload due to the bill, but the department anticipates that it will be minimal and can be absorbed by the department's existing budget.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

Genetic counseling is not listed as one of the department's divisions or boards in s. 20.43, F.S., under which the department derives its general regulatory authority from the Legislature. This may create a technical issue as to whether or not the department has been given authority by the Legislature to regulate genetic counselling.

VIII. Statutes Affected:

This bill substantially amends section 456.47 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁸ *Id.* at 5.

By Senator Harrell

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A bill to be entitled

An act relating to genetic counselors using telehealth; amending s. 456.47, F.S.; revising the definition of the term "telehealth provider" to include persons licensed as genetic counselors; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 456.47, Florida Statutes, is amended to read:

456.47 Use of telehealth to provide services.—

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

(b) "Telehealth provider" means any individual who provides health care and related services using telehealth and who is licensed or certified under s. 393.17; part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part III, part IV, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part I, ~~or~~ part II, or part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; who is licensed under a multistate health care licensure compact of which Florida is a member state; or who is registered under and complies with subsection (4).

Section 2. This act shall take effect July 1, 2023.



2023 AGENCY LEGISLATIVE BILL ANALYSIS



AGENCY: Florida Department of Health

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 218
BILL TITLE:	Genetic Counselors Using Telehealth
BILL SPONSOR:	Harrell
EFFECTIVE DATE:	July 1, 2023

<u>COMMITTEES OF REFERENCE</u>
1) Health Policy
2) Judiciary
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Judiciary

<u>SIMILAR BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
BILL SPONSOR:	Click or tap here to enter text.

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	Click or tap here to enter text.
BILL TITLE:	Click or tap here to enter text.
BILL SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	117
BILL SPONSOR:	Silvers

<u>Is this bill part of an Agency Package?</u>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	1/11/2023
LEAD AGENCY ANALYST:	Ashleigh Irving
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
FISCAL ANALYST:	Madison Adkins
LEGAL ANALYST:	John Wilson

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill revises the definition of telehealth provider by amending section 456.47, Florida Statutes to include genetic counselors providing an effective date of July 1, 2023.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

During the 2021 Legislative Session, SB 1770 established the licensed and regulated profession of genetic counseling within the Department of Health in chapter 483, Part III, Florida Statutes. The law establishes and defines:

- Genetic counselor; and
- Scope of practice of genetic counseling.
- Requirements for initial licensure, renewal, and continuing education;
- Grounds for disciplinary action and penalties; and
- Exemptions from genetic counseling regulation for:
 - Commissioned medical officers of the United States Armed Forces or Public Health Service while on active duty; and
 - Health care practitioners as defined in s. 456.001, F.S., other than genetic counselors, who are practicing within the scope of their education, training, and licensure.

According to the Division of Medical Quality Assurance 2021-2022 Annual Report, since its inception, the department has licensed 532 genetic counselors with 107 (20 percent) active licensees living in-state and 425 (80 percent) active licenses living out-of-state. There are 31 states, including Florida, regulating licensure for genetic counselors and 13 states with bills in progress. All other states regulating the profession authorize genetic counselors to provide telehealth services.

Health Care Practitioner Scope of Practice

The scope of practice for a regulated healthcare profession includes those activities and procedures that a person with a specified level of education, training, and competency is authorized to perform under the laws and rules of the state in which the person practices. The scope of practice can also incorporate conditions that may limit the exercise of authorized activities and procedures. Licensed health care practitioners in Florida may only perform that which is authorized by the scope of practice for their profession. Individuals who perform functions outside of their scope of practice are subject to discipline. Individuals who perform tasks that are specific to a scope of practice identified in Florida Statutes without the required licensure may be considered to be performing an unlicensed activity in violation of the law.

The scope of practice for genetic counseling, as defined in chapter 483, Part III (3), Florida Statutes means the process of advising an individual or a family affected by or at risk of genetic disorders, including: (a) Obtaining and evaluating individual, family, and medical histories to determine genetic risk for genetic or medical conditions and diseases in a patient, his or her offspring, and other family members; (b) Discussing the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases; (c) Identifying, ordering, and coordinating genetic laboratory tests and other diagnostic studies as appropriate for a genetic assessment; (d) Integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases; (e) Explaining the clinical implications of genetic laboratory tests and other diagnostic studies and their

results; (f) Evaluating the client’s or family’s responses to the condition or risk of recurrence and providing client-centered counseling and anticipatory guidance; (g) Identifying and using community resources that provide medical, educational, financial, and psychosocial support and advocacy; (h) Providing written documentation of medical, genetic, and counseling information for families and health care professionals; and (i) Referring patients to a physician for diagnosis and treatment.

Genetic counselors have advanced training in medical genetics and counseling to guide and support patients seeking more information about how inherited diseases and conditions might affect them or their families, and to interpret genetic test results based on personal and family history. Genetic counselors specialize in prenatal, pediatric, oncology, neurology, ophthalmology, psychiatry, and many other areas. In addition to different specialty areas, genetic counselors can have roles outside of seeing patients. Genetic counselors can work in research, education, industry, marketing, and many other roles across the healthcare and genetics fields.

The profession of genetic counseling is young compared to other medical specialties. For this reason, there are only a few thousand genetic counselors employed in the United States which makes telehealth a common practice for the profession. Genetic counseling is unique in that evaluating a patient’s health and family history with genetic test results could be done almost entirely through telehealth services. Genetic counselors could conceivably deliver equally effective services whether someone is in-person or several time zones away.

Initial Licensure Requirements

Any person desiring to be licensed as a genetic counselor in Florida must possess a minimum of a master’s degree from a genetic counseling training program or its equivalent as determined by the Accreditation Council of Genetic Counseling or a doctoral degree from a medical genetics training program accredited by the American Board of Medical Genetics and Genomics or the Canadian College of Medical Geneticists. They must also pass the examination for certification as a genetic counselor by the American Board of Genetic Counseling, Inc., the American Board of Medical Genetics and Genomics, or the Canadian Association of Genetic Counsellors.

Florida Telehealth Providers

During the 2019 legislative session, Florida passed section 456.47 Florida Statutes, which establishes standards of practice for telehealth services, including patient evaluations, and record-keeping. The law also authorizes out-of-state healthcare practitioners to perform telehealth services for patients in Florida. Signed by the Governor on June 25, 2019, this law became effective on July 1, 2019. Florida licensed genetic counselors are not presently identified as telehealth providers in accordance with section 456.47, Florida Statutes.

2. EFFECT OF THE BILL:

The bill authorizes Florida licensed genetic counselors as telehealth providers in accordance with section 456.47, Florida Statutes. If passed and signed into law, Florida telehealth providers may offer healthcare services by telehealth methods to clients physically located in Florida. Telehealth providers may not provide healthcare services to clients located in other states without express authorization. This amendment would also permit genetic counselors located in other states to register as an out-of-state telehealth provider, potentially expanding the population of genetic counselors providing services in Florida.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, explain:	N/A

Is the change consistent with the agency's core mission?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and Summary of Position:	Unknown
Opponents and Summary of Position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Board:	N/A
Board Purpose:	N/A
Who Appoints?	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain:	N/A

If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A
---	-----

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Revenues:	It is anticipated there will be a minimal impact to revenues collected at initial application for the Unlicensed Activity Fee in the amount of \$5.00 per applicant.
Expenditures:	There will be an impact to workload due to the provisions of this bill. However, it is anticipated the impact will be minimal and can be absorbed within existing budget authority.
Does the legislation contain a State Government appropriation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, explain impact:	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If yes, describe the anticipated impact to the agency including any fiscal impact:	N/A
--	-----

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, describe the anticipated impact including any fiscal impact:	N/A

ADDITIONAL COMMENTS

N/A

LEGAL – GENERAL COUNSEL’S OFFICE REVIEW

Issues/Concerns/Comments: No legal issues, concerns or comments identified at this time.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Committee on Health and
Human Services, *Chair*
Environment and Natural Resources, *Vice Chair*
Appropriations
Appropriations Committee on Education
Education Postsecondary
Health Policy
Judiciary

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR GAYLE HARRELL

31st District

February 22, 2023

Senator Clay Yarborough
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Yarborough,

I respectfully request that SB 218 – Genetic Counselors Telehealth be placed on the next available agenda for the Judiciary Committee.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 31

Cc: Tom Cibula, Staff Director
Lisa Larson, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

March 7, 2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

218

Bill Number or Topic

Judiciary

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Meridian Health Service

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

3/7/2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 218

Bill Number or Topic

JUDICIARY

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name CHRISTIAN CANARA

Phone (305) 604-4300

Address PO Box 122

Email CHRISTIAN@CHAURICECONSULTANTS FL.COM

Street

TALLAHASSEE FL 32302

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

INSTITUTE FOR JUSTICE

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This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

7 March 2023

Meeting Date

Judiciary

Committee

218

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Chris Stranburg

Phone

813-767-9667

Address

107 E College Ave

Email

cstranburg@afphg.org

Street

Tallahassee

State

FL

32301

Zip

Speaking:

 For Against Information

OR

Waive Speaking:

 In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

Americans for
Prosperity

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/7/23

The Florida Senate
APPEARANCE RECORD

218

Meeting Date

Senate Judiciary

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Robby Holroyd

Phone

954-803-0231

Address

205 S. Adams St.

Email

REH@tripscott.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Association of Genetic Counselors

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee Judge:

Started: 3/7/2023 2:01:49 PM

Ends: 3/7/2023 3:29:19 PM Length: 01:27:31

2:01:52 PM Meeting called to order, roll call
2:02:09 PM Quorum is present
2:02:27 PM Chair Yarborough makes opening remarks
2:02:40 PM Tab 2- SB 164 , Controlled Substances Testing by Senator Polsky
2:02:49 PM Chair Yarborough recognizes Senator Polsky
2:02:50 PM Senator Polsky explains the bill
2:04:34 PM Chair Yarborough reads appearance cards waiving
2:05:31 PM Senator Polsky closes on the bill
2:05:45 PM Roll call on SB 164
2:06:24 PM Chair Yarborough reports the bill
2:06:30 PM Tab 4- SB 662, Student Online Personal Information Protection by Senator Bradley
2:06:36 PM Chair Yarborough recognizes Senator Bradley
2:06:38 PM Senator Bradley explains the bill
2:08:39 PM Questions:
2:08:41 PM Senator Harrell
2:08:52 PM Senator Bradley
2:10:36 PM Senator Harrell
2:11:02 PM Senator Bradley
2:11:45 PM Senator Harrell
2:11:52 PM Senator Bradley
2:12:09 PM Chair Yarborough recognizes appearance cards
2:12:24 PM Cathryn Moering
2:15:48 PM Public Testimony:
2:15:59 PM Lee Carden
2:17:31 PM Senator Bradley closes on the bill
2:18:03 PM Roll call on SB 662
2:18:30 PM Chair Yarborough reports the bill
2:18:36 PM Tab 1- SB 130, Domestic Violence by Senator Berman
2:18:44 PM Chair Yarborough recognizes Senator Berman
2:18:46 PM Senator Berman explains the bill
2:21:16 PM Amendment 893018
2:21:24 PM Senator Berman explains the amendment
2:21:52 PM Senator Berman waives close
2:22:03 PM Chair Yarborough reports amendment
2:22:15 PM Public Testimony:
2:22:37 PM Alison Kessler
2:29:52 PM Kasey Carter
2:34:52 PM Phil Wartenberg, Family Law Section
2:38:46 PM Melina Markos
2:43:48 PM Chair Yarborough reads appearance cards waiving
2:44:38 PM Debate:
2:44:40 PM Senator Book
2:46:02 PM Senator Berman closes on the bill
2:47:39 PM Roll call on SB 130
2:48:04 PM Chair Yarborough reports the bill
2:48:23 PM Tab 3- SB 508, Problem-solving Courts by Senator Rouson
2:48:27 PM Chair Yarborough recognizes Senator Rouson
2:48:36 PM Senator Rouson explains the bill
2:51:21 PM Questions:
2:51:24 PM Senator Harrell
2:51:49 PM Senator Rouson
2:52:03 PM Chair Yarborough reads appearance cards waiving in support

2:52:30 PM Senator Rouson waives close
2:52:35 PM Roll call on SB 508
2:52:53 PM Chair Yarborough reports the bill
2:53:00 PM Tab 7- SB 218, Genetic Counselors Using Telehealth by Senator Harrell
2:53:10 PM Chair Yarborough recognizes Senator Harrell
2:53:13 PM Senator Harrell explains the bill
2:54:26 PM Chair Yarborough reads appearance cards waiving
2:54:54 PM Senator Harrell closes on the bill
2:55:03 PM Roll call on SB 218
2:55:30 PM Chair Yarborough reports the bill
2:55:34 PM Tab 5- SB 1098, Withholding or Withdrawal of Life-prolonging Procedures by Vice Chair Burton
2:55:42 PM Chair Yarborough recognizes Vice Chair Burton
2:55:43 PM Vice Chair Burton explains the bill
2:58:11 PM Questions:
2:58:13 PM Senator Harrell
2:58:47 PM Vice Chair Burton
2:58:52 PM Senator Harrell
2:59:04 PM Vice Chair Burton
2:59:08 PM Senator Thompson
2:59:28 PM Vice Chair Burton
3:00:30 PM Amendment 263154
3:00:43 PM Vice Chair Burton explains the amendment
3:01:14 PM Chair Yarborough reads appearance cards waiving
3:01:33 PM Vice Chair Burton waives close
3:01:39 PM Chair Yarborough reports the amendment
3:01:52 PM Public Testimony:
3:02:08 PM Rey Contreras
3:06:08 PM Karen Campbell, Florida Public Guardian Coalition
3:08:56 PM Chair Yarborough reads appearance cards waiving
3:09:14 PM Vice Chair Burton closes on the amendment
3:10:35 PM Roll call on SB 1098
3:10:57 PM Chair Yarborough reports the bill
3:11:10 PM Tab 6- SB 494, Fees in Lieu of Security Deposits by Senator DiCeglie
3:11:23 PM Chair Yarborough recognizes Senator Boyd to handle the bill for Senator DiCeglie
3:11:25 PM Senator Boyd explains the bill
3:13:05 PM Questions:
3:13:10 PM Senator Thompson
3:13:31 PM Senator Boyd
3:13:50 PM Senator Thompson
3:14:16 PM Senator Boyd
3:14:52 PM Senator Thompson
3:15:12 PM Senator Boyd
3:15:52 PM Senator Harrell
3:16:34 PM Senator Boyd
3:16:42 PM Senator Stewart
3:17:25 PM Senator Boyd
3:17:39 PM Senator Stewart
3:17:57 PM Senator Boyd
3:18:21 PM Amendment 265900
3:18:30 PM Chair Yarborough recognizes Senator Boyd
3:18:37 PM Senator Boyd explains the amendment
3:19:19 PM Senator Boyd waives close
3:19:25 PM Chair Yarborough reports the amendment
3:19:44 PM Public Testimony:
3:20:14 PM Jon Potter, Leaselock
3:21:19 PM Tyler Foerst
3:22:46 PM Chair Yarborough reads appearance cards waiving
3:22:54 PM Jackson Oberlink, Florida Rising
3:24:33 PM Dr. Rich Templin, Florida AFL-CIO
3:25:58 PM Debate:
3:26:01 PM Senator Thompson
3:27:12 PM Vice Chair Burton makes a motion to vote on SB 494 at a time certain of 3:29 p.m.

3:27:20 PM Senator Harrell
3:27:56 PM Senator Boyd closes on the bill
3:28:31 PM Roll call on SB 494
3:28:53 PM Chair Yarborough reports the bill
3:29:00 PM Meeting adjourned