Tab 1	**SB 870** by **Burton (CO-INTRODUCERS) Garcia**; (Similar to CS/H 00899) Surrendered Newborn Infants

731132	A	S	UNFAV	CF, Book	Delete L.42:	03/20 03:50 PM
485718	A	S	RCS	CF, Burton	Delete L.43 - 44:	03/20 03:50 PM
~~949384~~	A	S	WD	CF, Book	btw L.74 - 75:	03/20 03:50 PM
140998	A	S	RCS	CF, Burton	Delete L.132 - 321:	03/20 03:50 PM
693318	A	S	UNFAV	CF, Book	btw L.186 - 187:	03/20 03:50 PM

Tab 2	**SB 1010** by **Gruters**; (Identical to H 01303) Substance Abuse and Mental Health Services

739498	A	S	RCS	CF, Gruters	Delete L.40 - 181:	03/20 03:52 PM

Tab 3	**SB 1278** by **Simon (CO-INTRODUCERS) Rouson**; (Similar to H 01621) Direct-support Organizations of the Department of Children and Families

306642	A	S	RCS	CF, Simon	Delete L.89 - 101:	03/20 03:52 PM

Tab 4	**SB 1286** by **Book**; (Compare to CS/H 01031) Designated Public Safe Exchange Locations

Tab 5	**SB 1306** by **Harrell**; (Identical to H 01339) Placement of Surrendered Newborn Infants

Tab 6	**SB 1322** by **Grall**; (Identical to H 01377) Adoption of Children in Dependency Court

Tab 7	**SB 1374** by **Perry**; (Identical to H 01211) Child Restraint Requirements

Tab 8	**SB 1396** by **Garcia**; (Compare to H 01411) Department of Elderly Affairs

Tab 9	**SB 1412** by **Bradley**; (Similar to H 01349) Mental Health

119516	A	S	RCS	CF, Bradley	Delete L.181 - 280:	03/20 03:54 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Garcia, Chair
Senator Thompson, Vice Chair

MEETING DATE: Monday, March 20, 2023
TIME: 12:30—3:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Garcia, Chair; Senator Thompson, Vice Chair; Senators Baxley, Book, Bradley, Brodeur, Ingoglia, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 870** Burton (Similar CS/H 899)	Surrendered Newborn Infants; Revising the definition of the term "newborn infant"; authorizing certain hospitals, emergency medical services stations, and fire stations to use newborn infant safety devices to accept surrendered newborn infants if the device meets specified criteria; authorizing a parent to leave a newborn infant with medical staff or a licensed health care professional at a hospital after the delivery of the newborn infant under certain circumstances; providing that a parent who leaves a newborn infant in a newborn infant safety device has the right to remain anonymous and not to be pursued or followed, with exceptions, etc. HP 03/06/2023 Favorable CF 03/20/2023 Fav/CS RC	Fav/CS Yeas 4 Nays 3
2	**SB 1010** Gruters (Identical H 1303)	Substance Abuse and Mental Health Services; Revising requirements relating to the removal and replacement of certified recovery residence administrators; revising requirements relating to credentialing entities denying, revoking, or suspending certifications or imposing sanctions on a recovery residence; authorizing credentialing entities to approve certain certified recovery residence administrators to actively manage up to a specified number of residents if certain requirements are met; creating the Substance Abuse and Mental Health Treatment and Housing Task Force within the Department of Children and Families, etc. CF 03/20/2023 Fav/CS AHS FP	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 1278** Simon (Similar H 1621)	Direct-support Organizations of the Department of Children and Families; Authorizing the Department of Children and Families to establish a direct-support organization for a specified purpose; requiring the Secretary of Children and Families to appoint a board of directors for the direct-support organization; authorizing the department to allow the direct-support organization to use, without charge, the department's fixed property, facilities, and personnel services, subject to certain requirements; authorizing the direct-support organization to collect, expend, and provide funds for specified purposes, etc. CF 03/20/2023 Fav/CS GO RC	Fav/CS Yeas 7 Nays 0
4	**SB 1286** Book (Similar H 1031)	Designated Public Safe Exchange Locations; Requiring that certain information be included in a parenting plan; specifying that a parent may not be found in violation of a parenting plan, time-sharing schedule, or child exchange order, or charged with a certain offense, under certain circumstances; requiring boards of county commissioners to designate certain areas as public safe exchange locations for a specified purpose; providing that a parent of a child or the parent's designee may not be charged with the offense of interference with custody under certain circumstances, etc. CF 03/20/2023 Favorable JU RC	Favorable Yeas 7 Nays 0
5	**SB 1306** Harrell (Identical H 1339)	Placement of Surrendered Newborn Infants; Requiring licensed child-placing agencies to maintain a specified registry; requiring that certain information be removed from the registry under certain circumstances; prohibiting the child-placing agency from transferring certain costs to prospective adoptive parents; requiring licensed child-placing agencies to immediately place a surrendered newborn infant in the physical custody of an identified prospective adoptive parent; providing that the prospective adoptive parent becomes the guardian of such infant under certain conditions for a certain period of time; providing requirements for licensed child-placing agencies once they take physical custody of a surrendered newborn infant, etc. CF 03/20/2023 Favorable JU RC	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 1322** Grall (Identical H 1377)	Adoption of Children in Dependency Court; Specifying that certain adoption consents are valid, binding, and enforceable by the court; specifying that a consent to adoption is not valid after certain petitions for termination of parental rights have been filed; requiring that the final hearing on a motion to intervene and the change of placement of the child be held by a certain date; requiring the court to grant party status to the current caregivers under certain circumstances; requiring the court to order the transfer of custody of the child to the adoptive parents under certain circumstances and in accordance with a certain transition plan, etc. CF 03/20/2023 Favorable JU RC	Favorable Yeas 7 Nays 0
7	**SB 1374** Perry (Identical H 1211)	Child Restraint Requirements; Revising requirements for the use of a crash-tested, federally approved child restraint device while transporting a child in a motor vehicle, etc. CF 03/20/2023 Favorable TR RC	Favorable Yeas 7 Nays 0
8	**SB 1396** Garcia (Compare H 1411)	Department of Elderly Affairs; Revising the list of individuals who may not be appointed as ombudsmen under the State Long-Term Care Ombudsman Program; deleting an exemption from level 2 background screening requirements for certain individuals; requiring the office to notify complainants within a specified timeframe after determining that a complaint against a professional guardian is not legally sufficient; requiring the office to provide a certain written statement to the complainant and the professional guardian within a specified timeframe after completing an investigation; requiring clerks of the court to report to the office within a specified timeframe after the court imposes any sanctions on a professional guardian, etc. CF 03/20/2023 Favorable RC	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 1412** Bradley (Similar H 1349)	Mental Health; Authorizing the Department of Children and Families to issue a conditional designation for up to a certain number of days to allow the implementation of certain corrective measures by receiving facilities, treatment facilities, and receiving systems; requiring the sheriff to administer or to permit the department to administer the appropriate psychotropic medication to forensic clients before admission to a state mental health treatment facility; revising what an expert is required to specifically report on for recommended treatment for a defendant to attain competence to proceed, if the expert finds that a defendant is incompetent to proceed; revising the circumstances under which every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon specified findings by the court, etc. CF 03/20/2023 Fav/CS AHS FP	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents

CourtSmart Tag Report

Room: SB 37 **Case No.:** **Type:**
Caption: Senate Committee on Children, Families and Elder Affairs **Judge:**

Started: 3/20/2023 12:31:08 PM
Ends: 3/20/2023 1:49:39 PM **Length: 01:18:32**

12:31:06 PM Vice Chair Thompson calls meeting to order
12:31:35 PM Chair Garcia excused
12:31:39 PM Roll call
12:31:48 PM Quorum is present
12:31:52 PM Take up Tab 6 SB 1322 Adoption of Children in Dependency Court
12:32:27 PM Chair recognizes Senator Grall to explain bill
12:32:52 PM Chair recognizes Senator Grall to close
12:33:40 PM Roll Call SB 1322
12:33:46 PM Vote recorded
12:34:03 PM Take up Tab 8 SB 1396 Department of Elderly Affairs
12:34:23 PM Chair recognizes Senator Baxley to explain bill
12:35:21 PM Public Appearance by Nick Mayor of AARP
12:36:20 PM Public Appearance by Tyler Jefferson of Department of Elder Affairs
12:36:41 PM Roll Call SB 1396
12:36:58 PM Vote recorded
12:37:08 PM Take up Tab 4 SB 1286 Designated Public Safe Exchange Locations
12:37:32 PM Chair Recognizes Senator Book to explain bill
12:39:01 PM Public Appearance by Barbara Devane of FL Now
12:39:15 PM Public Appearance by Barney Bishop of Fla Smart Justice
12:39:38 PM Public Appearance by Phillip Wartenberg of Family Law Section
12:40:42 PM Chair recognizes Senator Book to close
12:41:02 PM Roll Call SB 1286
12:41:59 PM Vote recorded
12:42:04 PM Temporary Recess
12:42:31 PM Recording Paused
12:42:31 PM Recording Resumed
12:43:07 PM Take up Tab 2 SB 1010 Substance Abuse and Mental Health Services
12:44:06 PM Chair recognizes Senator Gruters to explain bill
12:44:19 PM Take up Amendment 739498
12:45:19 PM Chair recognizes Senator Gruters to explain amendment
12:45:31 PM Public Appearance by Tara Taggart of Florida League of Cities
12:46:13 PM Chair recognizes Senator Gruters to close
12:46:21 PM Action on amendment recorded, back on bill
12:46:32 PM Public Appearance by Barney Bishop of Florida Smart Justice
12:46:53 PM Comment by Senator Book
12:47:22 PM Chair recognizes Senator Gruters to close on bill
12:47:34 PM Roll Call SB 1010
12:48:10 PM Vote recorded
12:48:24 PM Temporary recess
12:48:32 PM Recording Paused
12:50:04 PM Recording Resumed
12:50:05 PM Take up Tab 9 SB 1412 Mental Health
12:50:20 PM Chair recognizes Senator Bradley to explain bill
12:51:52 PM Take up amendment barcode 119516
12:52:52 PM Chair recognizes Senator Bradley to explain amendment
12:53:04 PM Chair recognizes Senator Bradley to close
12:53:23 PM Action on amendment recorded
12:53:30 PM Back on bill
12:53:33 PM Public Appearance by John Paul Fiore of DCF
12:53:51 PM Comment by Senator Book
12:53:57 PM Chair recognizes Senator Bradley to close on bill
12:54:53 PM Roll Call SB 1412

12:55:03 PM Vote recorded
12:55:27 PM Temporary Recess
12:55:36 PM Recording Paused
12:59:10 PM Recording Resumed
12:59:11 PM Take up Tab 7 SB 1374 Child Restraint Requirements
12:59:24 PM Chair recognizes Senator Perry to explain bill
12:59:42 PM Question by Senator Rouson
1:00:20 PM Answer by Senator Perry
1:01:13 PM Question by Senator Book
1:01:47 PM Answer by Senator Perry
1:01:55 PM Question by Chair Thompson
1:02:21 PM Answer by Senator Perry
1:03:03 PM Public Appearance by Jason Rodriguez of St. Joseph Children's Hospital
1:03:06 PM Public Appearance by Michael Cusick of Florida Association of Children Hospitals
1:03:15 PM Public Appearance by Dr. Nancy Lawther of Florida PTA
1:03:21 PM Public Appearance by Mary Lynn Cullen of Advocacy Institute for Children
1:03:25 PM Public Appearance by Monte Stevens of AAA
1:03:33 PM Public Appearance by Barney Bishop of Fla Smart Justice
1:03:36 PM Comment by Senator Book
1:03:46 PM Chair recognizes Senator Perry to close on bill
1:04:10 PM Roll Call Sb 1374
1:04:50 PM Vote Recorded
1:05:10 PM Temporary recess
1:05:16 PM Recording Paused
1:09:13 PM Recording Resumed
1:09:15 PM Take up Tab 5 SB 1306 Placement of Surrendered Newborn Infants
1:09:39 PM Chair recognizes Senator Harrell to explain bill
1:10:13 PM Question by Senator Book
1:11:12 PM Answer by Senator Harrell
1:11:31 PM Question by Senator Book
1:12:28 PM Answer by Senator Harrell
1:12:36 PM Question by Senator Book
1:12:42 PM Answer by Senator Harrell
1:12:52 PM Question by Senator Book
1:13:52 PM Answer by Senator Harrell
1:14:07 PM Public Appearance by Dr. Nancy Lawther of Florida PTA
1:14:28 PM Public Appearance by Aaron DiPietro of Florida Family Policy Council
1:14:49 PM Public Appearance by Barney Bishop of Fla Smart Justice
1:14:58 PM Comment by Senator Baxley
1:15:50 PM Chair recognizes Senator Harrell to close
1:16:50 PM Roll Call SB 1306
1:17:19 PM Vote recorded
1:17:37 PM Take up Tab 1 SB 870 Surrendered Newborn Infants
1:17:59 PM Chair recognizes Senator Burton to explain bill
1:18:16 PM Questions by Senator Rouson
1:19:06 PM Answer by Senator Burton
1:19:34 PM Question by Senator Book
1:19:55 PM Answer by Senator Burton
1:20:15 PM Question by Senator Book
1:20:46 PM Answer by Senator Burton
1:21:43 PM Question by Senator Book
1:22:41 PM Answer by Senator Burton
1:22:49 PM Take up amendment barcode 485718
1:23:07 PM Chair recognizes Senator Burton to explain
1:23:17 PM Public Appearance by Andrew Shirvell of Florida Voice for the Unborn
1:23:39 PM Chair recognizes Senator Burton to close
1:23:52 PM Take up amendment barcode 140998
1:23:58 PM Chair recognizes Senator Burton to explain
1:24:06 PM Public Appearance by Andrew Shirvell of Florida Voice for the Unborn
1:24:29 PM Chair recognizes Senator Burton to close
1:24:35 PM Action on amendment recorded
1:24:40 PM Take up amendment barcode 731132

1:24:57 PM Chair recognizes Senator Book to explain
1:25:16 PM Public Appearance by Andrew Shirvell of Florida Voice for the Unborn
1:26:15 PM Comment by Senator Burton
1:26:30 PM Chair recognizes Senator Book to close
1:27:21 PM Roll Call barcode 731132
1:28:22 PM Action on amendment recorded
1:28:51 PM Take up amendment 949384
1:29:08 PM Chair recognizes Senator Book to explain
1:29:29 PM Public Appearance by Andrew Shirvell of Florida Voice for the Unborn
1:30:28 PM Comment by Senator Burton
1:30:41 PM Comment by Senator Book
1:31:20 PM Action on amendment recorded
1:31:45 PM Take up amendment 693318
1:31:58 PM Chair recognizes Senator Book to explain
1:32:05 PM Public Appearance by Andrew Shirvell of Florida Voice for the unborn
1:32:40 PM Comment by Senator Burton
1:33:31 PM Chair recognizes Senator Book to explain
1:33:55 PM Action on amendment recorded
1:34:42 PM Back on bill
1:34:46 PM Public Appearance by Aaron DiPietro of Florida Family Policy Council
1:35:08 PM Public Appearance by Andrew Shirvell of Florida Voice for the Unborn
1:35:18 PM Public Appearance by Madonna Finney of Florida Adoption Council
1:36:19 PM Public Appearance by Barney Bishop of Fla Smart Justice
1:36:23 PM Public Appearance by Christie Arnold of FL Council of Catholic Bishops
1:36:33 PM Comment by Senator Baxley
1:38:24 PM Comment by Senator Book
1:39:44 PM Chair recognizes Senator Burton to close on bill
1:41:10 PM Roll Call SB 870
1:42:09 PM Vote recorded
1:42:31 PM Take up Tab 3 SB 1278 Direct Support Organizations for the Department of Children and Families
1:43:44 PM Chair recognizes Senator Simon to explain the bill
1:44:44 PM Question by Chair Thompson
1:44:51 PM Answer by Senator Simon
1:44:58 PM Take up amendment 306642
1:45:50 PM Chair recognizes Sen Simon to explain
1:46:33 PM Comment by Senator Book
1:47:26 PM Action on amendment recorded
1:47:27 PM Back on bill
1:47:30 PM Public Appearance by John Paul Fiore of DCF
1:47:59 PM Chair recognizes Senator Simon to close
1:48:04 PM Roll Call SB 1278
1:48:14 PM Vote recorded
1:49:01 PM Senator Rouson moves
1:49:25 PM Meeting adjourned

Lowery, Nikki

From: del Valle, Ana
Sent: Sunday, March 19, 2023 11:32 AM
To: Cox, Ryan; Thompson, Geraldine; Lowery, Nikki
Cc: Ancheta, Nicholas
Subject: Sen. Garcia/ CFEA Absence

Good morning,

Writing to you on behalf of Senator Garcia. She is unable to be present on Monday's, March 20th, Committee on Children, Families, and Elder Affairs at 12:30 PM. Senator Baxley will be presenting SB 1396: Department of Elderly Affairs on her behalf.

Thank you,

Ana del Valle
Legislative Assistant
Senator Ileana Garcia – District 36

By Senator Burton

12-01357A-23 2023870__

A bill to be entitled

An act relating to surrendered newborn infants; amending s. 383.50, F.S.; revising the definition of the term "newborn infant"; defining the term "newborn infant safety device"; authorizing certain hospitals, emergency medical services stations, and fire stations to use newborn infant safety devices to accept surrendered newborn infants if the device meets specified criteria; requiring such hospitals, emergency medical services stations, and fire stations to monitor the inside of the device 24 hours per day and physically check and test the devices at specified intervals; providing additional requirements for certain fire stations using such devices; conforming provisions to changes made by the act; authorizing a parent to leave a newborn infant with medical staff or a licensed health care professional at a hospital after the delivery of the newborn infant under certain circumstances; providing that a parent who leaves a newborn infant in a newborn infant safety device has the right to remain anonymous and not to be pursued or followed, with exceptions; authorizing a parent to surrender a newborn infant by calling 911 and requesting an emergency medical services provider to meet at a specified location to retrieve the newborn infant; requiring the parent to stay with the newborn infant until the emergency medical services provider arrives; providing additional locations to which the prohibition on the initiation of criminal

investigations based solely on the surrendering of a newborn infant applies; amending s. 63.0423, F.S.; conforming a cross-reference; making conforming changes; providing an effective date.

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

Section 1. Section 383.50, Florida Statutes, is amended to read:

383.50 Treatment of surrendered newborn infant.—

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

(a) "Newborn infant" means a child who a licensed physician reasonably believes is approximately 30 ~~7~~ days old or younger at the time the child is left at a hospital, an emergency medical services station, or a fire station.

(b) "Newborn infant safety device" means a device that is installed in a supporting wall of a hospital, an emergency medical services station, or a fire station and that has an exterior point of access allowing an individual to place a newborn infant inside and an interior point of access allowing individuals inside the building to safely retrieve the newborn infant.

(2) There is a presumption that the parent who leaves the newborn infant in accordance with this section intended to leave the newborn infant and consented to termination of parental rights.

(3)(a) A hospital, an emergency medical services station, or a fire station that is staffed 24 hours per day may use a newborn infant safety device to accept surrendered newborn

infants under this section if the device is:

1. Physically part of the hospital, emergency medical services station, or fire station.

2. Temperature-controlled and ventilated for the safety of newborns.

3. Equipped with a dual alarm system connected to the physical location of the device which automatically triggers an alarm inside the building when a newborn infant is placed in the device.

4. Equipped with a surveillance system that allows employees of the hospital, emergency medical services station, or fire station to monitor the inside of the device 24 hours per day.

5. Located such that the interior point of access is in an area that is conspicuous and visible to the employees of the hospital, emergency medical services station, or fire station.

(b) A hospital, an emergency medical services station, or a fire station that uses a newborn infant safety device to accept surrendered newborn infants shall use the device's surveillance system to monitor the inside of the newborn infant safety device 24 hours per day and shall physically check the device at least twice daily and test the device at least weekly to ensure that the alarm system is in working order. A fire station that is staffed 24 hours per day except when all firefighter first responders are dispatched from the fire station for an emergency must use the dual alarm system of the newborn infant safety device to immediately dispatch the nearest first responder to retrieve any newborn infant left in the newborn infant safety device.

(4)~~(3)~~ Each emergency medical services station or fire station that is staffed with full-time firefighters, emergency medical technicians, or paramedics shall accept any newborn infant left with a firefighter, an emergency medical technician, or a paramedic or in a newborn infant safety device. The firefighter, emergency medical technician, or paramedic shall consider these actions as implied consent to and shall:

(a) Provide emergency medical services to the newborn infant to the extent that he or she is trained to provide those services, and

(b) Arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services.

A licensee as defined in s. 401.23, a fire department, or an employee or agent of a licensee or fire department may treat and transport a newborn infant pursuant to this section. If a newborn infant is placed in the physical custody of an employee or agent of a licensee or fire department or is placed in a newborn infant safety device, such placement is ~~shall be~~ considered implied consent for treatment and transport. A licensee, a fire department, or an employee or agent of a licensee or fire department is immune from criminal or civil liability for acting in good faith pursuant to this section. Nothing in this subsection limits liability for negligence.

(5)(a) A newborn infant may be left with medical staff or a licensed health care professional after the delivery of the newborn infant in a hospital if the parent of the newborn infant notifies medical staff or a licensed health care professional that the parent is voluntarily surrendering the infant and does

not intend to return.

(b) ~~(4)~~ Each hospital of this state subject to s. 395.1041 shall, and any other hospital may, admit and provide all necessary emergency services and care, as defined in s. 395.002(9), to any newborn infant left with the hospital in accordance with this section. The hospital or any of its licensed health care professionals shall consider these actions as implied consent for treatment, and a hospital accepting physical custody of a newborn infant has implied consent to perform all necessary emergency services and care. The hospital or any of its licensed health care professionals is immune from criminal or civil liability for acting in good faith in accordance with this section. Nothing in this subsection limits liability for negligence.

(6) ~~(5)~~ Except when there is actual or suspected child abuse or neglect, any parent who leaves a newborn infant in a newborn infant safety device or with a firefighter, an emergency medical technician, or a paramedic at a fire station or an emergency medical services station, or brings a newborn infant to an emergency room of a hospital and expresses an intent to leave the newborn infant and not return, has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed unless the parent seeks to reclaim the newborn infant. When an infant is born in a hospital and the mother expresses intent to leave the infant and not return, upon the mother’s request, the hospital or registrar shall complete the infant’s birth certificate without naming the mother thereon.

(7) ~~(6)~~ A parent of a newborn infant left at a hospital, emergency medical services station, or fire station under this

section may claim his or her newborn infant up until the court enters a judgment terminating his or her parental rights. A claim to the newborn infant must be made to the entity having physical or legal custody of the newborn infant or to the circuit court before whom proceedings involving the newborn infant are pending.

(8) ~~(7)~~ Upon admitting a newborn infant under this section, the hospital shall immediately contact a local licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of the newborn infant. The hospital shall notify the licensed child-placing agency that a newborn infant has been left with the hospital and approximately when the licensed child-placing agency can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting a licensed child-placing agency.

(9) ~~(8)~~ Any newborn infant admitted to a hospital in accordance with this section is presumed eligible for coverage under Medicaid, subject to federal rules.

(10) ~~(9)~~ A newborn infant left at a hospital, an emergency medical services station, or a fire station in accordance with this section is ~~shall~~ not ~~be~~ deemed abandoned or ~~and~~ subject to reporting and investigation requirements under s. 39.201 unless there is actual or suspected child abuse or until the Department of Health takes physical custody of the child.

(11) If the parent of a newborn infant is unable to surrender the newborn infant in accordance with this section, the parent may dial 911 to request that an emergency medical services provider meet the surrendering parent at a specified location. The surrendering parent must stay with the newborn infant until the emergency medical services provider arrives to take custody of the newborn infant.

(12) ~~(10)~~ A criminal investigation may ~~shall~~ not be initiated solely because a newborn infant is left at a hospital, an emergency medical services station, or a fire station under this section unless there is actual or suspected child abuse or neglect.

Section 2. Section 63.0423, Florida Statutes, is amended to read:

63.0423 Procedures with respect to surrendered newborn infants.—

(1) Upon entry of final judgment terminating parental rights, a licensed child-placing agency that takes physical custody of a newborn ~~an~~ infant surrendered at a hospital, an emergency medical services station, or a fire station pursuant to s. 383.50 assumes responsibility for the medical and other costs associated with the emergency services and care of the surrendered newborn infant from the time the licensed child-placing agency takes physical custody of the surrendered newborn infant.

(2) The licensed child-placing agency shall immediately seek an order from the circuit court for emergency custody of the surrendered newborn infant. The emergency custody order shall remain in effect until the court orders preliminary

approval of placement of the surrendered newborn infant in the prospective home, at which time the prospective adoptive parents become guardians pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parents shall remain subject to the right of the licensed child-placing agency to remove the surrendered newborn infant from the placement during the pendency of the proceedings if such removal is deemed by the licensed child-placing agency to be in the best interests of the child. The licensed child-placing agency may immediately seek to place the surrendered newborn infant in a prospective adoptive home.

(3) The licensed child-placing agency that takes physical custody of the surrendered newborn infant shall, within 24 hours thereafter, request assistance from law enforcement officials to investigate and determine, through the Missing Children Information Clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resources, whether the surrendered newborn infant is a missing child.

(4) The parent who surrenders the newborn infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the licensed child-placing agency may ~~shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, a surrendered newborn ~~an~~ infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect,

shall be placed in the custody of a licensed child-placing agency. Such a placement does not eliminate the reporting requirement under s. 383.50(8) ~~s. 383.50(7)~~. When the department is contacted regarding a newborn ~~an~~ infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a licensed child-placing agency and may not take custody of the newborn infant unless reasonable efforts to contact a licensed child-placing agency to accept the newborn infant have not been successful.

(5) A petition for termination of parental rights under this section may not be filed until 30 days after the date the newborn infant was surrendered in accordance with s. 383.50. A petition for termination of parental rights may not be granted until a parent has failed to reclaim or claim the surrendered newborn infant within the time period specified in s. 383.50.

(6) A claim of parental rights of the surrendered newborn infant must be made to the entity having legal custody of the surrendered newborn infant or to the circuit court before which proceedings involving the surrendered newborn infant are pending. A claim of parental rights of the surrendered newborn infant may not be made after the judgment to terminate parental rights is entered, except as otherwise provided by subsection (9).

(7) If a claim of parental rights of a surrendered newborn infant is made before the judgment to terminate parental rights is entered, the circuit court may hold the action for termination of parental rights in abeyance for a period of time not to exceed 60 days.

(a) The court may order scientific testing to determine

maternity or paternity at the expense of the parent claiming parental rights.

(b) The court shall appoint a guardian ad litem for the surrendered newborn infant and order whatever investigation, home evaluation, and psychological evaluation are necessary to determine what is in the best interests of the surrendered newborn infant.

(c) The court may not terminate parental rights solely on the basis that the parent left the newborn infant at a hospital, an emergency medical services station, or a fire station in accordance with s. 383.50.

(d) The court shall enter a judgment with written findings of fact and conclusions of law.

(8) Within 7 business days after recording the judgment, the clerk of the court shall mail a copy of the judgment to the department, the petitioner, and any person whose consent was required, if known. The clerk shall execute a certificate of each mailing.

(9)(a) A judgment terminating parental rights of a surrendered newborn infant pending adoption is voidable, and any later judgment of adoption of that child ~~minor~~ is voidable, if, upon the motion of a parent, the court finds that a person knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities toward the child ~~minor~~ or from exercising his or her parental rights. A motion under this subsection must be filed with the court originally entering the judgment. The motion must be filed within a reasonable time but not later than 1 year after the entry of the judgment terminating parental

rights.

(b) No later than 30 days after the filing of a motion under this subsection, the court shall conduct a preliminary hearing to determine what contact, if any, will be allowed ~~permitted~~ between a parent and the child pending resolution of the motion. Such contact may be allowed only if it is requested by a parent who has appeared at the hearing and the court determines that it is in the best interests of the child. If the court orders contact between a parent and the child, the order must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

(c) The court may not order scientific testing to determine the paternity or maternity of the child ~~minor~~ until such time as the court determines that a previously entered judgment terminating the parental rights of that parent is voidable pursuant to paragraph (a), unless all parties agree that such testing is in the best interests of the child. Upon the filing of test results establishing that person's maternity or paternity of the surrendered newborn infant, the court may order visitation only if it appears to be in the best interests of the child.

(d) Within 45 days after the preliminary hearing, the court shall conduct a final hearing on the motion to set aside the judgment and shall enter its written order as expeditiously as possible thereafter.

(10) Except to the extent expressly provided in this section, proceedings initiated by a licensed child-placing agency for the termination of parental rights and subsequent

adoption of a newborn infant left at a hospital, an emergency medical services station, or a fire station in accordance with s. 383.50 shall be conducted pursuant to this chapter.

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

The Florida Senate

APPEARANCE RECORD

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

3/20/23
Meeting Date

Children Family & Elder Affairs
Committee

870
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 4073125374

Address 201 W Park Ave
Street

Email carnold@flaccb.org

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 Conference of Catholic Bishops

☐ 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)

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
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March 20, 2023
Meeting Date

Children Families
Committee

870
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III

Phone 850-510-9922

Address 1454 Vieux Carre Drive
Street

Email Barney@BarneyBishop.com

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:

Fla. Smart Justice

☐ 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

Deliver both copies of this form to
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3/20/22
Meeting Date

C & F
Committee

SB 870
Bill Number or Topic

Amendment Barcode (if applicable)

Name Madonna Finney, Florida Adoption Council Phone 850 933 3741

Address PO Box 10728 Email MMFINNEY@AOL.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:

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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

March 20, 2023
Meeting Date

Senate Bill 870
Bill Number or Topic

Children, Families, and Elder Affairs
Committee

Amendment Barcode (if applicable)

Name Andrew Shirvell

Phone 850-404-3414

Address P.O. Box 12152
Street

Email andrew@FloridaVoiceFortheunborn.com

Tallahassee FL 32317
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: Florida Voice For the Unborn, Inc.

☐ 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

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

3/20/23
Meeting Date

SB 870
Bill Number or Topic

Children, Families, Elder Affairs
Committee

Amendment Barcode (if applicable)

Name Aaron DiPietro

Phone 904-608-4471

Address 4853 S. Orange Ave
Street

Email aarond@flfamily.org

Orlando FL
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: Florida Family Policy Council

☐ 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 20, 2023
Meeting Date

Children, Families, and Elder Affairs
Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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Senate Bill 870
Bill Number or Topic

485718
Amendment Barcode (if applicable)

Name Andrew Shirvell

Phone 850-404-3414

Address P.O. Box 12152
Street

Email andrew@floridavoicefortheunborn.com

Tallahassee FL 32317
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:
Florida Voice for the Unborn, Inc.

☐ 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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March 20, 2023
Meeting Date

Children, Families, and Elder Affairs
Committee

Senate Bill 870
Bill Number or Topic

140998
Amendment Barcode (if applicable)

Name Andrew Shirvell

Phone 850-404-3414

Address P.O. Box 12152
Street

Email andrew@floridavoicefortheunborn.com

Tallahassee FL 32317
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:
Florida Voice for the Unborn, Inc.

☐ 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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March 20, 2023
Meeting Date

Senate Bill 870
Bill Number or Topic

Children, Families, and Elder Affairs
Committee

731132
Amendment Barcode (if applicable)

Name Andrew Shirvell

Phone 850-404-3414

Address P.O. Box 12152
Street

Email andrew@FloridaVoiceForTheUnborn.com

Tallahassee FL 32317
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:
Florida Voice for the Unborn, Inc.

☐ 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

Deliver both copies of this form to
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March 20, 2023
Meeting Date

Senate Bill 870
Bill Number or Topic

949384
Amendment Barcode (if applicable)

Children, Families, and
Committee Elder Affairs

Name Andrew Shirvell

Phone 850-404-3414

Address P.O. Box 12152
Street

Email andrew@FloridaVoiceFor
theunborn.com

Tallahassee FL 32317
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:
Florida Voice For the Unborn, Inc.

☐ 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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March 20, 2023
Meeting Date

Children, Families, and Elder Affairs
Committee

Senate Bill 870
Bill Number or Topic

693318
Amendment Barcode (if applicable)

Name Andrew Shirvell

Phone 850-404-3414

Address P.O. Box 12152
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Email andrew@floridavoicefortheunborn.com

Tallahassee FL 32317
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☑ I am a registered lobbyist, representing:
Florida Voice for the Unborn, Inc.

☐ 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 Children, Families, and Elder Affairs

BILL:	CS/SB 870
INTRODUCER:	Committee on Children, Families, and Elder Affairs and Senator Burton
SUBJECT:	Surrendered Newborn Infants
DATE:	March 21, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Brown	HP	**Favorable**
2.	Tuszynski	Cox	CF	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 870 modifies statutory provisions relating to surrendered newborn infants. The age of a newborn infant who may be lawfully surrendered is increased from up to approximately seven days old to approximately 30 days old.

The bill authorizes a hospital, an emergency medical services (EMS) station, or a fire station that is staffed 24 hours per day to use a newborn infant safety device to accept surrendered newborn infants in accordance with safety procedures specified in the bill.

The bill provides an additional method of lawful surrender by allowing the parent of a newborn infant to dial 911 to request that an EMS provider meet at a specified location for surrender of the newborn infant directly to the EMS provider. The manner in which a parent may relinquish a newborn infant at a hospital after delivery is clarified.

The bill extends immunity from criminal investigation solely because a newborn infant is left at an EMS station or a fire station.

The bill takes effect July 1, 2023.

II. Present Situation:

Infant Safe Haven Laws

Every state legislature has enacted laws to address infant abandonment and endangerment in response to a reported increase in the abandonment of infants in unsafe locations, such as public restrooms or trash receptacles. Beginning with Texas in 1999, states have enacted these safe haven laws as an incentive for mothers in crisis to safely relinquish their babies at designated locations where the babies are protected and provided with care until a permanent home is found.[1]

While there is great variability in the laws across states, safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from criminal liability and prosecution for child endangerment, abandonment, or neglect in exchange for surrendering the baby to a safe haven.[2] Most states designate hospitals, emergency medical services providers, health care facilities, and fire stations as a safe haven. In ten states, emergency medical personnel responding to 911 calls may accept an infant.[3] Laws in nine states, allow a parent to voluntarily deliver the infant to a newborn safety device that meets certain safety standards.[4]

The age in which a baby may be lawfully surrendered also varies significantly from state to state. Approximately 23 states accept infants up to 30 days old.[5] Ages in other states range from up to 72 hours to 1 year.[6]

According to the nonprofit organization known as the National Safe Haven Alliance (NSHA), 4,505 safe haven relinquishments occurred during 1999-2021 nationwide,[7] and 4,709 nationally as of this writing.[8] Illegal abandonments have also occurred during that time span, with some newborns found alive and others deceased. These statistics are unofficial estimates, as there is no federally mandated safe haven report requirement.

Surrender of Newborn Infants in Florida

The Florida Legislature enacted Florida's initial abandoned newborn infant law in 2000.[9] The law created s. 383.50, F.S., and authorized the abandonment of a newborn infant, up to three

[1] U.S. Department of Health and Human Services Administration for Families, Children's Bureau, Child Welfare Information Gateway, *Infant Safe Haven Laws*, 2022 (Current through September 2021), available at https://www.childwelfare.gov/pubPDFs/safehaven.pdf (last visited March 13, 2023).
[2] *Id.*
[3] *Id.* Connecticut, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, New Hampshire, Vermont, and Wisconsin.
[4] *Id.* Arkansas, Indiana, Kentucky, Louisiana, Maine, Missouri, Ohio, Oklahoma, and Pennsylvania.
[5] *Id.* Arizona, Arkansas, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and West Virginia.
[6] *Id.*
[7] National Safe Haven Alliance, *2021 Impact Report*, available at https://www.nationalsafehavenalliance.org/_files/ugd/d98b71_3b9795ec5f784b93aba04a6ad560e2f4.pdf (last visited March 13, 2023).
[8] Nation Safe Haven Alliance, available at https://www.nationalsafehavenalliance.org/our-cause (last visited March 13, 2023).
[9] Chapter 2000-188, L.O.F.

days old or younger, at a hospital or a fire station and addressed presumption of relinquishment of parental rights, implied consent to treatment, anonymity, and physical custody of the infant.[10]

In 2001, s. 383.50, F.S., was amended to authorize EMS stations, in addition to hospitals and fire stations, as optional locations for the lawful relinquishment of a newborn infant.[11]

In 2008, multiple provisions of the section were modified to refer to "surrendered newborn infant" rather than "abandoned newborn infant."[12] The three-day age limit for surrender of a newborn infant was increased to a seven-day age limit. Additionally, a provision was added to indicate that when an infant is born in a hospital and the mother expresses intent to leave the infant and not return, the hospital or registrar is directed, upon her request, to complete the infant's birth certificate without naming the mother.

Under current law a firefighter, emergency medical technician, or paramedic at a fire station or EMS station that accepts a surrendered newborn infant must arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services.[13] Upon admitting a surrendered newborn infant, each hospital in this state with emergency services shall provide all necessary emergency services and care for the surrendered newborn infant and immediately contact a local licensed child-placing agency (CPA) or the Department of Children and Families' (DCF) statewide abuse hotline for the name of a CPA and transfer custody of the surrendered newborn infant.[14]

A Safe Haven for Newborns[15] reports that over the past 23 years approximately 424 newborns have been surrendered or abandoned in Florida.[16] Since 2000, 361 newborns have been surrendered in a safe haven hospital, emergency medical services station, or a fire station, and approximately 63 newborns have been abandoned in unsafe places.[17] In 2022, 14 newborns were surrendered to a safe haven and none were abandoned in an unsafe place.[18]

Safe Haven Baby Boxes

A Baby Box is a safety device provided for under a state's Safe Haven Law to legally and safely facilitate a mother in crisis to safely, securely, and anonymously surrender a newborn infant if she is unable to care for her newborn. A Baby Box is installed in an exterior wall of a designated fire station or hospital. It has an exterior door that automatically locks upon placement of a

[10] Section 383.50, F.S.
[11] Chapter 2001-53, s. 15, L.O.F.
[12] Chapter 2008-90, s. 4, L.O.F.
[13] Sections 383.50(3) and 395.1041, F.S.
[14] Sections 395.50(4) and 395.50(7), F.S.
[15] A Safe Haven for Newborns is a program of The Florida M. Silverio Foundation, a 501(c)(3) organization located in Miami, Florida.
[16] A Safe Haven for Newborns, *Safe Haven Statistics*, (last updated February 9, 2023), available at https://asafehavenfornewborns.com/what-we-do/safe-haven-statistics/ (last visited March 13, 2023).
[17] *Id.*
[18] *Id.*

newborn inside, an alarm system to alert that a baby is inside, and an interior door which allows a medical staff member to secure the surrendered newborn from inside the designated building.[19]

Safe Haven Baby Boxes, Inc. is a nonprofit incorporated in Indiana,[20] which has patented a device for receiving a surrendered baby,[21] trademarked as a "Safe Haven Baby Box."[22] The federal Food and Drug Administration has determined that a Safe Haven Baby Box is not a medical "device" pursuant to s. 201 of the federal Food, Drug, and Cosmetic Act, and therefore is not required to comply with the requirements of the act.[23]

Over 120 babies have been surrendered nationwide inside Safe Haven Baby Boxes since the first was installed in 2016.[24] There are over 130 active baby boxes – 93 in Indiana, 6 in Ohio, 16 in Kentucky,[25] 11 in Arkansas, and 1 each in New Mexico, North Carolina, Tennessee, Pennsylvania, and Florida, plus four Baby Drawers introduced by Banner Hospital in Arizona.[26] Florida's Safe Haven Baby Box is located at the Martin Luther King, Jr., First Responder Campus in Ocala and was dedicated by their City Council on December 15, 2020.[27] In January 2023, the first newborn infant was surrendered at the Baby Box at the fire station in Ocala.[28]

III. Effect of Proposed Changes:

The bill amends s. 383.50, F.S., to revise the definition of "newborn infant" to increase the allowable age of a surrendered newborn infant from approximately seven days old or younger to approximately 30 days old or younger.

A definition of "newborn infant safety device" is added to mean a device that is installed in a supporting wall of a hospital, an emergency medical services (EMS) station, or a fire station and

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[19] *Safe Haven Baby Boxes* available at https://shbb.org/ (last visited March 13, 2023).
[20] Indiana Secretary of State Corporation and Business Entity Search; search by entity name at: https://bsd.sos.in.gov/publicbusinesssearch (last visited March 13, 2023).
[21] United States Patent, dated Apr. 28, 2020, available at https://img1.wsimg.com/blobby/go/0e1dea24-4aa4-477a-b7dd-0e668b1de6d1/downloads/Patent%20.pdf?ver=1610398180477 (last visited March 13, 2023).
[22] Trademark Certificate, registered Oct. 15, 2019, available at https://img1.wsimg.com/blobby/go/0e1dea24-4aa4-477a-b7dd-0e668b1de6d1/downloads/Tradmark%20Certificate.pdf?ver=1610398180478 (last visited March 13, 2023).
[23] *See Letter from U.S. Food and Drug Administration to Safe Haven Baby Boxes, Inc*., Feb. 15, 2019, available at https://img1.wsimg.com/blobby/go/0e1dea24-4aa4-477a-b7dd-0e668b1de6d1/downloads/C180100.Letter.pdf?ver=1610398180478 (last visited March 15, 2023).
[24] *See* Safe Haven Baby Boxes, available at https://shbb.org/ (last visited March 15, 2023).
[25] An Associated Press article published in the Tallahassee Democrat on February 12, 2023, reported an infant was recently surrendered in a Safe Haven Baby Box at a fire station in Kentucky. Fire department staff was able to tend to the baby in less than 90 seconds. Approximately 24 newborns have been surrendered in baby boxes. (Article is on file with the Senate Health Policy Committee).
[26] Safe Haven Baby Boxes, *Baby Box Locations*, available at https://shbb.org/locations (last visited March 15, 2023).
[27] Health News Florida, *Ocala to Become First Florida City to Install Safe Haven Baby Boxes, Health News Florida by Caitlyn McLaughlin and Jessica James*, published Dec. 10, 2020, available at https://health.wusf.usf.edu/health-news-florida/2020-12-10/ocala-to-become-first-florida-city-to-install-safe-haven-baby-boxes; *See also* Ocala News, *Ocala Fire Rescue unveils Florida's first Safe Haven Baby Box*, Dec. 15, 2020, available at https://www.ocala-news.com/2020/12/15/ocala-fire-rescue-unveils-floridas-first-safe-haven-baby-box/ (all sites last visited March 15, 2023).
[28] Fox 13 News, *Newborn surrendered at Florida fire station is first baby save by state's only "Baby Box"*, January 10, 2023, available at https://www.fox13news.com/news/newborn-surrendered-at-florida-fire-station-is-first-baby-saved-by-states-only-baby-box (last visited March 15, 2023).

that has an exterior point of access allowing an individual to place a newborn infant inside and an interior point of access allowing individuals inside the building to safely retrieve the newborn infant.

The bill authorizes a hospital, an EMS station, or a fire station that is staffed 24 hours per day to use a newborn infant safety device to accept surrendered newborns if the device is:

- Physically part of the hospital, EMS station, or fire station.
- Temperature-controlled and ventilated for the safety of newborns.
- Equipped with a dual alarm system which automatically triggers an alarm inside the building when a newborn infant is placed inside.
- Equipped with a surveillance system that allows employees of the hospital, EMS station, or fire station to monitor the inside of the device 24 hours per day.
- Located such that the interior point of access is conspicuous and visible for employees.

Under the bill, a hospital, EMS station, or fire station that uses the device to accept surrendered newborn infants must use the device's surveillance system to monitor the inside of the device 24 hours per day, physically check the device at least twice daily, and test the device at least weekly to ensure that the alarm system is in working order. A fire station that is staffed 24 hours per day except when all firefighter first responders are dispatched from the fire station for an emergency must use the dual alarm system of the device to immediately dispatch the nearest first responder to retrieve a newborn infant left in the device.

The bill clarifies the manner in which a parent may surrender a newborn infant at a hospital. The newborn infant may be left with medical staff or a licensed health care professional after the delivery of the newborn infant in a hospital, if the parent notifies medical staff or a licensed health care professional that the parent is voluntarily surrendering the infant and does not intend to return. A person seeking to surrender a newborn infant after delivery of the infant in the hospital may use this method or the newborn infant safety device, if available.

The bill provides another avenue for lawfully surrendering a newborn infant. If the parent is unable to surrender the newborn infant by leaving it in a newborn infant safety device or surrendering it to appropriate persons at a hospital, EMS station, or fire station, the parent may dial 911 to request that an EMS provider meet the surrendering parent at a specified location. The surrendering parent must stay with the newborn infant until the EMS provider arrives to take custody of the newborn infant.

Existing provisions relating to the presumption that the parent intended to leave the newborn infant, consented to appropriate medical treatment and care, and to termination of parental rights; the care and custodial processing of an infant upon lawful surrender; and the parent's anonymity upon surrender are extended to occasions when newborn infants are surrendered in a newborn infant safety device.

The bill further provides that a criminal investigation may not be initiated solely because a newborn infant is left at an EMS station or a fire station in accordance with this section of statute unless there is actual or suspected child abuse or neglect. This provision currently applies only to a newborn infant left at a hospital.

The bill also amends s. 63.0423, F.S., relating to the termination of parental rights procedures with respect to surrendered newborn infants to make conforming and technical changes.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 383.50 and 63.0423 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 20, 2023:
The committee substitute made non-substantive style, language, and conforming changes throughout.

B. Amendments:

None.

731132

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

Senate Amendment (with title amendment)

Delete line 42
and insert:
reasonably believes is approximately 7 days old or younger at

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 3 - 4
and insert:

731132

amending s. 383.50, F.S.; defining the term "newborn

485718

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Burton) recommended the following:

Senate Amendment

Delete lines 43 - 44

and insert:

the time the child is surrendered under this section ~~left at a hospital, emergency medical services station, or fire station~~.

949384

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

Senate Amendment

Between lines 74 and 75
insert:
6. Constructed with material certified for use in explosive containers to reduce the hazards associated with the detonation of an explosive device which may result in injury or loss of life to persons within the building.

140998

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Burton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 132 - 321

and insert:

or neglect, any parent who leaves a newborn infant in accordance with this section ~~with a firefighter, emergency medical technician, or paramedic at a fire station or emergency medical services station,~~ or brings a newborn infant to an emergency room of a hospital and expresses an intent to leave the newborn infant and not return~~,~~ has the absolute right to remain

anonymous and to leave at any time and may not be pursued or followed unless the parent seeks to reclaim the newborn infant. When an infant is born in a hospital and the mother expresses intent to leave the infant and not return, upon the mother's request, the hospital or registrar must ~~shall~~ complete the infant's birth certificate without naming the mother thereon.

(7) ~~(6)~~ A parent of a newborn infant surrendered ~~left at a hospital, emergency medical services station, or fire station~~ under this section may claim his or her newborn infant up until the court enters a judgment terminating his or her parental rights. A claim to the newborn infant must be made to the entity having physical or legal custody of the newborn infant or to the circuit court before whom proceedings involving the newborn infant are pending.

(8) ~~(7)~~ Upon admitting a newborn infant under this section, the hospital shall immediately contact a local licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of the newborn infant. The hospital shall notify the licensed child-placing agency that a newborn infant has been left with the hospital and approximately when the licensed child-placing agency can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting a licensed child-placing agency.

(9) ~~(8)~~ Any newborn infant admitted to a hospital in

140998

accordance with this section is presumed eligible for coverage under Medicaid, subject to federal rules.

(10) ~~(9)~~ A newborn infant surrendered ~~left at a hospital, emergency medical services station, or fire station~~ in accordance with this section is ~~shall~~ not ~~be~~ deemed abandoned or ~~and~~ subject to reporting and investigation requirements under s. 39.201 unless there is actual or suspected child abuse or until the Department of Health takes physical custody of the child.

(11) If the parent of a newborn infant is otherwise unable to surrender the newborn infant in accordance with this section, the parent may dial 911 to request that an emergency medical services provider meet the surrendering parent at a specified location. The surrendering parent must stay with the newborn infant until the emergency medical services provider arrives to take custody of the newborn infant.

(12) ~~(10)~~ A criminal investigation may ~~shall~~ not be initiated solely because a newborn infant is surrendered ~~left at a hospital~~ under this section unless there is actual or suspected child abuse or neglect.

Section 2. Subsections (1), (4), (7), (9), and (10) of section 63.0423, Florida Statutes, are amended to read:

63.0423 Procedures with respect to surrendered infants.—

(1) Upon entry of final judgment terminating parental rights, a licensed child-placing agency that takes physical custody of an infant surrendered ~~at a hospital, emergency medical services station, or fire station~~ pursuant to s. 383.50 assumes responsibility for the medical and other costs associated with the emergency services and care of the surrendered infant from the time the licensed child-placing

140998

agency takes physical custody of the surrendered infant.

(4) The parent who surrenders the infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the licensed child-placing agency may ~~shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of a licensed child-placing agency. Such a placement does not eliminate the reporting requirement under s. 383.50(8) ~~s. 383.50(7)~~. When the department is contacted regarding an infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a licensed child-placing agency and may not take custody of the infant unless reasonable efforts to contact a licensed child-placing agency to accept the infant have not been successful.

(7) If a claim of parental rights of a surrendered infant is made before the judgment to terminate parental rights is entered, the circuit court may hold the action for termination of parental rights in abeyance for a period of time not to exceed 60 days.

(a) The court may order scientific testing to determine maternity or paternity at the expense of the parent claiming parental rights.

(b) The court shall appoint a guardian ad litem for the surrendered infant and order any ~~whatever~~ investigation, home

evaluation, or ~~and~~ psychological evaluation ~~are~~ necessary to determine what is in the best interests of the surrendered infant.

(c) The court may not terminate parental rights solely on the basis that the parent surrendered ~~left~~ the infant ~~at a hospital, emergency medical services station, or fire station~~ in accordance with s. 383.50.

(d) The court shall enter a judgment with written findings of fact and conclusions of law.

(9)(a) A judgment terminating parental rights to a surrendered infant pending adoption is voidable, and any later judgment of adoption of that child ~~minor~~ is voidable, if, upon the motion of a parent, the court finds that a person knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities toward the child ~~minor~~ or from exercising his or her parental rights. A motion under this subsection must be filed with the court originally entering the judgment. The motion must be filed within a reasonable time but not later than 1 year after the entry of the judgment terminating parental rights.

(b) No later than 30 days after the filing of a motion under this subsection, the court shall conduct a preliminary hearing to determine what contact, if any, will be allowed ~~permitted~~ between a parent and the child pending resolution of the motion. Such contact may be allowed only if it is requested by a parent who has appeared at the hearing and the court determines that it is in the best interests of the child. If the court orders contact between a parent and the child, the order

140998

must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

(c) The court may not order scientific testing to determine the paternity or maternity of the child ~~minor~~ until such time as the court determines that a previously entered judgment terminating the parental rights of that parent is voidable pursuant to paragraph (a), unless all parties agree that such testing is in the best interests of the child. Upon the filing of test results establishing that person's maternity or paternity of the surrendered infant, the court may order visitation only if it appears to be in the best interests of the child.

(d) Within 45 days after the preliminary hearing, the court shall conduct a final hearing on the motion to set aside the judgment and shall enter its written order as expeditiously as possible thereafter.

(10) Except to the extent expressly provided in this section, proceedings initiated by a licensed child-placing agency for the termination of parental rights and subsequent adoption of a newborn infant surrendered ~~left at a hospital, emergency medical services station, or fire station~~ in accordance with

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 19 - 31

and insert:

circumstances; conforming provisions to changes made

by the act; authorizing a parent to surrender a newborn infant by calling 911 and requesting an emergency medical services provider to meet at a specified location to retrieve the newborn infant; requiring the parent to stay with the newborn infant until the emergency medical services provider arrives; amending s. 63.0423, F.S.;

693318

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

Senate Amendment (with title amendment)

Between lines 186 and 187

insert:

(13) Any hospital, fire station, or emergency medical services station that uses a newborn infant safety device under this section, and the local government having jurisdiction over such facility, is immune from liability for any harm, failure, injury, or loss of life that may result from use or misuse of the newborn infant safety device, and all liability shall be

693318

assumed by the manufacturer and the parent company of the organization that owns such device.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 31

and insert:

newborn infant applies; providing facilities that use a newborn infant safety device, and the local governments having jurisdiction over such facilities, with immunity from liability related to the use of such device; providing that all liability is assumed by the manufacturer and parent organization having ownership of such device; amending s. 63.0423, F.S.;

By Senator Gruters

22-00414B-23 20231010__

A bill to be entitled

An act relating to substance abuse and mental health services; amending s. 397.487, F.S.; conforming a provision to changes made by the act; revising requirements relating to the removal and replacement of certified recovery residence administrators; revising requirements relating to credentialing entities denying, revoking, or suspending certifications or imposing sanctions on a recovery residence; requiring the Department of Children and Families to adopt rules; requiring that changes to certification requirements by credentialing entities be adopted by department rule before the change is effective and enforceable; amending s. 397.4871, F.S.; authorizing credentialing entities to approve certain certified recovery residence administrators to actively manage up to a specified number of residents if certain requirements are met; prohibiting certain certified recovery residence administrators who have been removed from a recovery residence from continuing to actively manage more than a specified number of residents without being reapproved by a credentialing entity; creating the Substance Abuse and Mental Health Treatment and Housing Task Force within the Department of Children and Families; providing a purpose for the task force; specifying membership of the task force; requiring the task force to meet at specified intervals; requiring the task force to conduct a specified study and review; requiring the task force

to submit a report to the department by a specified date; requiring the department to submit a report to the Governor and the Legislature by a specified date; exempting certain recovery residences from certain zoning laws and ordinances for a specified timeframe; providing for expiration of the task force; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) and paragraphs (b) and (e) of subsection (8) of section 397.487, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

397.487 Voluntary certification of recovery residences.—

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements. However, any change to certification requirements on or after October 1, 2023, must be adopted by department rule pursuant to paragraph (8)(f).

(8) Onsite followup monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(b) A certified recovery residence must notify the

credentialing entity within 3 business days after the removal of the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence has 90 ~~30~~ days to retain a certified recovery residence administrator. If a recovery residence's certified recovery residence administrator has been removed due to termination, resignation, or any other reason and had been approved to actively manage more than 50 residents pursuant to s. 397.4871(8), the recovery residence must retain another certified recovery residence administrator within 90 days to continue to manage the approved additional number of residents. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to comply with this paragraph.

(e) Any decision by a department-recognized credentialing entity to deny, revoke, or suspend a certification, or otherwise impose sanctions on a recovery residence, must be initiated by a formal notice provided to the recovery residence, and the credentialing agency must take final action within 30 days after the initial notification~~, is reviewable by the department~~. Upon receiving an adverse determination, the recovery residence may request an administrative hearing pursuant to ss. 120.569 and 120.57 ~~ss. 120.569 and 120.57(1)~~ within 30 days after final action taken ~~completing any appeals process offered~~ by the credentialing entity or the department, as applicable.

(f) Effective October 1, 2023, the department shall adopt by rule the certification requirements established by credentialing entities which are in effect on that date. Any changes to certification requirements by a credentialing entity

on or after October 1, 2023 must be adopted by department rule before such change is effective and enforceable by credentialing entities.

Section 2. Paragraph (b) of subsection (8) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(8)

(b)1. A certified recovery residence administrator may not actively manage more than 50 residents at any given time unless written justification is provided to, and approved by, the credentialing entity as to how the administrator is able to effectively and appropriately respond to the needs of the residents, to maintain residence standards, and to meet the residence certification requirements of this section. However, a certified recovery residence administrator may not actively manage more than 100 residents at any given time except as provided in subparagraph 2.

2. A credentialing entity may approve a certified recovery residence administrator to actively manage up to 250 residents if such administrator has been approved to actively manage 100 residents under subparagraph 1., if such administrator's recovery residence is wholly owned or controlled by a licensed service provider, and if the licensed service provider maintains a ratio of at least one staff member to eight residents. A certified recovery residence administrator approved under this subparagraph who has been removed by a recovery residence due to termination, resignation, or any other reason may not continue to actively manage more than 100 residents for another recovery residence without being reapproved by the credentialing entity

pursuant to this subparagraph.

Section 3. (1) The Substance Abuse and Mental Health Treatment and Housing Task Force, a task force as defined in s. 20.03(8), Florida Statutes, is created within the Department of Children and Families. The purpose of the task force is to study issues relating to the regulation of licensed private sector substance abuse and mental health treatment service providers and ancillary therapeutic housing in this state and provide recommended changes to provide best-in-class services with limited governmental intrusion. Except as otherwise provided in this section, the task force shall operate in a manner consistent with s. 20.052, Florida Statutes.

(2) The task force is composed of nine members, as follows:

(a) A representative of the Executive Office of the Governor, appointed by the Governor.

(b) A member of the Senate, appointed by the President of the Senate.

(c) A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

(d) A representative of the Office of the Attorney General, appointed by the Governor.

(e) A representative of the Chief Financial Officer, appointed by the Governor.

(f) A representative of the Palm Beach County State Attorney Addiction Recovery Task Force, appointed by the Governor.

(g) A representative of the Florida Association of Recovery Residences, appointed by the Governor.

(h) A representative of the treatment industry, appointed

by the Governor.

(i) A member of The Florida Bar with knowledge and experience in the treatment and therapeutic housing industry, appointed by the Governor.

(3) The task force shall appoint a chair and vice-chair and meet no less than monthly.

(4)(a) The task force, with assistance from the Department of Children and Families, shall conduct a study to evaluate the impact of chapter 419, Florida Statutes, on treatment services, to identify obstacles to providing all forms of therapeutic, medical, and clinical housing in this state to residents of this state, and to identify any compliance issues with the federal Americans with Disabilities Act and the federal Fair Housing Amendments Act of 1988.

(b) The task force shall conduct a review of statewide zoning codes to determine the effect, if any, that local regulations have on the ability of private sector licensed service providers to provide modern, effective, evidence-based treatment and ancillary therapeutic housing to residents of this state.

(5)(a) By December 31, 2024, the task force shall submit to the Department of Children and Families a report of its findings and recommendations, including any recommended amendments to chapter 419, Florida Statutes.

(b) By June 30, 2025, the Department of Children and Families shall submit a report of the task force's findings and recommendations, and any additional findings and recommendations made by the department, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) From July 1, 2023, until July 1, 2026, any recovery residence certified by the approved credentialing entity pursuant to s. 397.487, Florida Statutes, is exempt from state or local zoning laws or ordinances, including the requirements of chapter 419, Florida Statutes, which do not apply to all other single-family and multifamily dwellings.

(7) This section expires July 1, 2026.

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

The Florida Senate

APPEARANCE RECORD

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

March 20, 2023
Meeting Date

Children Families
Committee

1010
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III

Phone 850-510-9922

Address 1454 Vieux Carre Drive
Street

Email Barney@BarneyBishop.com

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:

Fla. Smart Justice

☐ 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)

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

3-20-23
Meeting Date

Children, Families & Elder Affairs
Committee

SB 1010
Bill Number or Topic

[redacted] 7394498
Amendment Barcode (if applicable)

Name Tara Taggart

Phone 850-701-3603

Address 301 S. Bronough St. #300
Street

Email ttaggart@flcities.com

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: Florida League of Cities

☐ 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)

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 Children, Families, and Elder Affairs

BILL:	CS/SB 1010
INTRODUCER:	Committee on Children, Families, and Elder Affairs and Senator Gruters
SUBJECT:	Substance Abuse and Mental Health Services
DATE:	March 21, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1010 makes several changes to provisions governing the licensure and regulation of substance abuse treatment programs and providers, including recovery residences and recovery residence administrators.

Specifically, the bill:

- Specifies that the onsite inspections performed by credentialing entities following receipt of a recovery residence's completed application for certification must be done specifically to determine whether the applicant meets established certification requirements;
- Increases, from 30 days to 90 days, the amount of time a recovery residence has to retain a new certified recovery residence administrator (CRRA) following the termination, resignation, or removal for any reason of the previous CRRA.
- Requires credentialing entities to initiate suspension, denial, and revocation actions against certified recovery residences through a formal written notice provided to the recovery residence;
- Requires credentialing entities to provide certified recovery residences with formal written notice and 90 days to cure alleged deficiencies unless the alleged deficiency is an immediate threat to the health, life, or safety of a resident or residents;
- Requires credentialing entities to allow recovery residences to participate in all proceedings conducted by the entities regarding the issues raised in the formal written notice;
- Requires the credentialing entities to issue a formal written notice of its final decision after the conclusion of such proceedings;

- Allows a recovery residence to request an administrative hearing within 30 days after the recovery residence received formal written notice of an adverse action taken by a credentialing entity;
- Requires the credentialing agency to keep specified written records and make such records available to the Division of Administrative Hearings upon request; and
- Expands the total number of residents a CRRA of a certified recovery residence may manage under certain conditions.

The bill will likely have a positive fiscal impact on private licensed service providers. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Substance Use Disorder Treatment

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2021, approximately 46.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year.[6] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids,

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[1] The World Health Organization, *Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; (last visited March 15, 2023); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited February 8, 2023).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited March 15, 2023).
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited March 15, 2023).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited March 15, 2023).
[5] *Id*.
[6] The SAMHSA, *Highlights for the 2021 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf (last visited March 15, 2023).

hallucinogens, and stimulants.[7] Provisional data from the CDC's National Center for Health Statistics indicate there were an estimated 107,622 drug overdose deaths in the United States during 2021 (the last year for which there is complete data), an increase of nearly 15% from the 93,655 deaths estimated in 2020.[8]

Substance Use Disorder Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[9] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[10] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[11] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[12] In 1993, legislation was adopted to combine chs. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[13]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[14] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[15] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[16]

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[17] The DCF provides treatment for SUD through a community-based

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[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited March 15, 2023).
[8] The Center for Disease Control and Prevention, National Center for Health Statistics, *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020 – But Are Still Up 15%*, available at https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm (last visited March 15, 2023).
[9] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Committee on Children, Families, and Elder Affairs).
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.
[14] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[15] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited March 15, 2023) (hereinafter cited as "Fundamentals of the Marchman Act").
[16] *Id*.
[17] *See* chs. 394 and 397, F.S.

provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.[18]

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[19]
- **Treatment Services:** Treatment services[20] include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.[21]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[22]

Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder treatment by licensing individual treatment components under ch. 397, F.S., and Rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,[23] intervention,[24] and clinical treatment services.[25]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[26] "Clinical treatment services" include, but are not limited to, the following licensable service components:

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.

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[18] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml (last visited March 15, 2023).
[19] *Id*.
[20] *Id*. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[21] *Id*.
[22] *Id*.
[23] Section 397.311(26)(c), F.S. "Prevention" is defined as "a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles". Substance abuse prevention is achieved through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments. *See also*, The DCF, *Substance Abuse: Prevention*, available at https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml (last visited March 15, 2023).
[24] Section 397.311(26)(b), F.S. "Intervention" is defined as "structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems."
[25] Section 397.311(26), F.S.
[26] Section 397.311(26)(a), F.S.

- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.[27]

Florida does not license recovery residences; instead, in 2015 the Legislature enacted sections 397.487–397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[28]

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[29] These residences offer no formal treatment and are, in some cases, self-funded through resident fees.[30]

A recovery residence is defined as "a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[31]

Voluntary Certification of Recovery Residences and Administrators in Florida

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[32] Under the voluntary certification program, the DCF has approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board (the FCB) certifies recovery residence administrators.[33]

Credentialing entities must require prospective recovery residences to submit the following documents with a completed application and fee:

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[27] *Id*.
[28] Chapter 2015-100, L.O.F.
[29] The SAMSHA, *Recovery Housing: Best Practices and Suggested Guidelines*, p. 2, available at https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf (last visited March 15, 2023).
[30] However, these homes may mandate or strongly encourage attendance at 12-step groups. The Society for Community Research and Action, *Statement on Recovery Residences: The Role of Recovery Residences in Promoting Long-term Addiction Recovery*, available at https://www.scra27.org/what-we-do/policy/policy-position-statements/statement-recovery-residences-addiction/ (last visited March 15, 2023).
[31] Section 397.311(38), F.S.
[32] Sections 397.487–397.4872, F.S.
[33] The DCF, *Recovery Residence Administrators and Recovery Residences*, available at https://www.myflfamilies.com/service-programs/samh/recovery-residence/ (last visited March 15, 2023).

- A policy and procedures manual containing:
  - Job descriptions for all staff positions;
  - Drug-testing procedures and requirements;
  - A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed;
  - Policies to support a resident's recovery efforts; and
  - A good neighbor policy to address neighborhood concerns and complaints.
- Rules for residents;
- Copies of all forms provided to residents;
- Intake procedures;
- Sexual predator and sexual offender registry compliance policy;
- Relapse policy;
- Fee schedule;
- Refund policy;
- Eviction procedures and policy;
- Code of ethics;
- Proof of insurance;
- Proof of background screening; and
- Proof of satisfactory fire, safety, and health inspections.[34]

Certified Recovery Residence Administrators

All certified recovery residences must be actively managed by a certified recovery residence administrator (CRRA).[35] CRRAs are individuals responsible for the overall management of a recovery residence, as well as the supervision of residents and paid or volunteer staff.[36] Prior to obtaining certification, CRRA applicants must successfully undergo a level 2 background screening pursuant to ch. 435, F.S.[37] Additionally, the FCB currently requires CRRAs to:

- Hold at least a high school diploma, GED, or equivalent;
- Undergo 10 hours of on-the-job supervision of the applicant's performance of related recovery residence administrator, manager, or residential management services within a recovery residence setting;
- Obtain three professional letters of recommendation;
- Pass an exam administered by the FCB;
- Complete 10 hours of continuing education annually; and
- Apply for certification renewal annually.[38]

CRRAs are prohibited from engaging in any of the following activities:

[34] Section 397.487(3), F.S.
[35] Section 397.487(5), F.S.
[36] The Florida Certification Board (The FCB), *Certified Recovery Residence Administrator (CRRA)*, available at https://flcertificationboard.org/certifications/certified-recovery-residence-administrator/ (last visited March 16, 2023).
[37] Section 397.4871(5), F.S.
[38] The FCB, *Certification Guidelines: Credential Standards and Requirements Table: Certified Recovery Residence Administrator (CRRA)*, p. 4-5, available at https://flcertificationboard.org/wp-content/uploads/CRRA-Standards-and-Requirements-Tables-January-2020.pdf (last visited March 16, 2023).

- Failing to adhere to continuing education requirements of the credentialing entity;[39]
- Providing false or misleading information to the credentialing entity at any time;[40]
- Advertising himself or herself to the public as a "certified recovery residence administrator" without first obtaining certification;[41] and
- Actively managing more than 50 residents at any given time, unless written justification is provided to, and approved by, the credentialing entity as to how the administrator is able to effectively and appropriately respond to the needs of the residents, to maintain residence standards, and to meet the residence certification requirements of this section. However, a certified recovery residence administrator may not actively manage more than 100 residents at any given time.[42]

III. Effect of Proposed Changes:

The bill amends s. 397.487, F.S., specifying that the onsite inspections performed by credentialing entities following receipt of a recovery residence's completed application for certification must be done specifically to determine whether the applicant meets established certification requirements. The bill requires periodic, rather than follow-up as under current law, onsite monitoring of a recovery residence by a credentialing entity following certification in order to ensure ongoing compliance with certification requirements. The bill prevents credentialing entities from suspending or revoking a certification without first making a written determination that a recovery residence is not in compliance with any certification requirement or has failed to timely remedy any identified deficiency.

The bill increases, from 30 to 90, the number of days a certified recovery residence has to retain a new CRRA after a previous CRRA is terminated, resigns, or leaves the position for any other reason. The bill clarifies that credentialing entities must initiate formal proceedings in order to revoke a recovery residence's certification. The bill requires credentialing entities to provide certified recovery residences with formal written notice and 90 days to cure alleged deficiencies unless the alleged deficiency is an immediate threat to the health, life, or safety of a resident or residents. It allows credentialing entities to proceed with formal proceedings against a recovery residence if such deficiencies are not cured within 90 days, and requires credentialing entities to allow a recovery residence to participate in all proceedings conducted by the credentialing entity regarding the issues raised in the formal written notice, and requires the credentialing entity to issue a formal written notice of its final decision after the conclusion of such proceedings.

The bill also changes the process for requesting a formal administrative hearing pursuant to ss. 120.569 and 120.57, F.S., by requiring recovery residences to request a hearing within 30 days after final action is taken, rather than after completing any appeals process offered by, the credentialing entity or the DCF, as applicable. The bill also requires credentialing entities to keep

[39] Section 397.4871(6)(a), F.S. CRRAs who violate this provision are subject to revocation of certification at the discretion of the credentialing entity.
[40] Section 397.4871(6)(c), F.S. CRRAs who violate this provision are subject to mandatory revocation of certification.
[41] Section 397.4871(7), F.S. CRRAs who violate this provision commit a first degree misdemeanor, punishable as provided in section 775.082, F.S. or section 775.083, F.S.
[42] Section 397.4871(8)(b), F.S.

written records of decisions made and proceedings conducted make such records available to the Division of Administrative Hearings upon request.

The bill also amends s. 397.4871, F.S., expanding the total number of residents a CRRA of a certified recovery residence may manage under certain conditions. Specifically, the bill allows credentialing entities to approve CRRAs to actively manage up to 250 residents if:

- The CRRA has already been approved to manage 100 residents;
- The CRRA's recovery residence is wholly owned or controlled by a licensed service provider; and
- The licensed service provider maintains a ratio of at least one supervisory employee to eight residents.

The bill further stipulates that a CRRA who has been removed by a recovery residence due to termination, resignation, or for any other reason may not continue to actively manage more than 100 residents without being reapproved by a credentialing entity.

The bill is effective 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:

The bill may have an indeterminate positive fiscal impact on licensed service providers by allowing CRRAs of certified recovery residences to actively manage more residents.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 397.487 and 397.4871 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 20, 2023:

The committee substitute:

- Specifies that the onsite inspections performed by credentialing entities following receipt of a recovery residence's completed application for certification must be done specifically to determine whether the applicant meets established certification requirements.
- Requires periodic, rather than follow-up, onsite monitoring of a recovery residence by a credentialing entity following certification in order to ensure ongoing compliance with certification requirements.
- Prevents credentialing entities from suspending or revoking a certification without first making a written determination that a recovery residence is not in compliance with any certification requirement or has failed to timely remedy any identified deficiency.
- Increases, from 30 days to 90 days, the amount of time a recovery residence has to retain a new certified recovery residence administrator (CRRA) following the termination, resignation, or removal for any reason of the previous CRRA.
- Clarifies that credentialing entities must initiate formal proceedings in order to revoke a recovery residence's certification.
- Requires credentialing entities to provide certified recovery residences with formal written notice and 90 days to cure alleged deficiencies unless the alleged deficiency is an immediate threat to the health, life, or safety of a resident or residents.
- Allows credentialing entities to proceed with formal proceedings against a recovery residence if such deficiencies are not cured within 90 days.

- Requires credentialing entities to allow a recovery residence to participate in all proceedings conducted by the credentialing entity regarding the issues raised in the formal written notice, and requires the credentialing entity to issue a formal written notice of its final decision after the conclusion of such proceedings.
- Allows a recovery residence to initiate administrative proceedings under chs. 120.569 and 120.57, F.S., within 30 days of receiving a formal written notice of final action from a credentialing entity.
- Requires credentialing entities to keep written records of decisions made and proceedings conducted make such records available to the Division of Administrative Hearings upon request.
- Allows a CRRA to actively manage up to 250 residents if:
  - The CRRA's recovery residence provides therapeutic housing and ancillary services exclusively to a licensed service provider; and
  - The licensed service provider maintains a staffing ratio of at least one supervisory employee for every eight residents.
- Removes a provision requiring a certified recovery residence to retain a new CRRA within 90 days if the previous CRRA:
  - Has been terminated, resigned, or been removed for any other reason; and
  - Had been approved to actively manage more than 50 residents.
- Removes the provision creating a Substance Abuse and Mental Health Treatment and Housing Task Force.
- Removes the three year exemption from local zoning laws and ordinances.
- Removes provisions requiring the DCF to adopt by rule:
  - Current certification requirements of credentialing entities; and
  - Any changes to certification requirements made by credentialing entities.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 181
and insert:
Section 1. Subsections (5) and (8) of section 397.487, Florida Statutes, are amended to read:
397.487 Voluntary certification of recovery residences.—
(5) Upon receiving a completed ~~complete~~ application, a credentialing entity shall conduct an onsite inspection of the recovery residence to determine whether the applicant meets the

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certification requirements.

(8) Periodic onsite ~~followup~~ monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance with such certification requirements.

(a) A credentialing entity may suspend or revoke a certification if the credentialing entity has made a written determination that the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) A certified recovery residence must notify the credentialing entity within 3 business days after the removal of the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence has 90 ~~30~~ days to retain a certified recovery residence administrator. The credentialing entity shall initiate formal proceedings to revoke the certificate of compliance of any recovery residence that fails to comply with this paragraph.

(c) If any owner, director, or chief financial officer of a certified recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after

such removal. The credentialing entity shall revoke the certificate of compliance of a recovery residence that fails to meet these requirements.

(d) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(e) Any decision by a department-recognized credentialing entity to deny, revoke, or suspend a certification, or otherwise impose sanctions on a recovery residence, must be initiated by a formal written notice provided to the recovery residence. The recovery residence must have 90 days to cure the alleged deficiency unless the alleged deficiency is an immediate threat to the health, life, or safety of a resident or residents. If the alleged deficiency is not cured within 90 days, the credentialing entity may proceed with formal proceedings against the recovery residence. The credentialing entity shall allow the recovery residence to participate in all proceedings conducted by the credentialing entity regarding the issues raised in the formal written notice. The credentialing entity shall issue a formal written notice of its final decision after the conclusion of such proceedings~~, is reviewable by the department~~. Upon receiving an adverse decision ~~determination~~, the recovery residence may request an administrative hearing pursuant to ss. 120.569 and 120.57 ~~ss. 120.569 and 120.57(1)~~ within 30 days after the recovery residence receives formal written notice of the final action taken ~~completing any appeals process offered~~ by the credentialing entity. The credentialing entity must keep written records of decisions made and proceedings conducted

pursuant to this paragraph and must make such records available to the Division of Administrative Hearings upon request ~~or the department, as applicable~~.

Section 2. Paragraph (b) of subsection (8) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(8)

(b) A certified recovery residence administrator may not actively manage more than 50 residents at any given time unless written justification is provided to, and approved by, the credentialing entity as to how the administrator is able to effectively and appropriately respond to the needs of the residents, to maintain residence standards, and to meet the residence certification requirements of this section. ~~However,~~ A certified recovery residence administrator may not actively manage more than 100 residents at any given time. However, a credentialing entity may approve a certified recovery residence administrator to actively manage up to 250 residents if such administrator's recovery residence provides therapeutic housing and ancillary services exclusively to a licensed service provider and if the licensed service provider maintains a ratio of at least 1 supervisory employee to 8 residents. A certified recovery residence administrator approved under this paragraph to manage more than 100 residents who has been removed by a recovery residence due to termination, resignation, or any other reason may not continue to actively manage more than 100 residents for another recovery residence without being reapproved by the credentialing entity pursuant to this paragraph.

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98
99 ========== T I T L E A M E N D M E N T ==========
100 And the title is amended as follows:
101 Delete lines 3 - 35
102 and insert:
103 services; amending s. 397.487, F.S.; specifying the
104 purpose of certain inspections by credentialing
105 entities; revising authorizations relating to onsite
106 monitoring of certified recovery residences by
107 credentialing entities; revising requirements relating
108 to the removal and replacement of certified recovery
109 residence administrators; revising requirements
110 relating to credentialing entities denying, revoking,
111 or suspending certifications or imposing sanctions on
112 a recovery residence; requiring credentialing entities
113 to keep specified records and make such records
114 available to the Division of Administrative Hearings
115 upon request; amending s. 397.4871, F.S.; authorizing
116 credentialing entities to approve certain certified
117 recovery residence administrators to actively manage
118 up to a specified number of residents if certain
119 requirements are met; prohibiting certain certified
120 recovery residence administrators who have been
121 removed from a recovery residence from continuing to
122 actively manage more than a specified number of
123 residents without being reapproved by a credentialing
124 entity; providing

By Senator Simon

3-01568A-23 20231278__

A bill to be entitled

An act relating to direct-support organizations of the Department of Children and Families; amending s. 402.57, F.S.; authorizing the Department of Children and Families to establish a direct-support organization for a specified purpose; specifying criteria for the direct-support organization; requiring the direct-support organization to operate under written contract with the department; providing requirements for the contract; requiring the Secretary of Children and Families to appoint a board of directors for the direct-support organization; providing for appointment of board members; authorizing the department to allow the direct-support organization to use, without charge, the department's fixed property, facilities, and personnel services, subject to certain requirements; defining the term "personnel services"; authorizing the direct-support organization to collect, expend, and provide funds for specified purposes; prohibiting the use of such funds for lobbying purposes; authorizing moneys to be held in a separate depository account in the name of the direct-support organization, subject to certain requirements; requiring the direct-support organization to provide for annual audits; providing for future repeal; providing an effective date.

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

Section 1. Section 402.57, Florida Statutes, is amended to read:

402.57 Direct-support organizations ~~organization~~.—

(1) DEPARTMENT OF CHILDREN AND FAMILIES.—The Department of Children and Families is authorized to create a direct-support organization, the sole purpose of which is to support the department in carrying out its purposes and responsibilities.

(a) The direct-support organization must be:

1. A not-for-profit corporation incorporated under chapter 617 and approved by the Department of State as a not-for-profit corporation;

2. Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the department and the individuals it serves; and

3. Determined by the department to be operating in a manner consistent with the goals and purposes of the department, the best interest of the state, and the needs of children and adults served by the department.

(b) The direct-support organization shall operate under a written contract with the department. The contract must provide for all of the following:

1. Department approval of the articles of incorporation and bylaws of the direct-support organization.

2. Submission of an annual budget for department approval.

3. Certification by the department that the direct-support

organization is complying with the terms of the contract and operating in a manner consistent with the goals and purposes of the department and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

4. The reversion to the state of moneys and property held in trust by the direct-support organization for the benefit of those served by the department if the department ceases to exist or the reversion to the department if the direct-support organization is no longer approved to operate for the department, a county commission, or a circuit board or ceases to exist.

5. The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

6. The disclosure of material provisions of the contract, and the distinction between the department and the direct-support organization, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

(c) The Secretary of Children and Families shall appoint the board of directors of the direct-support organization. The board members shall be appointed according to the organization's bylaws.

(d) The department may allow, without charge, appropriate use of fixed property, facilities, and personnel services of the department by the direct-support organization, subject to the requirements of this section. As used in this subsection, the term "personnel services" includes full-time or part-time

personnel, as well as payroll processing services.

1. The department may prescribe any conditions with which the direct-support organization must comply in order to use fixed property or facilities of the department.

2. The department may not allow the use of any fixed property or facilities of the department by the direct-support organization if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

3. The department shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property, facilities, or personnel services of the department.

(e) The direct-support organization may collect, expend, and provide funds for:

1. Addressing gaps in services for the children and adults served by the department.

2. Development, implementation, and operation of targeted prevention efforts.

3. Services and activities that support the goals of the department.

4. Functions of the direct-support organization's board of directors, as necessary and approved by the department.

The funds of the direct-support organization may not be used for the purpose of lobbying as defined in s. 11.045.

(f) Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to

the provisions of the contract with the department.

(g) The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

(h) This subsection is repealed October 1, 2028, unless reviewed and saved from repeal by the Legislature.

(2) CHILDREN AND YOUTH CABINET.—The Department of Children and Families shall establish a direct-support organization to assist the Children and Youth Cabinet established in s. 402.56 in carrying out its purposes and responsibilities, primarily regarding fostering public awareness of children and youth issues and developing new partners in the effort to serve children and youth by raising money; submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; and making expenditures to or for the benefit of the cabinet. The sole purpose for the direct-support organization is to support the cabinet.

(a) The direct-support organization must be:

1.~~(a)~~ Incorporated under chapter 617 and approved by the Department of State as a Florida corporation not for profit.

2.~~(b)~~ Organized and operated to make expenditures to or for the benefit of the cabinet.

3.~~(c)~~ Approved by the department to be operating for the benefit of and in a manner consistent with the goals of the cabinet and in the best interest of the state.

(b)~~(2)~~ The board of directors of the direct-support organization shall consist of seven members appointed by the Governor. Each member of the board of directors shall be appointed to a 4-year term. However, for the purpose of

providing staggered terms, the initial appointments shall be for either 2 years or 4 years, as determined by the Governor.

(c) ~~(3)~~ The direct-support organization shall operate under a written contract with the department.

(d) ~~(4)~~ All moneys received by the direct-support organization must be deposited into an account of the direct-support organization and shall be used in a manner consistent with the goals of the cabinet.

(e) ~~(5)~~ This subsection ~~section~~ is repealed October 1, 2024, unless reviewed and saved from repeal by the Legislature.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

APPEARANCE RECORD

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

3/20/2023
Meeting Date

S. CFE
Committee

1278
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Paul Fiore, DCF - Legislative Affairs Director

Phone 850-488-9410

Address 2415 N. Monroe Street
Street

Email

Tallahassee FL 32303
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:
Florida Department of Children and Families

☐ 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)

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 Children, Families, and Elder Affairs

BILL:	CS/SB 1278
INTRODUCER:	Committee on Children, Families, and Elder Affairs and Senator Simon
SUBJECT:	Direct-support Organizations of the Department of Children and Families
DATE:	March 21, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	**Fav/CS**
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1278 amends s. 402.57, F.S., to insert enacting language that allows the Department of Children and Families (DCF) to create a Direct Support Organization (DSO) with the purpose of supporting the DCF in carrying out its purposes and responsibilities. The bill details the requirements of and certain purposes for which to operate the DSO under written contract with the DCF and requires the Secretary of the DCF to appoint the board of directors according to the DSO's bylaws.

The bill allows the use of the DCF's fixed property, facilities, and "personnel services," without charge, by the DSO. The bill bars the DCF from allowing the use of any fixed property or facilities by the DSO if the DSO does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

The bill requires the DCF to adopt rules prescribing the procedures by which the DSO is governed and any conditions with which it must comply to use property, facilities, or personnel services of the DCF.

The bill allows the DSO to collect, expend, and provide funds for certain purposes that support the DCF. The DSO may not use funds for the purpose of lobbying. The DSO may hold any moneys in a separate depository account in the name of the DSO, subject to the provisions of the contract with the DCF. The DSO must provide an annual financial audit in accordance with s.

215.981, F.S. The bill also provides for the repeal of the subsection on October 1, 2028, unless reviewed and saved from repeal by the Legislature.

The bill does not appear to have a fiscal impact on the government or private sector.

The bill takes effect upon becoming law.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations, and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.[1] Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:[2]

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).[3]

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.[4] Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.[5] If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.[6] The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.[7]

[1] Chapter 2014-96, L.O.F.
[2] Section 20.058(1), F.S.
[3] The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.
[4] Section 20.058(2), F.S.
[5] Section 20.058(4), F.S.
[6] *Id*.
[7] *Id*.

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information provided by the CSO or DSO.[8] The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.[9]

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature.[10]

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[11] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee.[12] The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.[13]

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[14]

The Department of Children and Families

The Department of Children and Families (DCF) is created and its organizational structure established in s. 20.19, F.S. The DCF has a statutorily created mission to work in partnership with local communities to protect the vulnerable, promote strong and economically self-

[8] Section 20.058(3), F.S.
[9] *Id.*
[10] Section 20.058(5), F.S.
[11] The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is $300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.
[12] Section 11.45(3)(d), F.S.
[13] *Id.*
[14] Section 112.3251, F.S.

sufficient families, and advance personal and family recovery and resiliency.[15] The DCF must provide services relating to:

- Adult Protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.[16]

The DCF states its vision is to empower people with complex and varied needs to achieve the best outcomes for themselves and their families and deliver world class and continuously improving service focused on providing the people it serves with the level and quality that the DCF would demand and expect for its own families.[17]

Direct Support Organization for the Children and Youth Cabinet

In 2007, the Legislature created the Children and Youth Cabinet (Cabinet).[18] The Cabinet is charged with promoting and implementing collaboration, creativity, increased efficiency, information sharing and improved service delivery between and within state agencies and organizations. As directed by statute, in 2007 the Cabinet developed a shared vision and a Strategic Plan to guide the Cabinet in designing and implementing measurable outcomes and actions that promote collaboration and information sharing.[19] The stated mission of the Cabinet is to ensure that the public policy of Florida relating to children and youth promotes interdepartmental collaboration and program implementation in order for services designed for children and youth to be planned, managed and delivered in a holistic and integrated manner to improve the self-sufficiency, safety, economic stability, health, and quality of life of all children and youth in Florida.[20]

Section 402.57, F.S., requires the DCF to establish a DSO to assist the Cabinet in carrying out its purpose and responsibilities. The sole purpose of the DSO is to support the Cabinet, and must be:

- A Florida not-for-profit corporation.
- Organized to make expenditures to or for the Cabinet.
- Approved by the DCF to be operating for the benefit of and in a manner consistent with the goals of the Cabinet and in the best interest of the state.

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[15] Section 20.19(1), F.S.
[16] Section 20.19(4), F.S.
[17] The Department of Children and Families, *Mission, Vision and Values*, available at https://www.myflfamilies.com/about/additional-services-offices/office-secretary/mission-vision-and-values (last visited March 13, 2023).
[18] Chapter 2007-151, s. 1, L.O.F., codified as s. 402.56, F.S.
[19] Governor Ron DeSantis – 46th Governor of Florida, *Florida Children and Youth Cabinet*, available at https://www.flgov.com/childrens-cabinet/ (last visited March 13, 2023).
[20] *Id*.

The DCF does not have DSO or CSO enacting language other than the language specific to the Cabinet.

III. Effect of Proposed Changes:

The bill amends s. 402.57, F.S., to insert enacting language that allows the DCF to create a DSO with the sole purpose to support the DCF in carrying out its purposes and responsibilities. The DSO must be:

- A Florida not-for-profit corporation.
- Organized and operated to:
  - Conduct programs and activities;
  - Raise funds;
  - Request and receive grants, gifts, and bequests of moneys;
  - Acquire, receive, hold, invest, and administer securities, funds, objects of value or other real or personal property; and
  - Make expenditures to or for the direct or indirect benefit of the DCF and the individuals it serves.
- Determined by the DCF to be operating in a manner consistent with the goals and purposes of the DCF, the best interest of Florida, and the needs of children and adults served by the DCF.

The bill requires the DSO to operate under a written contract with the DCF that provides for all of the following:

- Approval of articles of incorporation and bylaws by the DCF.
- Submission of an annual budget for approval by the DCF.
- Annual certification by the DCF that the DSO is in compliance with the contract and operating in a manner consistent with the goals and purposes of the DCF and in the best interest of the state. This certification must be reported in the official minutes of a meeting of the DSO.
- Reversion of moneys and property held in trust by the DSO to the state if the DCF ceases to exist or to the DCF if the DSO is no longer approved to operate or ceases to exist.
- That the fiscal year for the DSO runs from July 1 of each year through June 30 of the following year.
- Disclosure of material provisions of the contract and the distinction between the DCF and the DSO to donors, including on all promotional and fundraising publications.

The bill requires the Secretary of the DCF to appoint the board of directors of the DSO according to the DSO's bylaws.

The bill provides that the DCF, without charge, may allow appropriate use of fixed property or facilities of the DCF by the DSO. The bill allows the DCF to prescribe conditions the DSO must meet to used fixed property or facilities and bars the DCF from allowing the use of any fixed property or facilities by the DSO if the DSO does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

The bill also provides that the DCF, without charge, may allow appropriate use of "personnel services"[21] of the DCF by the DSO.

The bill requires the DCF to adopt rules prescribing the procedures by which the DSO is governed and any conditions with which it must comply to use property, facilities, or personnel services of the DCF.

The bill allows the DSO to collect, expend, and provide funds to address gaps in services for the children and adults served by the DCF; develop, implement, and operate targeted prevention efforts; and provide services and activities that support the goals of the DCF. The DSO may not use funds for the purpose of lobbying. The DSO may hold any moneys in a separate depository account in the name of the DSO, subject to the provisions of the contract with the DCF. The DSO must provide an annual financial audit in accordance with s. 215.981, F.S.

The bill also provides for the repeal of the enacting subsection on October 1, 2028, unless reviewed and saved from repeal by the Legislature.

The bill takes effect upon becoming law.

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.

[21] The bill provides that "personnel services" includes full-time or part-time personnel, as well as payroll processing services.

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 section 402.57 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 20, 2023:

The Committee Substitute made a clarifying non-substantive technical change to the provision related to the specified use of certain facilities and services of the DCF and the requirement to rulemaking authority.

B. Amendments:

None.

306642

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Simon) recommended the following:

Senate Amendment

Delete lines 89 - 101
and insert:
1. The department may not allow the use of any fixed property, facilities, or personnel services of the department by the direct-support organization if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

306642

2. The department may prescribe any conditions with which a direct-support organization must comply to use fixed property, facilities, or personnel services of the department and shall adopt rules prescribing those conditions and the procedures by which the direct-support organization is governed.

By Senator Book

35-01309A-23 20231286__

A bill to be entitled

An act relating to designated public safe exchange locations; amending s. 61.13, F.S.; requiring that certain information be included in a parenting plan; specifying that a parent may not be found in violation of a parenting plan, time-sharing schedule, or child exchange order, or charged with a certain offense, under certain circumstances; amending s. 125.01, F.S.; requiring boards of county commissioners to designate certain areas as public safe exchange locations for a specified purpose; providing requirements for such areas; providing immunity; amending s. 787.03, F.S.; providing that a parent of a child or the parent's designee may not be charged with the offense of interference with custody under certain circumstances; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 61.13, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

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

(2)

(b) A parenting plan approved by the court must, at a minimum, include all of the following information:

1. A detailed description of ~~Describe in adequate detail~~ how the parents will share and be responsible for the daily

tasks associated with the upbringing of the child.~~;~~

2. ~~Include~~ The time-sharing schedule arrangements that specify the time that the ~~minor~~ child will spend with each parent. The parenting plan must state that at any time, notwithstanding any provision in the agreed-upon parenting plan or time-sharing schedule or order relating to the exchange of the child, a parent or a parent's designee may choose to exchange the child with the other parent or the other parent's designee at a designated public safe exchange location as provided in s. 125.01(8).~~;~~

3. A designation of ~~Designate~~ who will be responsible for all of the following:

a. Any and all forms of health care. If the court orders shared parental responsibility over health care decisions, the parenting plan must provide that either parent may consent to mental health treatment for the child.

b. School-related matters, including the address to be used for school-boundary determination and registration.

c. Other activities.~~; and~~

4. A detailed description of ~~Describe in adequate detail~~ the methods and technologies that the parents will use to communicate with the child.

(10) A parent may not be found in violation of his or her parenting plan, time-sharing schedule, or child exchange order, or charged with the offense of interference with the parenting plan, time-sharing schedule, or child exchange order under s. 787.03, if the parent or the parent's designee chooses to use a designated public safe exchange location to exchange custody of his or her child instead of a location that was previously

agreed to by both parents or stated in the parenting plan, time-sharing schedule, or child exchange order.

Section 2. Subsection (8) is added to section 125.01, Florida Statutes, to read:

125.01 Powers and duties.—

(8)(a) Each board of county commissioners shall designate one or more sheriff's office or police department locations that have staff on site 24-hours a day as a public safe exchange location at which parents or parents' designees may meet to exchange custody of a child. The designation must be based on the population of the county, as follows: a minimum of one location for a population of less than 50,000; a minimum of two locations for a population of less than 75,000; and a minimum of three locations for a population of more than 75,000.

(b) Each sheriff's office or police department designated as a public safe exchange location shall install a purple light on the outside of the building so the building is identifiable as a designated public safe exchange location. The parking lot of each public safe exchange location must be accessible 24 hours a day, 7 days a week, and each public safe exchange location shall provide adequate lighting and an external video surveillance system that records continuously, 24 hours a day, 7 days a week, and that meets all of the following criteria:

1. At least one camera is fixed on the entrance to the premises and is able to record the area in the vicinity of the purple light.

2. Records images clearly and such images accurately display the time and date.

3. Retains video surveillance recordings or images for at

least 6 months.

(c) A cause of action may not be brought against the county, the sheriff, a county commissioner, or a law enforcement officer or an employee of the designated public safe exchange location based on an incident that occurs when a parent or parent's designee meets at a public safe exchange location to exchange custody of his or her child.

Section 3. Subsection (7) is added to section 787.03, Florida Statutes, to read:

787.03 Interference with custody.—

(7) A parent of a child or the parent's designee may not be charged with an offense under this section solely for using or attempting to use a designated public safe exchange location as provided in s. 125.01(8) to exchange custody of his or her child instead of a location that was previously agreed to by both parents or specified in a parenting plan, time-sharing schedule, or child exchange order.

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

The Florida Senate

APPEARANCE RECORD

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

3/20/23
Meeting Date

Children & Families
Committee

1286
Bill Number or Topic

Amendment Barcode (if applicable)

Name PHIL WARTENBERG

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Street

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Tampa FL 33602
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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March 20, 2023
Meeting Date

Children Families
Committee

1286
Bill Number or Topic

Amendment Barcode (if applicable)

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Tallahassee FL 32308
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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:

Fla. Smart Justice

☐ 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)

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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3-20-23
Meeting Date

Children, Families ---
Committee

1284
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara DeVane

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Email barbaradevane1@yahoo.com

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:
FL NOW

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

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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 Children, Families, and Elder Affairs

BILL:	SB 1286
INTRODUCER:	Senator Book
SUBJECT:	Designated Public Safe Exchange Locations
DATE:	March 20, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	**Favorable**
2.			JU	
3.			RC	

I. Summary:

SB 1286 amends s. 125.01, F.S., expanding the duties of county legislative and governing bodies by requiring each board of county commissioners to designate one or more sheriff's office or police department locations as public safe exchange locations for parents to exchange custody of a child. The safe exchange location must:

- Have staff on site 24-hours a day.
- Install a purple light on the outside of the building to identify it as a designated public exchange location.
- Be accessible 24 hours a day, 7 days a week.
- Provide adequate lighting.
- Provide external video surveillance that records continuously, 24 hours a day, 7 days a week, that meets all of the following criteria:
  - At least one camera fixed on the entrance to the premises and able to record the areas near the external purple light.
  - Records images clearly and displays accurate date and time.
  - Retains video recordings or images for at least 6 months.

The bill requires a designation of a minimum of one safe exchange location in counties with a population of less than 50,000, a minimum of two locations for a population of less than 75,000, and a minimum of three locations for a population of more than 75,000.

The bill amends s. 61.13, F.S., requiring any parenting plan approved by a court to allow a parent or parent's designee to exchange a child with the other parent or parent's designee at a designated public safe exchange location. The bill details that a parent may not be found in violation of a parenting plan, time-sharing schedule, or child exchange order or be charged with interference with the same under s. 787.03, F.S. if the parent or designee chooses to use a public safe exchange location previously agreed to by both parents in a parenting plan, sharing schedule, or child exchange order.

The bill also amends s. 787.03, F.S., of the Florida Criminal Code to make conforming changes to the crime of "interference with custody" to state that a parent or designee may not be charged with that crime solely for using or attempting to use a public safe exchange location previously agreed to by both parents or specified in a parenting plan, time-sharing schedule, or child exchange order.

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply. See Section IV. Constitutional Issues.

The bill will have an indeterminate negative fiscal impact on the government sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023

II. Present Situation:

Rights and Responsibilities of a Parent

In a dissolution of marriage with children or in a paternity case, issues of parenting must be worked out between the parties. The United States Supreme Court and Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection.[1] Further, a parent has general responsibilities owed to his or her children, including supervision, health and safety, education, care, and protection. In Florida, parenting is broken down into two distinct components, including parental responsibility (decision-making) and timesharing (physical visitation with the child based on a parenting plan).

Timesharing and Parental Responsibility

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting[2] and time-sharing[3] of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:

> 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. There is no

[1] *See Lassiter v. Dep't of Soc. Services of Durham Cnty., N. C.*, 452 U.S. 18 (1981) (calling the right "plain beyond the need for multiple citation" and quoting *Stanley v. Illinois*, 405 U.S. 645 (1972)); *I.T. v. Dep't of Children & Families*, 338 So. 3d 6 (Fla. 3d DCA 2022); *D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013); *F.R. v. Adoption of Baby Boy Born November 2, 2010*, 135 So. 3d 301 (Fla. 1st DCA 2012); *In Interest of J.D.*, 510 So. 2d 623 (Fla. 1st DCA 1987).

[2] Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate. *See* CustodyXChange, *Parental Rights and Parental Responsibilities: Know Yours*, available at https://www.custodyxchange.com/topics/custody/legal-concepts/parental-rights-responsibility.php (last visited March 15, 2023)

[3] Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. Section 61.046(23), F.S.

> 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.[4]

In establishing time-sharing, the court must consider the best interests of the child[5] as the primary consideration and evaluate all factors affecting the welfare and interests of the child and the circumstances of the family.[6]

A court may prescribe a "parenting plan"[7] by which the parents are ordered to share decision-making and physical custody of the minor child. The parenting plan may order parents to exercise shared parental responsibility, it may delegate decision-making authority over specific matters to one parent, or it may grant a parent sole parental responsibility over the minor child. Common issues concerning a minor child may include education, healthcare, and social or emotional wellbeing. Further, once a court has established parental responsibility, a parenting plan or time-sharing plan[8] may be ordered, and such plan may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child.[9]

Cassie Carli and Safe Exchange of Custody

In late March of 2022, Cassie Carli of Navarre, Florida went missing after meeting with her 4-year-old daughter's father, her ex-boyfriend, to exchange custody of the child.[10] Ms. Carli's body was found a week later in Alabama and her ex-boyfriend was arrested in Tennessee on charges of tampering with evidence, giving false information concerning a missing persons investigation, and destruction of evidence.[11]

County Government and Powers

Florida has two distinct County types:

- **Charter Counties** – these counties operate under a county charter and have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[12]
- **Non-charter Counties** – these counties operate under powers of self-government that are provided by general or special law.[13]

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[4] Section 61.13(2)(c)1., F.S.
[5] Section 61.13(2)(c), F.S.
[6] Section 61.13(3), F.S.
[7] A "parenting plan" is a document created to govern the relationship between the parents relating to decisions which must be made regarding the child and must contain a timesharing schedule for the parents and child. Section 61.046(14), F.S. If a parenting plan is agreed to by the parties, it must be approved by the court.
[8] Section 61.13(2)(b), F.S.
[9] Section 61.13.(3), F.S.
[10] WEAR News 3, *TIMELINE: Disappearance, body discovery of Navarre mother Cassie Carli*, available at https://weartv.com/news/local/timeline-disappearance-of-missing-navarre-mother-cassie-carli (last visited March 14, 2023).
[11] *Id.*
[12] FLA. CONST. art. VIII, s. 1(g).
[13] FLA. CONST. art. VIII, s. 1(f).

Section 125.01, F.S., specifies powers of self-government for non-charter counties, unless such powers are preempted by general or special law.[14] Such powers include, but are not limited to, the authority to:

- Employ personnel;[15]
- Perform any act not specifically enumerated that is not inconsistent with law and is in the common interest of the people of the county;[16]
- Adopt ordinances and prescribe fines;[17] and
- Provide hospitals, ambulance service, and health and welfare programs.[18]

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Interference with Custody

In 1974, the Legislature created the offense of interference with custody.[19] It is a third degree felony[20] for a person:

- Without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[21]
- In the absence of a court order determining custody or visitation rights, who is a parent, stepparent, guardian, or relative who has custody of a child or incompetent person, to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[22]

Defenses to a charge of interference with custody are:

- The defendant had reasonable cause to believe the action was necessary to preserve the child from danger;
- The defendant was the victim of an act of domestic violence or had reasonable cause to believe he or she was about to become the victim of an act of domestic violence and the defendant had reasonable cause to believe the action was necessary to escape or protect himself or herself from the domestic violence or preserve the child from exposure; or
- The child was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense against the child, and the defendant establishes that it was reasonable to rely on the instigating acts of the child.[23]

[14] *See* Section 125.01, F.S.
[15] Section 125.01(3)(a), F.S.
[16] Section 125.01(1)(w), F.S.
[17] Section 125.01(1)(t), F.S.
[18] Section 125.01(1)(e), F.S.
[19] Chapter 74-383, s. 24, L.O.F., codified as s. 787.03, F.S.
[20] A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.
[21] Section 787.03(1), F.S.
[22] Section 787.03(2), F.S.
[23] Section 787.03(4), F.S.

The statute does not apply if a spouse flees with a child because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child is in danger.[24]

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report, within 10 days after taking the child, with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken.[25] The report must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[26] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[27, 28]

III. Effect of Proposed Changes:

The bill amends s. 125.01, F.S., to expand the duties of a county legislative and governing body to require each board of county commissioners to designate one or more sheriff's office or police department locations as public safe exchange locations for parents to exchange custody of a child. The safe exchange location must:

- Have staff on site 24-hours a day.
- Install a purple light on the outside of the building to identify it as a designated public exchange location.
- Be accessible 24 hours a day, 7 days a week.
- Provide adequate lighting.
- Provide external video surveillance that records continuously, 24 hours a day, 7 days a week, that meets all of the following criteria:
  - At least one camera fixed on the entrance to the premises and able to record the areas near the external purple light.
  - Records images clearly and displays accurate date and time.
  - Retains video recordings or images for at least 6 months.

The bill requires a designation of a minimum of one safe exchange location in counties with a population of less than 50,000, a minimum of two locations for a population of less than 75,000, and a minimum of three locations for a population of more than 75,000.

The bill amends s. 61.13, F.S., requiring any parenting plan approved by a court to allow a parent or parent's designee to exchange a child with the other parent or parent's designee at a designated public safe exchange location. The bill details that a parent may not be found in violation of a parenting plan, time-sharing schedule, or child exchange order, or be charged with a violation of interference with the same under s. 787.03, F.S., if the parent or designee chooses

[24] Section 787.03(6)(a), F.S.
[25] Section 787.03(6)(b), F.S.
[26] *Id.*
[27] *Id.*
[28] Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A; Uniform Child Custody Jurisdiction and Enforcement Act, ss. 61.501 through 61.542, F.S.

to use a public safe exchange location previously agreed to by both parents in a parenting plan, time-sharing schedule, or child exchange order.

The bill also amends s. 787.03, F.S., conforming changes to the crime of "interference with custody" to state that a parent or designee may not be charged with that crime solely for using or attempting to use a public safe exchange location previously agreed to by both parents or specified in a parenting plan, time-sharing schedule, or child exchange order.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill requires local governments to expend funds on sheriff offices or police department buildings designated as public safe exchange locations to:

- Install certain lighting and video surveillance equipment.
- Retain/store video or images for at least 6 months.

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. None of the constitutional exceptions appear to apply.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an "insignificant fiscal impact" are exempt from the mandate requirements, which for Fiscal Year 2022-2023 is forecast at approximately $2.3 million. However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies.

If the bill does qualify as a mandate, in order to be binding upon cities and counties the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

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 bill may have an indeterminate negative fiscal impact on those sheriff's offices and police departments designated as safe exchange locations as they will be required to incur a cost to install certain lighting and video surveillance to comply with the bill's language.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.13, 125.01, and 787.03 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 Harrell

31-01169A-23 20231306__

A bill to be entitled

An act relating to placement of surrendered newborn infants; amending s. 63.039, F.S.; requiring licensed child-placing agencies to maintain a specified registry; requiring that certain information be removed from the registry under certain circumstances; prohibiting the child-placing agency from transferring certain costs to prospective adoptive parents; amending s. 63.0423, F.S.; requiring licensed child-placing agencies to immediately place a surrendered newborn infant in the physical custody of an identified prospective adoptive parent; providing that the prospective adoptive parent becomes the guardian of such infant under certain conditions for a certain period of time; providing requirements that apply if a certain prospective adoptive home is not available; requiring the court to require the child-placing agency to make certain reasonable efforts to identify an appropriate prospective adoptive parent; conforming provisions to changes made by the act; amending s. 383.50, F.S.; providing requirements for licensed child-placing agencies once they take physical custody of a surrendered newborn infant; 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. Present subsections (3), (4), and (5) of section

63.039, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, and a new subsection (3) is added to that section, to read:

63.039 Duties ~~Duty~~ of adoption entity; ~~to~~ Prospective Adoptive Parents of Infants registry; sanctions.—

(3)(a) A licensed child-placing agency shall establish and maintain a registry of prospective adoptive parents of infants with the names and addresses of prospective adoptive parents who have received a favorable preliminary home study under s. 63.092 and have indicated the desire to be a prospective adoptive parent only for a newborn infant surrendered under s. 383.50. The licensed child-placing agency must remove the name and address of a prospective adoptive parent from the registry when the favorable preliminary home study for such prospective adoptive parent is no longer valid as provided in s. 63.092(3).

(b) The child-placing agency may not transfer the cost of establishing and maintaining the registry created pursuant to this subsection to a prospective adoptive parent through either the cost of the home study or through the cost of adoption of a newborn infant under this section.

Section 2. Subsection (2) of section 63.0423, Florida Statutes, is amended to read:

63.0423 Procedures with respect to surrendered infants.—

(2) Upon taking physical custody of a newborn infant surrendered pursuant to s. 383.50, the licensed child-placing agency shall immediately place the surrendered infant with an identified prospective adoptive parent, at which time the prospective adoptive parent becomes the guardian of the surrendered infant pending termination of parental rights and

finalization of adoption or until the court orders otherwise. If a prospective adoptive parent from the registry is not available, the licensed child-placing agency must seek an order from the circuit court for emergency custody of the surrendered infant. As a part of the emergency order, the court shall require the licensed child-placing agency that has been unable to identify a prospective adoptive parent for the surrendered infant to make all reasonable efforts to identify an appropriate prospective adoptive parent as soon as practicable, including but not limited to, contacting all other licensed child-placing agencies in this state to facilitate the identification of a prospective adoptive parent from the registry described in s. 63.039. The emergency custody order remains ~~shall remain~~ in effect until the court orders preliminary approval of placement of the surrendered infant in a ~~the~~ prospective home, at which time the prospective adoptive parent becomes ~~parents become~~ guardian ~~guardians~~ pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parent is ~~parents shall remain~~ subject to the right of the licensed child-placing agency to remove the surrendered infant from the placement during the pendency of the proceedings if such removal is deemed by the licensed child-placing agency to be in the best interests of the child. ~~The licensed child-placing agency may immediately seek to place the surrendered infant in a prospective adoptive home.~~

Section 3. Subsection (7) of section 383.50, Florida Statutes, is amended to read:

383.50 Treatment of surrendered newborn infant.—

(7) Upon admitting a newborn infant under this section, the hospital shall immediately contact a local licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of the newborn infant. The hospital shall notify the licensed child-placing agency that a newborn infant has been left with the hospital and approximately when the licensed child-placing agency can take physical custody of the child. Once the licensed child-placing agency takes physical custody of the newborn infant, the agency shall immediately seek to place the surrendered newborn infant with a prospective adoptive parent who is on the Prospective Adoptive Parents of Infants registry established and maintained under s. 63.039. If a prospective adoptive parent from the registry is not available, the licensed child-placing agency must follow the procedures in s. 63.0423. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting a licensed child-placing agency.

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

The Florida Senate

APPEARANCE RECORD

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

March 20, 2023
Meeting Date

Children Families
Committee

1306
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III

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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:

Fla. Smart Justice

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/20/23
Meeting Date

SB 1306
Bill Number or Topic

Children, Families, Elder Affairs
Committee

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Family Policy Council

☐ 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)

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

March 20 2023
Meeting Date

SB 1306
Bill Number or Topic

Children, Families & Elder affairs
Committee

Amendment Barcode (if applicable)

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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 PTA

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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL:	SB 1306
INTRODUCER:	Senator Harrell
SUBJECT:	Placement of Surrendered Newborn Infants
DATE:	March 20, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	**Favorable**
2.			JU	
3.			RC	

I. Summary:

SB 1306 amends s. 63.039, F.S., to require licensed child-placing agencies (CPA) that accept surrendered infants for adoption to establish and maintain a registry of prospective adoptive parents of infants. This registry must:

- Maintain the names and addresses of prospective adoptive parents who have received a favorable preliminary home study and indicated a desire to only adopt a newborn infant surrendered under s. 383.50, F.S.
- Remove the name and address of prospective adoptive parents from the registry when the favorable home study is no longer valid.

The bill amends s. 63.0423, F.S., and updates the procedures that a CPA must follow with respect to surrendered infants. A CPA must immediately place a surrendered infant with an identified prospective adoptive parent from their registry or the registry of another CPA without seeking an order for emergency custody. The bill makes that prospective adoptive parent the guardian of the surrendered infant, pending termination of parental rights and finalization of adoption, or until ordered otherwise. The bill requires a CPA to seek an order for emergency custody only if a prospective adoptive parent from the registry is not available and requires the court to order the CPA to make all reasonable efforts to identify an appropriate prospective adoptive parent as soon as practicable, including contacting all other CPAs in this state to facilitate the identification of a prospective adoptive parent from their registries.

The bill also amends s. 383.50, F.S., to make conforming changes to the required processes and procedures for the treatment of surrendered newborn infants by a hospital, emergency medical services station, or fire station.

The bill may have an indeterminate fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Infant Safe Haven Laws

Every state legislature has enacted laws to address infant abandonment and endangerment in response to a reported increase in the abandonment of infants in unsafe locations, such as public restrooms or trash receptacles. Beginning with Texas in 1999, states have enacted these safe haven laws as an incentive for mothers in crisis to safely relinquish their babies at designated locations where the babies are protected and provided with care until a permanent home is found.[1]

While there is great variability in the laws across states, safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from criminal liability and prosecution for child endangerment, abandonment, or neglect in exchange for surrendering the baby to a safe haven.[2] Most states designate hospitals, emergency medical services providers, health care facilities, and fire stations as a safe haven. In ten states, emergency medical personnel responding to 911 calls may accept an infant.[3] Laws in nine states, allow a parent to voluntarily deliver the infant to a newborn safety device that meets certain safety standards.[4]

The age in which a baby may be lawfully surrendered also varies significantly from state to state. Approximately 23 states accept infants up to 30 days old.[5] Ages in other states range from up to 72 hours to 1 year.[6]

According to the nonprofit organization known as the National Safe Haven Alliance (NSHA), 4,505 safe haven relinquishments occurred during 1999-2021 nationwide,[7] and 4,709 nationally as of this writing.[8] Illegal abandonments have also occurred during that time span, with some newborns found alive and others deceased. These statistics are unofficial estimates, as there is no federally mandated safe haven report requirement.

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[1] *See* U.S. Department of Health and Human Services Administration for Families, Children's Bureau, Child Welfare Information Gateway, *Infant Safe Haven Laws*, 2022 (Current through September 2021), available at https://www.childwelfare.gov/pubPDFs/safehaven.pdf (last visited March 13, 2023).
[2] *Id.*
[3] *Id.* Connecticut, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, New Hampshire, Vermont, and Wisconsin.
[4] *Id.* Arkansas, Indiana, Kentucky, Louisiana, Maine, Missouri, Ohio, Oklahoma, and Pennsylvania.
[5] *Id.* Arizona, Arkansas, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and West Virginia.
[6] *Id.*
[7] *See* National Safe Haven Alliance, *2021 Impact Report*, available at https://www.nationalsafehavenalliance.org/_files/ugd/d98b71_3b9795ec5f784b93aba04a6ad560e2f4.pdf (last visited March 13, 2023).
[8] *See* Nation Safe Haven Alliance, available at https://www.nationalsafehavenalliance.org/our-cause (last visited March 13, 2023).

Surrender of Newborn Infants in Florida

The Florida Legislature enacted Florida's initial abandoned newborn infant law in 2000.[9] The law created s. 383.50, F.S., and authorized the abandonment of a newborn infant, up to three days old or younger, at a hospital or a fire station and addressed presumption of relinquishment of parental rights, implied consent to treatment, anonymity, and physical custody of the infant.[10]

In 2001, s. 383.50, F.S., was amended to authorize EMS stations, in addition to hospitals and fire stations, as optional locations for the lawful relinquishment of a newborn infant.[11]

In 2008, multiple provisions of the section were modified to refer to "surrendered newborn infant" rather than "abandoned newborn infant."[12] The three-day age limit for surrender of a newborn infant was increased to a seven-day age limit. Additionally, a provision was added to indicate that when an infant is born in a hospital and the mother expresses intent to leave the infant and not return, the hospital or registrar is directed, upon her request, to complete the infant's birth certificate without naming the mother.

Under current law a firefighter, emergency medical technician, or paramedic at a fire station or EMS station that accepts a surrendered newborn infant must arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services.[13] Upon admitting a surrendered newborn infant, each hospital in this state with emergency services shall provide all necessary emergency services and care for the surrendered newborn infant and immediately contact a local licensed child-placing agency (CPA) or the Department of Children and Families' (DCF) statewide abuse hotline for the name of a CPA and transfer custody of the surrendered newborn infant.[14]

A Safe Haven for Newborns[15] reports that over the past 23 years approximately 424 newborns have been surrendered or abandoned in Florida.[16] Since 2000, 361 newborns have been surrendered in a safe haven hospital, emergency medical services station, or a fire station, and approximately 63 newborns have been abandoned in unsafe places.[17] In 2022, 14 newborns were surrendered to a safe haven and none were abandoned in an unsafe place.[18]

[9] Chapter 2000-188, L.O.F.
[10] Section 383.50, F.S.
[11] Chapter 2001-53, s. 15, L.O.F.
[12] Chapter 2008-90, s. 4, L.O.F.
[13] Sections 383.50(3) and 395.1041, F.S.
[14] Sections 395.50(4) and 395.50(7), F.S.
[15] A Safe Haven for Newborns is a program of The Florida M. Silverio Foundation, a 501(c)(3) organization located in Miami, Florida.
[16] A Safe Haven for Newborns, *Safe Haven Statistics*, (last updated February 9, 2023), available at https://asafehavenfornewborns.com/what-we-do/safe-haven-statistics/ (last visited March 13, 2023).
[17] *Id.*
[18] *Id.*

The Florida Adoption Act

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:[19]

- DCF;
- CPAs licensed by DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida acting as an adoption intermediary; or
- A child-placing agency licensed in another state that is licensed by the DCF to place children in Florida.

Surrendered Newborn Infants under the Florida Adoption Act

Section 63.0423, F.S., details the procedures and requirements for the handling of surrendered infants under the Florida Adoption Act. The law requires a licensed child-placing agency (CPA) to seek an immediate order from the circuit court for emergency custody of the surrendered newborn to remain in effect until the court orders approval of placement with a prospective adoptive parent, at which time the prospective adoptive parent becomes the guardian pending the termination of parental rights and finalization of adoption.[20] The law explicitly bars the DCF from taking custody of a properly surrendered infant unless reasonable efforts by the hospital to contact a CPA to accept the surrendered infant have not been successful.[21]

Section 63.039, F.S., details the duties of adoption entities to a prospective adoptive parent to protect and promote the well-being of persons being adopted, his or her parents, and prospective adoptive parents. The section requires certain disclosures, consents, and petitions be filed; termination of parental rights to be obtained; and time limits be maintained.

Current law related to the surrender of newborn infants does not mention or require any specific timelines or processes for the identification or transfer of custody to a prospective adoptive parent. However, the law does contemplate that a CPA may *immediately seek to place* a surrendered infant with a prospective adoptive parent.[22] There is no requirement of CPAs to communicate with each other, maintain any form of registry or database, or otherwise coordinate identification of and placement with prospective adoptive parents statewide.

III. Effect of Proposed Changes:

The bill amends s. 63.039, F.S., to require a CPA to establish and maintain a registry of prospective adoptive parents of infants. This registry must:

- Maintain the names and addresses of prospective adoptive parents who have received a favorable preliminary home study and indicated a desire to only adopt a newborn infant surrendered under s. 383.50, F.S.

[19] Section 63.032(3), F.S.
[20] Section 63.0423(2), F.S.; The prospective adoptive parent's guardianship is subject to the right of the licensed child-placing agency to remove the infant if deemed to be in the best interest of the child.
[21] Section 63.0432(4), F.S.
[22] *Id.*

- Remove the name and address of such prospective adoptive parents from the registry when the favorable home study is no longer valid.

The bill bars a CPA from transferring the cost of establishing and maintaining the registry to a prospective adoptive parent through the cost of the home study or the cost of adoption of a newborn under this section.

The bill amends 63.0423, F.S., and updates the procedures that s CPA must follow with respect to surrendered infants. Upon taking custody of a surrendered infant, a CPA must immediately place the surrendered infant with an identified prospective adoptive parent. The bill makes that prospective adoptive parent the guardian of the surrendered infant, pending termination of parental rights and finalization of adoption or until ordered otherwise. This changes the current requirement that a CPA must immediately seek an emergency custody order upon surrender of an infant.

The bill requires a CPA to seek an order from the circuit court for emergency custody only if a prospective adoptive parent from the registry is not available. The bill requires the emergency order to require the CPA to make all reasonable efforts to identify an appropriate prospective adoptive parent as soon as practicable, including contacting all other CPAs in this state to facilitate the identification of a prospective adoptive parent from their registries.

The bill also amends s. 383.50, F.S., that details the required processes and procedures for the treatment of surrendered newborn infants by a hospital, emergency medical services station, or fire station to conform with the changes in the bill.

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:

The bill will likely have an indeterminate negative fiscal impact on private sector CPAs to implement and maintain the surrendered infant registry.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 63.039, 63.0423, and 383.50 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 Grall

29-01485-23 20231322__

A bill to be entitled

An act relating to adoption of children in dependency court; amending s. 63.082, F.S.; specifying that certain adoption consents are valid, binding, and enforceable by the court; specifying that a consent to adoption is not valid after certain petitions for termination of parental rights have been filed; making technical changes; requiring that the final hearing on a motion to intervene and the change of placement of the child be held by a certain date; deleting a provision regarding the sufficiency of the home study provided by the adoption entity; requiring that an evidentiary hearing be granted if a certain motion to intervene is filed; specifying the determinations to be made at such hearing; providing legislative findings; providing a rebuttable presumption; requiring the court to grant party status to the current caregivers under certain circumstances; providing when such party status expires; specifying the factors for consideration to rebut the rebuttable presumption; requiring the court to order the transfer of custody of the child to the adoptive parents under certain circumstances and in accordance with a certain transition plan; conforming provisions to changes made by the act; requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a certain analysis; requiring the Department of Children and Families to provide a certain list of child-caring and child-placing agencies to OPPAGA by a

certain date; requiring certain child-caring and child-placing agencies to provide certain data to OPPAGA by a certain date; requiring OPPAGA to provide a certain analysis and report to the Legislature by a certain date; providing an effective date.

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

Section 1. Subsection (6) of section 63.082, Florida Statutes, is amended to read:

63.082 Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation of consent.—

(6)(a) If a parent executes a consent for adoption of a child ~~minor~~ with an adoption entity or qualified prospective adoptive parents and the ~~minor~~ child is under the supervision of the department, or otherwise subject to the jurisdiction of the dependency court as a result of the entry of a shelter order~~, a~~ or dependency petition~~, or a petition for termination of parental rights~~ pursuant to chapter 39~~, but parental rights have not yet been terminated~~, the adoption consent is valid, binding, and enforceable by the court. A consent to adoption of a child with an adoption entity or qualified prospective adoptive parents is not valid if executed after the filing of a petition for termination of parental rights pursuant to s. 39.802.

(b) Upon execution of the consent of the parent, the adoption entity may petition ~~shall be permitted~~ to intervene in the dependency case as a party of ~~in~~ interest and must provide the court that acquired jurisdiction over the child ~~minor~~,

pursuant to the shelter order or dependency petition filed by the department, a copy of the preliminary home study of the identified prospective adoptive parents and any other evidence of the suitability of the placement. The preliminary home study must be maintained with strictest confidentiality within the dependency court file and the department's file. A preliminary home study must be provided to the court in all cases in which an adoption entity has been allowed to intervene ~~intervened~~ pursuant to this section. Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and the change of placement of the child must be held within 30 days after the filing of the motion, and a written final order must be filed within 15 days after the hearing ~~Unless the court has concerns regarding the qualifications of the home study provider, or concerns that the home study may not be adequate to determine the best interests of the child, the home study provided by the adoption entity shall be deemed to be sufficient and no additional home study needs to be performed by the department~~.

(c) If a motion to intervene and the change of placement of the child by an adoption entity is filed ~~files a motion to intervene in the dependency case in accordance with this chapter~~, the dependency court must ~~shall~~ promptly grant an evidentiary ~~a~~ hearing to determine whether:

1. The adoption entity has filed the required documents to be allowed ~~permitted~~ to intervene; ~~and~~

2. The fee and compensation structure of the adoption entity creates any undue financial incentive for the parent to consent or for the adoption entity to intervene;

3. The preliminary home study is adequate and provides the information required to make a best interests determination; and

4. The ~~whether a~~ change of placement of the child to the prospective adoptive family is in the best interests of the child. ~~Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and the change of placement of the child must be held within 30 days after the filing of the motion, and a written final order shall be filed within 15 days after the hearing.~~

(d)1.a. The Legislature finds that there is a compelling state interest to ensure that a child involved in chapter 39 proceedings is served in a way that minimizes his or her trauma, provides safe placement, maintains continuity of bonded placements, and achieves permanency as soon as possible.

b. The Legislature finds that the use of intervention into dependency cases for the purpose of adoption has the potential to be traumatic for a child in the dependency system and that the disruption of a stable and bonded long-term placement and the change of placement to a person or family to whom the child has no bond or connection may create additional trauma.

c. The Legislature finds that the right of a parent to determine an appropriate placement for a child who has been found dependent is not absolute and must be weighed against other factors that take the child's safety and well-being into account.

d. It is the intent of the Legislature to reduce the disruption of stable and bonded long-term placements that have been identified as potential adoptive placements.

2. If the child has been in his or her current placement

for at least 9 continuous months or 15 of the last 24 months immediately preceding the filing of the motion to intervene and the change of placement of the child and that placement is a prospective adoptive placement, there is a rebuttable presumption that it is in the child's best interest to remain in his or her current placement. The court shall grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence pursuant to this subsection. This limited party status expires upon the issuance of a final order on the motion to intervene and the change of placement of the child. To rebut the presumption established in this subparagraph, the intervening party must prove by competent and substantial evidence that it is in the best interests of the child to disrupt the current stable prospective adoptive placement using the factors set forth in subparagraph 3. and any other factors the court deems relevant.

3. In determining whether changing placement to the prospective adoptive parents selected by the parent or adoption entity is in the best interests of the child, the court shall consider and weigh all relevant factors, including, but not limited to:

a. The permanency offered by each placement;

b. The established bond between the child and the current caregiver with whom the child is residing if that placement is a potential adoptive home;

c. The stability of the current placement if that placement is a potential adoptive home, as well as the desirability of maintaining continuity of that placement;

d. The importance of maintaining sibling relationships, if possible;

e. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference; and

f. The right of the parent to determine an appropriate placement for the child.

(e) If after consideration of all relevant factors, including those set forth in subparagraph (d)3. ~~paragraph (c)~~, the court determines that the home study is adequate and provides the information necessary to determine that the prospective adoptive parents are properly qualified to adopt the ~~minor~~ child and that the change of placement ~~adoption~~ is in the best interests of the ~~minor~~ child, the court must ~~shall promptly~~ order the transfer of custody of the ~~minor~~ child to the prospective adoptive parents, under the supervision of the adoption entity, in accordance with a transition plan developed by the department in consultation with the caregivers of the current placement and the caregivers of the newly ordered placement to minimize the trauma of removal of the child from his or her current placement. The court may establish reasonable requirements for the transfer of custody in the transfer order, including a reasonable period of time to transition final custody to the prospective adoptive parents. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption. If the child has been determined to be dependent by the court, the department must ~~shall~~ provide information to the prospective adoptive parents at the time they receive placement of the dependent

child regarding approved parent training classes available within the community. The department shall file with the court an acknowledgment of the prospective adoptive parents' ~~parent's~~ receipt of the information regarding approved parent training classes available within the community.

~~(c) In determining whether the best interests of the child are served by transferring the custody of the minor child to the prospective adoptive parent selected by the parent or adoption entity, the court shall consider and weigh all relevant factors, including, but not limited to:~~

~~1. The permanency offered;~~

~~2. The established bonded relationship between the child and the current caregiver in any potential adoptive home in which the child has been residing;~~

~~3. The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement;~~

~~4. The importance of maintaining sibling relationships, if possible;~~

~~5. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;~~

~~6. Whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f), (g), or (h);~~

~~7. What is best for the child; and~~

~~8. The right of the parent to determine an appropriate placement for the child.~~

(f) The adoption entity is ~~shall be~~ responsible for keeping the dependency court informed of the status of the adoption

proceedings at least every 90 days from the date of the order changing placement of the child until the date of finalization of the adoption.

(g) At the arraignment hearing held pursuant to s. 39.506, in the order that approves the case plan pursuant to s. 39.603, and in the order that changes the permanency goal to adoption pursuant to s. 39.621, the court shall provide written notice to the biological parent who is a party to the case of his or her right to participate in a private adoption plan including written notice of the factors set forth ~~provided~~ in subparagraph (d)3. ~~paragraph (c)~~.

Section 2. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a comparative analysis nationally of the state processes that allow private adoption entities to intervene or participate in dependency cases, including, at a minimum, processes and requirements for intervention or participation of private adoption entities in dependency cases; any statutory fee limits for intervention adoption services, including attorney fees, recruitment fees, marketing fees, matching fees, and counseling fees; and any regulations on marketing and client recruitment methods or strategies. By July 15, 2023, the Department of Children and Families shall provide to OPPAGA a list of all child-caring agencies registered under s. 409.176, Florida Statutes, and all child-placing agencies licensed under s. 63.202, Florida Statutes, and contact information for each such agency. By October 1, 2023, all registered child-caring agencies and licensed child-placing agencies shall provide OPPAGA with data as requested by OPPAGA related to contact information for any

intermediary adoption entities the agency contracts with, fees and compensation for any portion of an intervention adoption the agency has been involved with, and related costs for adoption interventions initiated under chapter 39, Florida Statutes. OPPAGA shall submit the analysis and report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

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

March 20, 2023
Meeting Date

Children Families
Committee

1322
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III

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

PLEASE CHECK ONE OF THE FOLLOWING:

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Fla. Smart Justice

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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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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 Children, Families, and Elder Affairs

BILL:	SB 1322
INTRODUCER:	Senator Grall
SUBJECT:	Adoption of Children in Dependency Court
DATE:	March 20, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	**Favorable**
2.			JU	
3.			RC	

I. Summary:

SB 1322 amends s. 63.082(6), F.S., to change the conditions for when and how a child-welfare involved parent may execute a consent for adoption of his or her child with an adoption entity when that child is under the supervision of the Department of Children and Families (DCF), or otherwise subject to the jurisdiction of the dependency court pursuant to ch. 39, F.S.

Specifically, the bill:

- Limits when a consent for adoption of a child with an adoption entity is valid, binding, and enforceable by the court under s. 63.082(6), F.S.
- Requires the court to promptly grant an evidentiary hearing on a motion to intervene to determine whether:
  - The adoption entity has filed the required documents to be allowed to intervene;
  - The fee and compensation structure of the adoption entity creates any undue financial incentives;
  - The preliminary home study is adequate and provides the information required to make a best interest determination; and
  - The change of placement of the child to the prospective adoptive family is in the best interests of the child.
- Details legislative findings and intent language to reduce the disruption of stable and bonded long-term placements that have been identified as prospective adoptive placements.
- Creates a rebuttable presumption that it is in a child's best interest to remain in his or her current placement if it is a prospective adoptive placement and the child has been in that placement for a certain amount of time.
- Clarifies the list of factors a court must consider and weigh to determine whether it is in the best interest of a child to change his or her placement to the prospective adoptive parent selected by the parent or adoption entity.
- Requires the DCF to develop a transition plan to minimize the trauma of removal of the child if the court grants the motion to intervene and orders a change of placement.

- Makes technical and conforming changes throughout.

The bill also creates an unnumbered section of law requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a national comparative analysis of state processes that allow private adoption entities to intervene or participate in dependency cases and requires the DCF and licensed child-caring and child-placing agencies to provide OPPAGA with certain data by dates certain. The analysis and report is due to the President of the Senate and Speaker of the House of Representatives by January 1, 2024.

The bill does not appear to have a fiscal impact on the government or private sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates the state's dependency system that is charged with protecting the welfare of children in Florida; this system is often referred to as the "child welfare system." The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.[1] The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by DCF-contracted community-based care lead agencies (CBC).[2]

Community-based Care

The DCF, through the CBCs, administers a system of care[3] for children that is required to focus on:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.[4]

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[1] Section 39.001(8), F.S.
[2] Section 409.986(1), F.S.; *See generally* The Department of Children and Families (The DCF), *About Community-Based Care*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last viewed March 15, 2023).
[3] *Id.*
[4] *Id.*; *Also see generally* s. 409.988, F.S.

The CBCs must give priority to services that are evidence-based and trauma informed.[5] The CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[6] The CBCs employ case managers that serve as the primary link between the child welfare system and families under the DCF's supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.[7]

Out-of-home Placement

When a child protective investigator determines that in-home services are not enough to ensure safety in a child's home, the investigator removes and places the child with a safe and appropriate temporary placement.[8] These temporary placements, referred to as out-of-home care or foster care, provide housing and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.[9]

The CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.[10] Legislative intent is to place a child in the least restrictive, most family-like environment in close proximity to parents when removed from his or her home.[11]

Case planning

The DCF must develop and draft a case plan for each child receiving services within the dependency system.[12] The purpose of a case plan is to develop a document that details the identified concerns and barriers within the family unit, the permanency goal or goals, and the services designed to ameliorate those concerns and barriers and achieve the permanency goal.[13]

The services detailed in a case plan must be designed in collaboration with the parent and stakeholders to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement.[14] The services offered must be the least intrusive possible into the life of the parent and child and must provide the most efficient path to quick reunification or other permanent placement.[15]

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[5] Section 409.988(3), F.S.
[6] The DCF, *Lead Agency Information*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited March 15, 2023).
[7] Section 409.988(1), F.S.
[8] Sections 39.401 through 39.4022, F.S.
[9] The Office of Program Policy and Government Accountability, *Program Summary*, available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053 (last visited March 15, 2023).
[10] Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.
[11] Sections 39.001(1) and 39.4021(1), F.S.
[12] *See* Part VII of ch. 39, F.S.
[13] Section 39.6012(1), F.S.
[14] *Id.*
[15] *Id.*

The Florida Adoption Act

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:

- The Department of Children and Families (DCF) under ch. 39, F.S.;
- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is licensed by the DCF to place children in Florida.[16]

Chapter 39 Adoptions

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her, the child welfare system may seek a permanent home for that child through the adoption process.[17] Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be legally the child of the adoptive parents and entitled to all rights and privileges and subject to all obligations of a child born to the adoptive parents.[18] Adoption is one of the legally recognized child-welfare permanency goals that may be ordered by a court for a child within the child welfare system.[19]

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her current parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.[20] The DCF may place the child with a licensed child-placing agency, a registered child-caring agency, or a family home for prospective adoption if given custody of a child that has been made available for a subsequent adoption under ch. 39, F.S.[21]

Intervention by an Adoption Entity into a Dependency Proceeding

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,[22] and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to participate in a private adoption plan.[23] In 2003, the Legislature created s. 63.082(6), F.S., which is a path to allow a child-welfare involved parent to place their child for adoption with a private adoption agency,

[16] Section 63.032(3), F.S.
[17] Section 39.811(2), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.
[18] Section 39.01(5), F.S.
[19] Section 39.01(59), F.S., defines "permanency goal" to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time as another permanency goal is pursued. *See also* Section 39.621(3), F.S.
[20] Section 39.811(9)
[21] Section 39.812(1), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.
[22] Section 63.022, F.S.
[23] Section 63.022(5), F.S.

while the child is under the jurisdiction of the dependency court and receiving services from the DCF and CBCs, as long as parental rights have not been terminated.[24]

Upon execution of a consent for adoption by a child-welfare involved parent with an adoption entity, the court is required to accept that consent as valid, binding, and enforceable and requires the court to allow that adoption entity to intervene in the dependency case. [25] The intervention process allows a child welfare-involved parent to potentially have his or her dependent child removed from the child's current judicially approved placement and subsequently placed with and adopted by a person chosen by the child-welfare involved parent or adoption entity. Current law requires courts to notify child welfare-involved parents about the option of consent and adoption through a private adoption entity at certain points in the dependency case, including when it has been determined that reunification is not a viable permanency option and a case plan goal of adoption has been added.[26]

After a child-welfare involved parent executes the valid and binding consent, the process is as follows:

- The court must permit the adoption entity to intervene in the dependency case.[27]
- The adoption entity provides the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.[28] The home study must be deemed sufficient and no additional home study needs to be performed by the DCF unless the court has concerns about the qualifications of the home study provider or adequacy of the home study.[29]
- The dependency court must hold a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is in the best interests of the child.[30]
- After consideration of all relevant factors, if the court determines that the prospective adoptive parent is properly qualified and the adoption is in the best interest of the minor child, the court must promptly order transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.[31] The court may establish reasonable requirements for the transfer of custody, including time for a reasonable transition from the child's current placement to the new prospective adoptive placement.[32]
- The adoption entity must keep the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.[33]

The court has always been required to consider certain factors to determine the best interest of the child. Prior to 2016, the court was required to only consider the following factors:

[24] Chapter 2003-58, L.O.F., codified as s. 63.082(6), F.S.
[25] Section 63.082(6)(a), F.S.; *See also* Rule 65C-16.019, F.A.C.
[26] Section 63.082(6)(g), F.S.
[27] Section 63.082(6)(b), F.S.
[28] *Id.*
[29] *Id.*
[30] Section 63.082(6)(c), F.S.
[31] Section 63.082(6)(d), F.S.
[32] *Id.*
[33] Section 63.082(6)(f), F.S.

- Rights of the parent to determine an appropriate placement for the child;
- Permanency offered;
- Child's bonding with any potential adoptive home that the child has been residing in; and
- Importance of maintaining sibling relationships, if possible.[34]

In 2016, the Legislature broadened these best interest factors to give more deference to the court to make a best interest determination and better align the best interest factors in ch. 63, F.S., with those already in ch. 39, F.S.[35] To determine whether the transfer of custody and subsequent adoption is in the best interest of the child, the court is required to consider and weigh all relevant factors, including, but not limited to:

- The permanency offered;
- The established bonded relationship between the child and his or her current potential adoptive caregiver with whom the child is residing;
- The stability of the potential adoptive home in which the child currently resides and the desirability of maintaining continuity of placement;
- The importance of maintaining sibling relationships, if possible;
- The reasonable preferences and wishes of the child, if the child is of sufficient maturity, understanding, and experience to express a preference;
- Whether a petition for termination of parental rights has been filed pursuant to certain statutes;
- What is best for the child; and
- The right of a parent to determine an appropriate placement for the child.[36]

Florida courts have interpreted these 2016 changes differently.

Judicial Treatment of Adoption Intervention into Dependency Cases

The Florida Supreme Court has held that while a parent has a fundamental right to raise his or her child, that right is not absolute and is "subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail."[37]

Circuit Split

In *W.K. v. Department of Children and Families*,[38] Florida's Fourth District Court of Appeal found that "it is not the court's role to determine which placement would be better for the child" and that "the 'best interest' analysis [in s. 63.082(6)] requires a determination that the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives."

[34] Chapter 2003-58 s. 15, L.O.F.
[35] Chapter 2016-71 s. 2, L.O.F.
[36] Section 63.082(6)(e), F.S.
[37] *Padgett v. Dep't of Health & Rehab. Servs*., 577 So. 2d 565, 570 (Fla. 1991) (citing In re Camm, 294 So. 2d 318, 320 (Fla. 1974))
[38] 230 So.3d 905, 908 (Fla. 4th DCA 2017)

However, in a more recent case, *Guardian ad Litem v. Campbell*,[39] Florida's Fifth District Court of Appeal found that a trial court's order applying the standard set in W.K. (4th DCA), inappropriately elevated one statutory factor, the right of the parent to determine an appropriate placement for the child, over the other seven statutory factors in its best interest determination.[40] The 5th DCA concluded, in full:

> "The current version of section 63.082(6) is clear that when considering a motion to transfer custody of a dependent child who is under the supervision of the Department, the trial court must consider the wishes of the natural parent or parents, if their parental rights have not been terminated, and weigh those wishes with the other seven factors articulated in section 63.082(6)(e), along with "all relevant factors." *see also* E.Q., 208 So. 3d at 1261 ("It is therefore clear that when considering a motion by a parent to transfer a dependent child, who has been placed with the department or a legal custodian, to a relative, the trial court must consider the wishes of the parent or parents, if their parental rights have not been terminated, and weigh those wishes with the other ... factors articulated in section 63.082(6), which relate to the best interests of the child.") The trial court correctly followed this statutory directive and entered an order with factual findings under section 63.082(6)(e). However, based on its interpretation of W.K.'s statement about the court's role in determining a custody transfer to prospective adoptive parents, the trial court reluctantly ordered custody transferred to the Grandparents, even though it had concluded that this transfer was not in the Child's best interests. Its ultimate conclusion inappropriately elevated one factor over the others and constituted a departure from the essential requirements of the law causing irreparable harm."

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact that is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.[41] There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.[42]

Presumptions that are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are

[39] 348 So.3d 1177 (Fla. 5th DCA 2022).
[40] *Id.* at 1181 – 1183
[41] *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).
[42] Section 90.302, F.S.

proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.[43]

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.[44] These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.[45]

Existing Presumption Related To Placement Stability for Children in the Dependency System

Section 39.522, F.S. provides for a rebuttable presumption in ch. 39, F.S., dependency cases that it is in the best interest of a child to remain permanently in his or her current physical location if:

- the child has been in the same safe and stable placement for 9 consecutive months or more;
- reunification is not a permanency option for the child;
- the caregiver is able, willing, and eligible for consideration as an adoptive parent or permanent custodian for the child;
- the caregiver is not the party requesting the change in placement; and
- the change in placement being sought is not to reunify the child with his or her parent or sibling or transition to a safe and stable relative caregiver.

III. Effect of Proposed Changes:

Chapter 39, F.S., Intervention Adoptions

The bill amends s. 63.082(6), F.S., to change the conditions for when and how a child-welfare involved parent may execute a consent for adoption of his or her child with an adoption entity when that child is under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court pursuant to ch. 39, F.S.

Legislative Findings and Intent

The bill details findings and intent of the Legislature that:

- There is a compelling state interest to ensure that a child involved in chapter 39 proceedings is served in a way that minimizes his or her trauma, provides safe placement, maintains continuity of bonded placements, and achieves permanency as soon as possible.
- The use of intervention into dependency cases for the purpose of adoption has the potential to be traumatic for a child and that the disruption of a stable and bonded long-term placement and the change of placement to a person or family to whom the child has no bond or connection may create additional trauma.
- The right of a parent to determine an appropriate placement for a child who has been found dependent is not absolute and must be weighed against other factors that take the child's safety and well-being into account.

[43] *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).
[44] Section 90.304, F.S.
[45] *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).

- Disruptions of stable and bonded long-term placements that have been identified as potential adoptive placements should be reduced.

Judicial Process

The bill limits when a consent for adoption of a child with an adoption entity is valid, binding, and enforceable by the court under s. 63.082(6), F.S., by making any consent for adoption of a child with an adoption entity not valid if executed after the filing of a petition for the termination of parental rights by the DCF under s. 39.802, F.S. This change reduces the opportunity for a parent to disrupt a bonded and stable placement late in the pendency of a case, when the DCF has decided that it is in the child's best interest to terminate the legal relationship between the child and his or her parents.

The bill allows, rather than requires, an adoption entity to petition for intervention upon the execution of a valid consent. The bill requires the court to promptly grant an evidentiary hearing if a motion to intervene is filed to determine whether the:

- Adoption entity has filed the required documents to be allowed to intervene;
- Fee and compensation structure of the adoption entity creates any undue financial incentive for the parent to consent or for the adoption entity to intervene;
- Preliminary home study is adequate and provides the information required to make a best interest determination; and
- Change of placement of the child to the prospective adoptive family is in the best interests of the child.

The bill strikes language that requires a court to consider a home study sufficient unless the court has concerns as to the qualifications of the home study provider or the adequacy of the home study in general and that no additional home study needs to be performed by the DCF. The bill instead makes the adequacy of the home study a determination made by the court during the evidentiary hearing and is silent as to whether the court may order another home study.

The bill requires the court, when making the determination of whether to change the placement to the prospective adoptive parents selected by the parent or adoption entity, to consider and weigh all relevant factors, including but not limited to the:

- Permanency offered by each placement;
- Established bond between the child and the current caregiver with whom the child is residing if that placement is a potential adoptive home;
- Stability of the current placement if that placement is a potential adoptive home, as well as the desirability of maintaining continuity of that placement;
- Importance of maintaining sibling relationships, if possible;
- Reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference; and
- Right of the parent to determine an appropriate placement for the child.

These changes clarify the current factors in statute, removes a factor related to certain grounds for termination of parental rights to be considered (an impossibility under the new language) and removes a recursive factor, "what is best for the child," as the overarching purpose of the factors is to determine what is in the child's best interests.

Rebuttable Presumption

The bill creates a rebuttable presumption that it is in the child's best interest to remain in his or her current placement if that placement is a prospective adoptive placement and the child has been in that placement for at least 9 continuous months or 15 of the last 24 months preceding the filing of the motion to intervene. The court must grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence for the intervention. The limited party status expires upon the issuance of a final order on the motion to intervene and for the change of placement of the child. To rebut the presumption, the intervening party must prove by competent and substantial evidence that it is in the best interests of the child to disrupt the current stable prospective adoptive placement using the above-described best interest factors, and any other factors the court deems relevant. These changes further highlight the legislative intent to reduce the disruption of stable and bonded long-term placements by increasing the burden of proof on an intervenor in cases in which a child is in a stable and bonded long-term placement that is a prospective adoptive placement.

Transition Plan

The bill requires the DCF to develop a transition plan to minimize the trauma of removal of the child from his or her current placement if the court grants the motion to intervene and orders a change of placement to the prospective adoptive placement identified by the parent or adoption entity.

The bill changes "minor child" to "child" and makes other conforming changes throughout.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Study

The bill also creates an unnumbered section of law requiring the OPPAGA to conduct a comparative analysis nationally of state processes that allow private adoption entities to intervene or participate in dependency cases. The analysis should look at processes, statutory fee limits, and any regulations on marketing and client recruitment. The bill requires the DCF to provide OPPAGA a list of all licensed adoption entities by July 15, 2023, and for all licensed child-caring and child-placing agencies to provide OPPAGA with any data requested related to contact information for any intermediary adoption entities the agency contracts with, fees and compensation for any portion of intervention adoptions, and related costs. The analysis and report is due to the President of the Senate and Speaker of the House of Representatives by January 1, 2024.

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:

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the "fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.[46] Other due process rights include notice and appointment of counsel for indigent parents.[47]

The Florida Supreme court has held in *Padgett v. Dep't of Health & Rehab. Servs*., 577 So. 2d 565, 570 (Fla. 1991), that while a parent has a fundamental right to raise his or her child, that right is not absolute and is subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail.[48]

Florida's 3rd DCA stated it succinctly as "the wishes of the parents are a factor, but those wishes must be considered with the other [seven] factors, which relate to a determination of what is in the best interest of the child."[49]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[46] *Santosky v. Kramer*, 455 U.S. 745, 756, 769 (1982).
[47] *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).
[48] Citing *In re* Camm, 294 So. 2d 318, 320 (Fla. 1974).
[49] *E.Q. v. Dep't of Child. & Fams*., 208 So. 3d 1258, 1260 (Fla. 3d DCA 2017).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 63.082 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 Perry

9-01673A-23 20231374__

A bill to be entitled

An act relating to child restraint requirements; amending s. 316.613, F.S.; revising requirements for the use of a crash-tested, federally approved child restraint device while transporting a child in a motor vehicle; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, must ~~shall~~, if the child is 7 ~~5~~ years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 2 ~~3~~ years, such restraint device must be a rear-facing five-point harness ~~separate carrier or a vehicle manufacturer's integrated child seat~~.

2. For children aged 3 ~~4~~ through 4 ~~5~~ years, such restraint device must be a forward-facing or rear-facing five-point harness.

3. For children aged 5 through 7 years, such restraint device must be ~~a separate carrier, an integrated child seat, or~~ a child booster seat that incorporates the use of the motor vehicle's safety belt as defined in s. 316.614(3)(b) or must be a forward-facing five-point harness ~~may be used~~. However, the

requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:

a. Is being transported gratuitously by an operator who is not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.

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

The Florida Senate

APPEARANCE RECORD

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

March 20, 2023
Meeting Date

Children Families
Committee

1374
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III

Phone 850-510-9922

Email Barney@BarneyBishop.com

Address 1454 Vieux Carre Drive
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:

Fla. Smart Justice

☐ 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)

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
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March 20, 2023
Meeting Date

SB1374
Bill Number or Topic

Children, Families, and Elder
Committee

Amendment Barcode (if applicable)

Name Monte Stevens

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Address 123 S. Adams St.
Street

Email Stevens@thesouthernagroup.com

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:

AAA

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3/20/23
Meeting Date

CF
Committee

1374
Bill Number or Topic

Amendment Barcode (if applicable)

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Street

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Sarasota FL 34243
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:
Advocacy Institute for Children

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1374

March 20, 2023
Meeting Date

Bill Number or Topic

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Children, Families & Elder affairs
Committee

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. (Florida PTA) Phone 407 853-7604

Address 1747 Orlando Central Pkwy Email legislation@floridapta.org
Street

Orlando, Fl 32809
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 PTA

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/20/23
Meeting Date

1374
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

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Tallahassee FL 32308
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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 Association of Children's Hospitals

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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03/20/23
Meeting Date

Children, Families, & Seniors
Committee

1374
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jason Rodriguez

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Address 2985 Drew Street
Street

Email

Clearwater FL 33759
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:
St. Joseph's Children's Hospital

☐ 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)

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 Children, Families, and Elder Affairs

BILL:	SB 1374
INTRODUCER:	Senator Perry
SUBJECT:	Child Restraint Requirements
DATE:	March 17, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Favorable**
2.			TR	
3.			RC	

I. Summary:

SB 1374 amends current law relating to child restraint requirements while transporting a child in a motor vehicle. The bill increases the age of children which must use a crash-tested, federally-approved child restraint device from age five years or younger to age seven years or younger.

For children under the age of 3, the bill specifically requires the use of a rear-facing five-point harness. For children age 3 through 4, the bill requires the use of a forward-facing or rear-facing five-point harness. For children aged 5 through 7, the bill requires the use of a booster seat which:

- Incorporates the use of the motor vehicle's safety belt; or
- Is a forward-facing or rear-facing five-point harness.

The fiscal impact on private sector sales of child restraint devices is indeterminate. The bill will likely have an indeterminate but insignificant fiscal impact on local governments and the Department of Highway Safety and Motor Vehicles (DHSMV). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Child Restraint Devices or "Car Seats" and National Highway Traffic Safety Administration Recommendations

Car seats available on the market offer a variety of choices. The best choice, according to the National Highway Traffic Safety Administration (NHTSA), is a selection based on a given child's age and size, which complies with the specific car seat manufacturer's instructions for height and weight limits, and is properly installed in accordance with the vehicle's owner's

manual. Further, for maximum safety, the NHTSA recommends keeping a child in a car seat for as long as possible, provided the child does not exceed the manufacturer's height and weight limitations. The NHTSA also recommends keeping a child in the back seat at least through the age of 12.[1]

Car seats are generally available in four types, with variations in each type, including:

- Rear-facing car seats have a harness that, in a crash, cradles and moves with a child to reduce the stress to the child's neck and spinal cord.
- Forward-facing car seats have a harness and tether that limits a child's forward movement during a crash.
- Booster seats raise the height of the child to position the seat belt so that it fits properly over the stronger parts of a child's body.
- Seat belts.[2]

The NHTSA recommends that a child from birth through 12 months should always ride in a rear-facing car seat, noting that convertible and all-in-one versions of these seats usually have higher height and weight limits for the rear-facing position, which facilitates keeping a child in a rear-facing position for a longer period of time.[3]

For children one through three years old, the NHTSA suggests keeping a child in a rear-facing seat until the child reaches the top height or weight limit indicated by the car seat's manufacturer. Once either limit is exceeded, the NHTSA recommends a forward-facing seat with a harness and tether.[4]

For children four through seven years, the NHTSA advises a child should be kept in a forward-facing car seat with a harness and tether until the child reaches the top height or weight limit set by the car seat's manufacturer. Again, once either limit is exceeded, the child should be transported in a booster seat, but the NHTSA recommends the booster seat still be installed properly in the back seat of the vehicle.[5]

For children eight through 12 years, the NHTSA recommends keeping a child in a booster seat until the child is big enough to fit in a seat belt properly. Proper fit in a seat belt for the NHTSA means that the lap belt lies snugly across the upper thighs, not the stomach, and the shoulder belt lies snugly across the shoulder and chest, not across the neck or face. The NHTSA notes the child should still ride in the back seat of the vehicle "because it's safer there."[6]

Child Passenger Safety

According to the Center for Disease Control and Prevention (CDC), motor vehicle injuries are a

[1] The NHTSA, *Car Seats and Booster Seats*, available at https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#age-size-rec (last visited March 13, 2023).
[2] The NHTSA, *Car Seat Types*, available at https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-right-car-seat-car-seat-types (last visited March 13, 2023).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*

leading cause of death among children in the U.S.[7] The CDC data for 2020 indicates that 607 child passengers ages 12 and under were killed in automobile crashes in the U.S.[8] Of the children killed in a crash, 38% were not buckled in.[9]

The CDC reports that the:

- Use of a car seat reduces the risk for of injury children by 71 to 82 percent in passenger vehicles compared to seat belt use alone.
- Use of a booster seat reduces the risk for serious injury by 45 percent for children aged four to eight years when compared with seat belt use alone).
- For older children and adults, use of a seat belt reduces the risk for death and serious injury by approximately one-half.[10]

A study of five states that increased the age requirement to seven or eight years for car seat or booster seat use found that the rate of children using car seats and booster seats increased nearly three times. Further, the rate of children who sustained fatal or incapacitating injuries was reduced by 17 percent.[11]

The CDC has produced guidelines for parents and caregivers that are based on stages, including the use of a:

- Rear-facing car seat, for children birth to age two.
- Forward-facing car seat in the back seat, until at least age five or when they reach the upper weight or height limit of seat.[12]
- Booster seat, until a seat belts fit properly.[13]

A child no longer needs to use a booster seat once seat belts fit them properly. The seat belt fits properly when the lap belt lays across the upper thighs (not the stomach) and the shoulder belt lays across the chest (not the neck). The recommended height for proper seat belt fit is 57 inches tall.[14]

Child Restraint Requirements in Other States

The 50 states and the District of Columbia all have laws requiring some type of child restraint seats for children under a certain age, height, or weight.[15] Many laws require all children to ride in the rear seat whenever possible, and most states permit children over a particular age, height

[7] The CDC, *Child Passenger Safety: Get the Facts – The Scope of the Problem*, available at http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html (last visited March 13, 2023).
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] The CDC, *Child Passenger Safety Infographics*, available at https://www.cdc.gov/vitalsigns/childpassengersafety/infographic.html#:~:text=The%20recommended%20height%20for%20proper%20seat%20belt%20fit%20is%2057%20inches%20tall.&text=Children%20no%20longer%20need%20to,chest%20(not%20the%20neck) (last visited March 13, 2023).
[15] The Governors Highway Safety Association, *Child Passenger Safety*, available at https://www.ghsa.org/state-laws/issues/child%20passenger%20safety (last visited March 13, 2023).

or weight to use an adult safety belt.[16] For example, the state of Connecticut requires children under the age of two or under thirty pounds to ride rear facing in a child restraint system equipped with a five-point harness. Children under the age of five, but not under the age of two, or under forty pounds, but not under thirty pounds, must be in a harness restraint – either a rear-facing or forward-facing car seat. All children under age eight and under sixty pounds must use a child restraint – either a car seat, or a booster seat secured by a lap-and-shoulder belt.[17]

Tennessee requires children under the age of one, or weighing less than twenty pounds, to ride rear-facing in a child restraint system that meets federal motor vehicle safety standards. Children age one through four years old and weighing more than twenty pounds are required to ride in a child safety restraint system (rear facing or forward facing) that meets federal motor vehicle safety standards. Children age four through nine years of age and measuring less than four feet nine inches in height, are required to be in a child booster seat that meets the federal motor vehicle safety standards.[18]

48 states, the District of Columbia, and Puerto Rico require booster seats for children who have outgrown their car seats but are still too small for adult seat belts, and only two states (Florida and South Dakota) do not have legal requirements for booster seats.[19]

Florida Law

Safety Belt Use Under 18

Section 316.614(4)(a), F.S., prohibits a person from operating a motor vehicle[20] or autocycle[21] in this state unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by a safety belt or by a child restraint device, if applicable. As used in s. 316.613, F.S., the term "motor vehicle" does not include:

- A school bus as defined in s. 316.003, F.S.
- A bus used for the transportation of persons for compensation.
- A farm tractor or implement of husbandry.
- A truck having a gross vehicle weight rating of more than 26,000 pounds.
- A motorcycle, moped, or bicycle.[22]

[16] *Id*.
[17] Conn. Gen. Stat. § 14-100a (2022)
[18] Tenn. Code Ann. § 55-9-602 (2022)
[19] The Bump, *A State by State Look at Car Seat and Booster Seat Laws*, available at https://www.thebump.com/a/car-seat-laws and available at https://www.thebump.com/a/car-seat-laws (last visited March 13, 2023).
[20] Section 316.003(46), F.S., defines "motor vehicle," except for purposes of the payment of tolls, as "a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped."
[21] Section 316.003(2), F.S., defines "autocycle" as "a three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration."
[22] Section 316.614(3)(a), F.S.

The term "safety belt" is defined as a seat belt assembly that meets the requirements established under Federal Motor Vehicle Safety Standard No. 208, 49 C.F.R. s. 571.208.[23]

Child Restraint Requirements

Section 316.613, F.S., requires every operator of a motor vehicle operated on the roadways, streets, or highways of this state to provide for protection of a child who is five years of age or younger by properly using a crash-tested, federally approved child restraint device. The device must be a separate carrier or a vehicle manufacturer's integrated child seat for children through three years of age.[24] A separate carrier, an integrated child seat, or a child booster seat may be used for children aged four through five years. However, the requirement does not apply in certain circumstances, including when a safety belt is used and the child:

- Is being transported gratuitously by an operator who is not a member of the child's immediate family;
- Is being transported in a medical emergency situation involving the child; or
- Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.[25]

A violation of s. 316.613, F.S., is a moving violation punishable by a penalty of $60 plus any applicable local court costs.[26] In addition, the violator will have three points assessed against his or her driver license. In lieu of the monetary penalty and the assessment of points, a violator may elect to participate in a child restraint safety program, with the approval of the court with jurisdiction over the violation. After completing the program, the court may waive the monetary penalty, and must waive the assessment of points.[27]

School Buses

Section 316.6145, F.S., requires each school bus[28] purchased new after December 31, 2000, and used to transport students in grades pre-K through 12 be equipped with safety belts or with any other federally approved restraint system in a number sufficient to allow each student being transported to use a separate safety belt or restraint system.[29] Each school district is required to prioritize the allocation of buses equipped with safety belts or restraint systems to children in elementary schools.[30] However, the provisions of s. 316.613, F.S., relating to child safety

[23] Section 316.614(3)(b), F.S.
[24] Section 316.613(1)(a)1., F.S.
[25] Section 316.613(1)(a)2., F.S.
[26] Section 316.613(5), F.S.
[27] *Id.*
[28] Section 316.6145(1)(b), F.S., defines a "school bus" to mean "one that is owned, leased, operated, or contracted by a school district."
[29] Section 316.6145(1), F.S.
[30] Section 316.6145(4), F.S. Section 1006.25(2), F.S., requires each school bus regularly used for the transportation of prekindergarten disability program and K-12 public school students to and from school or to and from school activities, and owned, operated, rented, contracted, or leased by any district school board to comply with the applicable federal motor vehicle safety standards. Subsection (4) of that section requires students be transported only in designated seating positions, except in specified emergency situations, and use the occupant crash protection system provided by the manufacturer. The Department of Education (DOE) posts on its website guidelines providing "clarification and interpretation of the NHTSA Guidelines, and additional background and the DOE recommendations regarding technical and operational issues associated with transporting pre-school age students." *See* The Department of Education, *Florida Guidelines for Seating of Pre-school*

restraints, do not apply to school buses, as they are excluded from the definition of "motor vehicle" for purposes of that section.[31]

Child Care Facility Vehicles

Section 402.305(1), F.S., requires the Department of Children and Families (DCF) to establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served. Section 402.305(10), F.S., requires the minimum standards, among other items, to include requirements for child restraints or seat belts in vehicles used by child care facilities[32] and large family child care homes[33] to transport children.

Pursuant to that direction, each child transported in a child care facility vehicle or a large family child care home vehicle is required to be in an individual, factory-installed seat belt or a federally approved child restraint.[34]

III. Effect of Proposed Changes:

The bill amends s. 316.613, F.S., increasing the age of children which must use a crash-tested, federally-approved child restraint device from age five years or younger to age seven years or younger. The bill eliminates the requirement that children age 4 through 5 be secured with a separate carrier or an integrated child seat and instead requires that children age 3 through 4 to be secured using a rear-facing five-point harness.

The bill also eliminates the requirement that children age 4 through 5 be secured with the age of a child for which use of a separate carrier, an integrated child seat, or a child booster seat. The bill replaces this provision with the following requirements:

- Children age 3 through 4 must be secured with a forward-facing or rear-facing five-point harness; and
- Children age 5 through 7 must be secured with a child booster seat that incorporates the use of the motor vehicle's safety belt as that term is defined in s. 316.614(3)(b) or must be a forward-facing five-point harness.

Age Children in School Buses, available at https://www.fldoe.org/core/fileparse.php/7585/urlt/0085488-flguidelines.pdf (last visited March 13, 2023).

[31] Section 316.613(2)(a), F.S.

[32] Section 402.302(1), F.S., defines "child care" to mean "the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care." Subsection (2) of that section defines "child care facility" to include "any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit."

[33] Section 402.302(11), F.S., defines "large family child care home" to mean "an occupied resident in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation, with one of the two personnel being the owner or occupant of the residence."

[34] *See* Rule 65C-22.001(6)(e), F.A.C.

Because Florida's child restraint requirements are based solely on the child's age, the result may or may not always be consistent with the NHTSA's recommendations, which instead focus on the actual weight and height of the child being transported.

The bill is effective 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:

Compliant child restraint devices may have to be replaced due any defects or wear and tear occurring within the additional year of use required by the bill. However, the fiscal impact on private sector sales of child restraint devices is indeterminate.

Increasing the age a child must be in a child restraint from age five to age seven may result in an increase in the number of child restraint violations issued to drivers.

C. Government Sector Impact:

The DHSMV estimated that increasing the age a child must be in a child restraint from age five to age seven may result in an increase in the number of child restraint violations

issued to drivers, which would likely result in an indeterminate, positive fiscal impact to local governments.[35]

The DHSMV also advised it will have to make updates to the Driver Handbook, driver license knowledge test questions bank, communication educational material, and driver improvement course curriculums to reflect the changes in the bill. In addition, the Division of Motorist Services will have to modify the Uniform Traffic Guide, Appendix C, to reflect the changes in the bill. Accordingly, the bill may result in an indeterminate, likely insignificant negative fiscal impact to the DHSMV.[36]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.613 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.

[35] The Department of Highway Safety and Motor Vehicles, Agency Analysis of Senate Bill 380 (2021), January 5, 2021 (On file with the Senate Committee on Transportation).
[36] *Id.*

By Senator Garcia

36-01294D-23 20231396__

A bill to be entitled

An act relating to the Department of Elderly Affairs; amending s. 400.0069, F.S.; revising the list of individuals who may not be appointed as ombudsmen under the State Long-Term Care Ombudsman Program; amending s. 430.0402, F.S.; revising the definition of the term "direct service provider"; deleting an exemption from level 2 background screening requirements for certain individuals; deleting obsolete language; amending s. 744.2001, F.S.; deleting obsolete language; providing additional duties for the executive director of the Office of Public and Professional Guardians; amending s. 744.2003, F.S.; revising continuing education requirements for professional guardians; amending s. 744.2004, F.S.; requiring the office to notify complainants within a specified timeframe after determining that a complaint against a professional guardian is not legally sufficient; reducing the timeframe within which the office must complete and provide its initial investigative findings and recommendations, if any, to the professional guardian who is the subject of the investigation and to the complainant; requiring the office to provide a certain written statement to the complainant and the professional guardian within a specified timeframe after completing an investigation; deleting obsolete language; amending s. 744.3145, F.S.; providing an additional method of complying with certain

instruction and education requirements for court-appointed guardians; amending s. 744.368, F.S.; requiring clerks of the court to report to the office within a specified timeframe after the court imposes any sanctions on a professional guardian; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 400.0069, Florida Statutes, is amended to read:

400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils; duties; appointment.—

(4) Each district and local council shall be composed of ombudsmen whose primary residences are located within the boundaries of the district.

(b) The following individuals may not be appointed as ombudsmen:

1. The owner or representative of a long-term care facility.

2. A provider or representative of a provider of long-term care service.

3. An employee of the agency.

4. An employee of the department who is not employed in the State Long-Term Care Ombudsman Program~~, except for staff certified as ombudsmen in the district offices~~.

5. An employee of the Department of Children and Families.

6. An employee of the Agency for Persons with Disabilities.

Section 2. Paragraph (b) of subsection (1), paragraphs (a)

and (c) of subsection (2), and subsection (3) of section 430.0402, Florida Statutes, are amended to read:

430.0402 Screening of direct service providers.—

(1)

(b) For purposes of this section, the term "direct service provider" means a person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client and has access to the client's living areas, funds, personal property, or personal identification information as defined in s. 817.568. The term also includes, but is not limited to, the administrator or a similarly titled person who is responsible for the day-to-day operations of the provider, the financial officer or similarly titled person who is responsible for the financial operations of the provider, coordinators, managers, and supervisors of residential facilities, ~~and~~ volunteers, and any other person seeking employment with a provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, financial matters, legal matters, personal property, or living areas.

(2) Level 2 background screening pursuant to chapter 435 and this section is not required for the following direct service providers:

(a)~~1.~~ Licensed physicians, nurses, or other professionals licensed by the Department of Health who have been fingerprinted and undergone background screening as part of their licensure~~;~~ ~~and~~

~~2. Attorneys in good standing with The Florida Bar;~~

if they are providing a service that is within the scope of their licensed practice.

(c) Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.

1. The program that provides services to the elderly is responsible for verifying that the volunteer is not listed on either database.

2. ~~Once the department is participating as a specified agency in the clearinghouse created under s. 435.12,~~ The provider shall forward the volunteer information to the Department of Elderly Affairs if the volunteer is not listed in either database specified in subparagraph 1. The department must then perform a check of the clearinghouse. If a disqualification is identified in the clearinghouse, the volunteer must undergo level 2 background screening pursuant to chapter 435 and this section.

~~(3) Until the department is participating as a specified agency in the clearinghouse created under s. 435.12, the department may not require additional level 2 screening if the individual is qualified for licensure or employment by the Agency for Health Care Administration pursuant to the agency's background screening standards under s. 408.809 and the individual is providing a service that is within the scope of his or her licensed practice or employment.~~

Section 3. Subsections (2) and (3) of section 744.2001,

Florida Statutes, are amended to read:

744.2001 Office of Public and Professional Guardians.—There is created the Office of Public and Professional Guardians within the Department of Elderly Affairs.

(2) The executive director shall, within available resources:

(a) Have oversight responsibilities for all public and professional guardians.

(b) Establish standards of practice for public and professional guardianship associations and other interested stakeholders~~, no later than October 1, 2016. The executive director shall provide a draft of the standards to the Governor, the Legislature, and the secretary for review by August 1, 2016~~.

(c) Review and approve the standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

(d) Offer and make available online an education course to satisfy the requirements of s. 744.3145(2).

(e) Produce and make available information about alternatives to and types of guardianship for dissemination by area agencies on aging as defined in s. 430.203 and aging resource centers as described in s. 430.2053.

(3) The executive director's oversight responsibilities of professional guardians ~~must be finalized by October 1, 2016, and shall~~ include, but are not limited to:

(a) Developing and implementing a monitoring tool to ensure compliance of professional guardians with the standards of practice established by the Office of Public and Professional

Guardians. This monitoring tool may not include a financial audit as required by the clerk of the circuit court under s. 744.368.

(b) Developing procedures, in consultation with professional guardianship associations and other interested stakeholders, for the review of an allegation that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians.

(c) Establishing disciplinary proceedings, conducting hearings, and taking administrative action pursuant to chapter 120.

Section 4. Subsection (3) of section 744.2003, Florida Statutes, is amended to read:

744.2003 Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian as defined in s. 744.102(17) and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 30 ~~16~~ hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The required continuing education must include at least 2 hours on fiduciary responsibilities; 2 hours on professional ethics; 1 hour on advance directives; 3 hours on abuse, neglect, and exploitation; and 4 hours on guardianship law. The instruction and education must be completed through a course approved or offered by the Office of Public and Professional Guardians. The expenses incurred to satisfy the educational requirements prescribed in

this section may not be paid with the assets of any ward. This subsection does not apply to any attorney ~~who is~~ licensed to practice law in this state or an institution acting as guardian under s. 744.2002(7).

Section 5. Subsections (1) and (6) of section 744.2004, Florida Statutes, are amended to read:

744.2004 Complaints; disciplinary proceedings; penalties; enforcement.—

(1) ~~By October 1, 2016,~~ The Office of Public and Professional Guardians shall establish procedures to:

(a) Review and, if determined legally sufficient, initiate an investigation within 10 business days after receipt of ~~investigate~~ any complaint that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians. A complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

(b) Notify the complainant ~~Initiate an investigation~~ no later than 10 business days after the Office of Public and Professional Guardians determines that a complaint is not legally sufficient ~~receives a complaint~~.

(c) Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and the person who filed the complaint within 45 ~~60~~ days after receipt of a complaint.

(d) Obtain supporting information or documentation to determine the legal sufficiency of a complaint.

(e) Interview a ward, family member, or interested party to

determine the legal sufficiency of a complaint.

(f) Dismiss any complaint if, at any time after legal sufficiency is determined, it is found there is insufficient evidence to support the allegations contained in the complaint.

(g) Within 10 business days after completing an investigation, provide to the complainant and the professional guardian a written statement specifying any finding of a violation of a standard of practice by the professional guardian and any actions taken, or specifying that no such violation was found, as applicable.

(h) Coordinate, to the greatest extent possible, with the clerks of court to avoid duplication of duties with regard to the financial audits prepared by the clerks pursuant to s. 744.368.

(6) ~~By October 1, 2016,~~ The Department of Elderly Affairs shall adopt rules to implement the provisions of this section.

Section 6. Subsection (4) of section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.—

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within 4 months after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization or through a course offered by the Office of Public and Professional Guardians under s. 744.2001. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The

Florida Bar.

Section 7. Subsection (8) is added to section 744.368, Florida Statutes, to read:

744.368 Responsibilities of the clerk of the circuit court.—

(8) Within 10 business days after the court imposes any sanctions on a professional guardian, including, but not limited to, contempt of court or removal of the professional guardian, the clerk shall report such actions to the Office of Public and Professional Guardians.

Section 8. This act shall take effect July 1, 2023.

From: Tyler Jefferson
To: Cox, Ryan; Delia, Peter
Subject: OPPG Question
Date: Thursday, February 2, 2023 5:59:19 PM

Good evening,

The average amount of time it took the SIA to complete an investigation during calendar years 21-23 was 8.14 months. Please let me know if you have any questions.

Thank you,

Lowery, Nikki

From: Delia, Peter
Sent: Friday, March 17, 2023 2:39 PM
To: Lowery, Nikki
Subject: FW: DCF: SB 1412 - FSA Feedback

From: Allie McNair <amcnair@flsheriffs.org>
Sent: Thursday, March 16, 2023 1:31 PM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>; Cox, Ryan <Cox.Ryan@flsenate.gov>; Delia, Peter <Delia.Peter@flsenate.gov>
Subject: RE: DCF: SB 1412 - FSA Feedback

Thank you for the introduction JP. Our legislative committee reviewed those sections impacting the sherris and we were good with those provisions. I would be happy to answer any questions you might have or discuss more in depth.

Thanks!

Allie (Pass) McNair, Government Affairs Coordinator
(850) 877-2165 x. 5841 (office)
(850) 566-1979 (cell)
FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Thursday, March 16, 2023 12:54 PM
To: Allie McNair <amcnair@flsheriffs.org>; Cox, Ryan <Cox.Ryan@flsenate.gov>; Delia, Peter <Delia.Peter@flsenate.gov>
Subject: DCF: SB 1412 - FSA Feedback

Good Afternoon Allie,

Following up on our call, please let this email serve as an introduction between you and Senate CFE Staff. Allie serves as the Director of Legislative Affairs for the Florida Sheriff's Association. Ryan Cox is the S. CFE Staff Director and Peter Delia is the Senior Staff Attorney over SAMH issues.

As we discussed, they would like to know what FSA's position is on SB 1412. They may have other questions too, but I'll leave that to them.

Best,
JP

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TRANSPARENT • OPTIMISTIC
ENGAGED • COLLABORATIVE
IDEAL TEAM PLAYERS

John Paul Fiore, J.D.
Director of Legislative Affairs
Office of the Chief of Staff
Florida Department of Children and Families
2415 North Monroe Street, A153
Tallahassee, Florida 32303
Office: (850) 488-9410
Cell: (850) 354-1551

Lowery, Nikki

From: Delia, Peter
Sent: Friday, March 17, 2023 2:39 PM
To: Lowery, Nikki
Subject: FW: Forensic Bed Waitlist

From: Delia, Peter
Sent: Wednesday, March 15, 2023 5:19 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Subject: FW: Forensic Bed Waitlist

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Wednesday, March 15, 2023 4:41 PM
To: Delia, Peter <Delia.Peter@flsenate.gov>
Cc: Guzman, Alex <alex.guzman@myflfamilies.com>; Corcoran, Chad <chad.corcoran@myflfamilies.com>
Subject: RE: Forensic Bed Waitlist

Peter,

Please see below:

- Forensic Wait List – 330
- 45 admissions this week

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Cell: (850) 354-1551

From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Tuesday, March 14, 2023 10:55 AM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>
Subject: Forensic Bed Waitlist

Hey John Paul, would you mind sending over current numbers for the forensic bed waitlist?

Thanks!

Peter Delia
Senior Attorney
Florida Senate
Committee on Children, Families,
And Elder Affairs
404 South Monroe Street
520 Knott Building
Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

Lowery, Nikki

From: Delia, Peter
Sent: Friday, March 17, 2023 2:40 PM
To: Lowery, Nikki
Subject: FW: SB 1600

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Saturday, January 29, 2022 4:39 PM
To: Delia, Peter <Delia.Peter@flsenate.gov>
Subject: RE: SB 1600

Peter,

The table below reflects the data on January 13, 2022.

Individuals on the Waitlist	**548**
Individuals on the Waitlist for Greater Than 15 days	**492**
Average Number of Days Individuals Are on the Waitlist	**59**
Number of Individuals Waiting	**Number of Days Waiting**
287	**0-60 Days**
203	**61-100 Days**
58	**101 Days and Over**

John Paul Fiore, J.D.
Director of Legislative Affairs
Florida Department of Children and Families
2415 North Monroe Street, Suite A150
Tallahassee, Florida 32303
Office: (850) 488-9410 | Cell: (850) 354-1551

From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Saturday, January 29, 2022 12:28 PM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>
Subject: RE: SB 1600

Thanks so much JP, I've got it. One other question: Do you all have current numbers for the forensic bed waitlist?

Peter Delia
Senior Attorney
Florida Senate
Committee on Children, Families,
And Elder Affairs
404 South Monroe Street
520 Knott Building
Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Thursday, January 27, 2022 3:40 PM
To: Delia, Peter <Delia.Peter@flsenate.gov>
Cc: Brown, Terri <Terri.Brown@myflfamilies.com>; Cox, Ryan <Cox.Ryan@flsenate.gov>
Subject: RE: SB 1600

Hey Peter,

We'll get that over to you ASAP. It's with OPB now.

JP

From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Thursday, January 27, 2022 12:47 PM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>
Subject: SB 1600

Hey JP, do you all have an analysis for SB 1600 available?

Thanks!

Peter Delia
Senior Attorney
Florida Senate
Committee on Children, Families,
And Elder Affairs
404 South Monroe Street
520 Knott Building
Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

From: Tyler Jefferson
To: Delia, Peter
Subject: RE: Data Request
Date: Wednesday, February 8, 2023 9:40:10 AM

2021 (Jan-Dec) 150 complaints received by OPPG and 91 sent for investigation to the Statewide Investigative Alliance
2022 (Jan-Nov 30) 71 complaints received by OPPG and 24 sent for investigation to the Statewide Investigative Alliance

Thank you,

From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Tuesday, February 7, 2023 12:34 PM
To: Tyler Jefferson <jeffersont@elderaffairs.org>
Subject: Data Request

Good afternoon Tyler,

I have one quick request for you, and I apologize if this was mixed in with some of the data you provided us previously. Can you give me the numbers of complaints filed with OPPG against a guardian or involving a guardianship in 2021 and 2022?

Thanks!

Peter Delia
Senior Attorney
Florida Senate
Committee on Children, Families,
And Elder Affairs
404 South Monroe Street
520 Knott Building
Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

withheld from disclosure if deemed confidential pursuant to the laws of the State of Florida.

The Florida Senate

APPEARANCE RECORD

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

03/20/23
Meeting Date

Children, Families, Elder
Committee

SB 1396
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tyler Jefferson - Dept of Elder Affairs

Phone 850-414-2130

Address 4040 Esplanade Way
Street

Email jeffersont@elderaffairs.org

Tallahassee FL 32399
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:

Dept of Elder Affairs

☐ 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)

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

S-001 (08/10/2021)

March 20, 2023
Meeting Date

Children Families
Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1396
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III

Phone 850-510-9922

Address 1454 Vieux Carre Drive
Street

Email Barney@BarneyBishop.com

Tallahassee — *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:
Fla. Smart Justice

☐ 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)

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

S-001

3/20/2023
Meeting Date

The Florida Senate

APPEARANCE RECORD

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

1396
Bill Number or Topic

Children, Families, and
Committee

Amendment Barcode (if applicable)

Name Nick Mayor

Phone 850-524-9659

Address 215 South Monroe St
Street

Email nmayor@aarp.org

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:

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.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL:	SB 1396
INTRODUCER:	Senator Garcia
SUBJECT:	Department of Elderly Affairs
DATE:	March 17, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Favorable**
2.			RC	

I. Summary:

SB 1396 makes several changes to certain programs operated within the Department of Elder Affairs (DOEA). Specifically, the bill:

- Permits Long-Term Care Ombudsman Program staff employed in the state office of the Program to become certified as ombudsmen.
- Deletes obsolete language relating to the DOEA joining the Background Screening Clearinghouse within the Agency for Health Care Administration (the AHCA), and includes certain persons within the definition of 'direct service provider' who require a level 2 background screening.
- Revises the duties of the executive director of the Office of Public and Professional Guardianship (the OPPG) to include offering and making certain information about alternatives to and types of guardianship available for dissemination by the Area Agencies on Aging and Aging Resource Centers throughout the state.
- Increases the continuing education requirements of professional guardians and specifies the number of continuing education hours required for certain topics.
- Reorganizes language for clarity and requires the OPPG to notify complainants no later than 10 business days after the OPPG determines that a complaint is not legally sufficient.
- Revises the number of days within which the OPPG must complete and provide any initial investigative findings and recommendations to both the guardian and the complainant from 60 to 45 days.
- Requires the OPPG to provide both the guardian and the complainant with a written statement specifying any finding of a violation of a standard of practice by a professional guardian and any actions taken or specifying that no such violation was found within 10 business days after completing an investigation.
- Requires the Clerks of the Circuit Court (Clerks) to report sanctions imposed by the court on a professional guardian to the OPPG within a specified time frame.

The bill may have a negative fiscal impact on the DOEA. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program (the Program) to be eligible to receive funding associated with programs under the OAA.[1] The Program was founded in 1975 as a result of the OAA, which grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities (ALFs), and adult family care homes.[2] Volunteer ombudsmen seek to ensure the health, safety, welfare and rights of these residents throughout Florida.

The Program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.[3] The Program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes.[4] Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.[5] In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.[6]

The State Ombudsman carries out his or her responsibilities under Florida and federal law through the training and certification of volunteers who operate through district and local councils, and through staff positions in the state and district offices established to coordinate and assist the local councils.[7]

Federal regulations provide that the State Ombudsman may designate employees or volunteers within the Program office to carry out the duties of the office as "representatives of the office," subject to the training and certification requirements for representatives of the office.[8] However, Florida law specifies certain categories of individuals who may not be appointed as ombudsmen, including, in part, "An employee of the [DOEA], except for staff certified as ombudsmen in the

---

[1] *See* s. 400.0061(1), F.S.; *see also* the Office of Program Policy Analysis and Governmental Accountability, *Department of Elder Affairs, Older Americans Act Programs*, available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5026 (last visited March 16, 2023).
[2] The Florida Ombudsman Program, *About Us*, available at https://ombudsman.elderaffairs.org/about-us/ (last visited March 13, 2023).
[3] Section 400.0063(2), F.S.
[4] Section 400.0078(1), F.S.
[5] Section 400.0078(2), F.S.
[6] *See* s. 400.0074, F.S.
[7] The Department of Elder Affairs (the DOEA), *Agency Analysis of SB 1396*, p. 2, February 11, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOEA Analysis").
[8] *Id*.

district offices."[9] "Offices" in this context refers to the district offices of the State Long-Term Care Ombudsman Program.[10] Read together, these provisions exempt staff in the Program's district offices from the general prohibition against appointment of DOEA employees as ombudsmen, but they do not permit staff in the Program's state office to be appointed as ombudsmen.[11]

Background Screening

Chapter 435, F.S., establishes standard procedures for criminal history background screening of certain prospective employees working with vulnerable populations. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[12] and may include criminal records checks through local law enforcement agencies.[13]

Level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[14]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[15] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.[16]

For both level 1 and 2 screenings, an employer must submit the information necessary for screening to the FDLE within five working days after receiving it.[17] Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.[18] For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[19] For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[20]

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[9] *See* s. 400.0069(4)(b)4., F.S.
[10] The DOEA Analysis at p. 2; *see also* s. 400.0060(7), F.S.
[11] *Id*.
[12] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at https://www.nsopw.gov/ (last visited March 13, 2023).
[13] Section 435.03, F.S.
[14] Section 435.04, F.S.
[15] Section 435.05(1)(a), F.S.
[16] Sections 435.03(1) and 435.04(1)(a), F.S.
[17] Section 435.05(1)(b)-(c), F.S.
[18] *Id*.
[19] Section 435.05(1)(b), F.S.
[20] Section 435.05(1)(c), F.S.

The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[21]

Various agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with entities who serve vulnerable populations are subject to background screening; however, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting.[22] In 2012, the Legislature created the Care Provider Background Screening Clearinghouse to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.[23] Designated agencies include the Agency for Health Care Administration (the AHCA), the Department of Health (the DOH), the Department of Children and Families (the DCF), the DOEA, the Agency for Persons with Disabilities (the APD), and Vocational Rehabilitation within the Department of Education (the DOE).[24]

Direct Service Providers

Direct service providers are individuals who have direct, face-to-face contact with clients served by the DOEA while providing services to the client and who have access to the client's living areas, funds, personal property, or person identification information as defined in s. 817.568, F.S.[25, 26] Direct service providers must undergo a level 2 background screening, including employment history checks and local criminal records checks through local law enforcement agencies.[27]

However, current law provides that attorneys in good standing with the Florida Bar are exempt from background screening requirements if they are a direct service provider.[28] While the Florida Bar requires background screening for when an individual applies for their bar license, the Florida Bar does not have an automatic notification system for any subsequent arrests.[29] The

[21] Section 435.05(1)(d), F.S.
[22] The DOEA Analysis at p. 3.
[23] *Id.*; *see also* s. 435.12, F.S. and ch. 2012-73, L.O.F.
[24] *Id*.
[25] Section 430.0402(1)(b), F.S. The individual must be 18 years of age or older.
[26] Section 817.568, F.S., defines "personal identification information" to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any: 1. name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2. unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3. unique electronic identification number, address, or routing code; 4. Medical records; 5. Telecommunication identifying information or access device; or 6. Other number or information that can be used to access a person's financial resources.
[27] Section 430.0402(1)(a), F.S.
[28] Section 430.0402(2), F.S.
[29] The DOEA Analysis at p. 3.

Florida Bar only requires attorneys to self-report when arrested; therefore, an attorney may be in good standing, but have an arrest or conviction that has not been reported to the Florida Bar.[30]

Aging and Disability Resource Centers

The DOEA administers programs and services for elders across the state of Florida through 11 Area Agencies on Aging, which operate as Aging and Disability Resource Centers (ADRCs).[31] These ADRCs function as a single, coordinated system for information and access to services for all Floridians seeking long-term care resources.[32] The ADRCs provide information and assistance about state and federal benefits, as well as available local programs and services.[33] The primary functions of the ADRCs include providing information and referral services, ensuring that eligibility determinations are done properly and efficiently, triaging clients who require assistance, and managing the availability of financial resources for certain key long-term care programs targeted for elders to ensure financial viability and stability.[34]

Florida's 11 ADRCs are distributed throughout the state as shown in the map below:[35]

[30] *Id.*
[31] The DOEA, *Aging and Disability Resource Centers (ADRCs)*, available at https://elderaffairs.org/resource-directory/aging-and-disability-resource-centers-adrcs/ (last visited March 13, 2023).
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property, or both.[36] Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.[37] The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.[38]

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.[39] Once a person has been adjudicated incapacitated, termed a "ward", the court appoints a guardian and the letters of guardianship are issued.[40] The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.[41]

Public and Professional Guardians

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.[42] A public guardian is considered a professional guardian for purposes of regulation, education, and registration.[43]

Office of Public and Professional Guardians

In 1999, the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within the DOEA.[44] In 2016, the Legislature renamed the Statewide Public Guardianship Office as the Office of Public and Professional Guardians (OPPG), required the OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and investigators.[45] The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.[46]

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[36] Section 744.102(9), F.S.
[37] Section 744.1012(1), F.S.
[38] Section 744.1012(2), F.S
[39] Section 744.3201, F.S.
[40] *See* s. 744.345, F.S.
[41] Section 744.2005, F.S.
[42] Section 744.102(17), F.S
[43] *Id*.
[44] Chapter 99-277, L.O.F.
[45] Chapter 2016-40, L.O.F.
[46] The DOEA, *Office of Public and Professional Guardians*, available at https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/ (last visited March 13, 2023).

There are 16 public guardian offices that serve all 67 counties.[47] Since 2016, approximately 550 professional guardians have registered with the OPPG statewide.[48]

Registration

A professional guardian must register with the OPPG annually.[49] As part of the registration, the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;[50]
- Successfully pass an examination approved by the DOEA to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.[51, 52]

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.[53]

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.[54] The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.[55]

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of ch. 744, F.S.[56] The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.[57] There is also currently no statutory requirement neither for courts to report removal of guardians to the OPPG.

[47] *Id*.
[48] *Id*.
[49] Section 744.2002, F.S.
[50] This training may not be paid with the assets of the ward.
[51] Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than $50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.
[52] Sections 744.2002(3) and 744.3135, F.S.
[53] Section 744.2003(3), F.S.
[54] Section 744.3135(1), F.S.
[55] Section 744.2002(9), F.S.
[56] Section 744.2002(5), F.S.
[57] Section 744.2004(4), F.S.

OPPG Disciplinary Action

Disciplinary action may be taken against a professional guardian for:

- Making a misleading, deceptive, or fraudulent representation in or related to the practice of guardianship;
- Violating any rule governing guardians or guardianship adopted by OPPG;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to a crime which relates to the practice of, or ability to practice as, a professional guardian;
- Failing to comply with the educational course requirements for professional guardians;
- Having a registration, license, or authority to practice a regulated profession revoked;
- Knowingly filing a false report or complaint with OPPG against another guardian;
- Attempting to obtain, obtaining, or renewing a registration or license to practice a profession by bribery, fraud, or a known error;
- Failing to report a violation of ch. 744, F.S., or the rules of OPPG to OPPG;
- Failing to perform a legal or statutory obligation;
- Making or filing a false report that is signed in the person's capacity as professional guardian;
- Using the position of guardian for financial gain;
- Violating or failing to comply with an order from OPPG;
- Improperly interfering with an investigation;
- Using the guardianship relationship to engage or attempt to engage in sexual activity;
- Failing to report to OPPG within 30 days being convicted or found guilty of, or enter a plea of guilty or nolo contendere to a crime;
- Being unable to perform the functions of guardian;
- Failing to post and maintain a blanket fiduciary bond;
- Failing to maintain all records relating to a guardianship for specified time; or
- Violating any provision of ch. 744, F.S., or any rules adopted thereunder.[58]

When the OPPG finds that a professional guardian is guilty of any of the grounds for discipline, it may take action against that guardian by entering an order imposing one or more penalties on the professional guardian.[59] When determining what action is appropriate against a professional guardian, prior to consideration of any mitigation or rehabilitation for the professional guardian, the OPPG must first consider what sanctions are necessary to safeguard the wards and protect the public.[60] The OPPG may impose any combination of the following sanctions:

- Refuse to register an applicant as a professional guardian;
- Suspend or revoke a professional guardian's registration;
- Issue a reprimand;
- Require treatment, completion of continuing education courses, or reexamination;
- Require restitution; or
- Require remedial education.[61]

[58] Section 744.20041(1), F.S.
[59] Section 744.20041(2), F.S.
[60] Section 744.20041(3), F.S.
[61] Section 744.20041(2), F.S.

If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.[62]

Guardian Complaints and Investigations

Any person may submit a complaint against a professional guardian to the OPPG. In 2016, the Legislature expanded the responsibility and authority of the OPPG.[63] SB 232 required OPPG to investigate allegations of suspected wrongdoing perpetrated by public and professional guardians.[64] Once the OPPG receives a complaint a procedure is initiated to investigate the complaint, including that the OPPG is required to:

- Review and, if determined legally sufficient,[65] investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.[66]

To achieve the statutory duty to investigate such complaints, on July 14, 2016, the OPPG entered into a memorandum of understanding (MOU) with six clerks in different regions of the state, collectively referred to as the Statewide Investigation Alliance (SIA), and have since referred many complaints of professional guardians to the SIA for investigations.[67] The six county clerks comprising the SIA are:

- Palm Beach County;
- Pinellas County;
- Sarasota County;
- Lee County;
- Okaloosa County; and
- Polk County.[68]

Investigations which find substantiated allegations of violations by professional guardians may be referred to law enforcement, the Office of the Attorney General, the Office of the State Attorney, or the Florida Bar, as appropriate.[69]

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[62] Section 744.20041(9), F.S.
[63] Chapter 2016-40, L.O.F., *see also* Florida Court Clerks and Comptrollers Association, *Statewide Investigative Alliance*, available at https://flclerksia.com/ (last visited March 13, 2023) (hereinafter cited as "Clerks Association").
[64] Florida Court Clerks and Comptrollers Association, *Statewide Investigative Alliance*, available at https://flclerksia.com/ (last visited March 12, 2023).
[65] Section 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.
[66] Section 744.2004, F.S.
[67] *Id*.
[68] Clerks Association. Lake County was also a part of the SIA from July 2016 through July 2018.
[69] *Id*.

According to the DOEA, the annual numbers of complaints filed against a guardian or involving a guardianship since 2016 are as follows:

- 183 in 2016;
- 132 in 2017;
- 56 in 2018;
- 113 in 2019;
- 169 in 2020;
- 150 in 2021; and
- 71 received through November 30, 2022.[70]

Further, the DOEA has stated that the average amount of time it took the SIA to complete an investigation over the period from 2021 through 2023 was approximately 8.14 months.[71]

Auditor General Report

In August 2020, the Florida Auditor General released a report (AG Report) containing the findings of an audit conducted of the OPPG.[72] The AG Report detailed the following findings specifically related to the OPPG:

- Finding 1: Contrary to State law, the OPPG did not establish policies and procedures for monitoring private professional guardians, develop or implement a monitoring tool, or monitor private professional guardians for compliance with OPPG standards of practice governing the conduct of professional guardians.
- Finding 2: OPPG efforts to monitor Public Guardian Offices (PGOs) were not always adequate to ensure that:
  - OPPG records evidenced that program monitors were free from conflicts of interest, all State guardianship rules were subject to adequate monitoring.
  - Monitoring Tool responses were supported by and consistent with source documentation, and monitoring reports were appropriately reviewed and timely provided to PGOs.
- Finding 3: OPPG complaint processing controls need improvement to ensure that:
  - Complaints are referred and related investigation activities are conducted in accordance with State law, OPPG policies and procedures, other guidelines, and management expectations;
  - Investigations include all applicable complaint allegations; and
  - Guardians and complainants are timely notified of whether disciplinary actions are taken.
- Finding 4: Contrary to State law, the DOEA had not adopted rules for certain OPPG processes, including the process for investigating complaints.
- Finding 5: OPPG controls need enhancement to ensure that, prior to reimbursing Clerks of the Court for the direct costs of guardianship complaint investigations, invoiced amounts are adequately supported and agree with established rates.

[70] Email from Derek Miller, former Legislative Affairs Director, the DOEA, August 26, 2021; Email from Tyler Jefferson, Legislative Affairs Director, the DOEA, February 8, 2023 (all documents on file with the Senate Committee on Children, Families, and Elder Affairs).
[71] Email from Tyler Jefferson, Legislative Affairs Director, the DOEA, February 2, 2023 (on file with the Senate Children, Families, and Elder Affairs Committee).
[72] The State of Florida Auditor General, *Operational Audit No. 2021-010: Department of Elder Affairs, Office of Public and Professional Guardians and Selected Administrative Activities* August 2020, available at https://flauditor.gov/pages/pdf_files/2021-010.pdf (last visited March 13, 2023) (hereinafter cited as "AG Report").

- Finding 6: OPPG controls did not adequately promote the timely submittal of annual professional guardian renewal registrations or ensure that the courts responsible for appointing guardians were timely notified of lapses in guardian registration.[73]

Finding 3: Complaint Investigations

According to the AG Report, the OPPG and the SIA entered into a subsequent MOU in July 2018 pursuant to which the SIA was responsible for investigating all complaints against professional guardians referred by the OPPG, and the OPPG was responsible for determining whether disciplinary or administrative action against a guardian was warranted.[74] According to the OPPG records, during the period July 2017 through January 2019, the OPPG received 90 complaints against 57 guardians. Of the 90 complaints, the OPPG closed only 1 complaint which was initially received in December 2017.[75] During that same period, the OPPG closed 31 complaints received prior to July 2017 related to 23 guardians.[76] Additionally, during the period July 2017 through January 2019, only one complaint led to an administrative action which resulted in the revocation of the guardian's registration in March 2019.[77]

The 2018 MOU and the OPPG policies and procedures required the OPPG to determine whether a complaint was legally sufficient and appropriate for investigation within 3 business days of receiving the complaint.[78] Such complaints were to be referred to the Administrative Coordinator (AC) who was also responsible for reviewing the complaints for legal sufficiency and assigning legally sufficient guardianship complaints to the applicable Clerk for investigation.[79]

The Auditor General reviewed records for 20 of the 32 complaints recorded as closed in the OPPG Complaint Intake Log during the period July 2017 through January 2019 to determine whether the OPPG had established adequate complaint processing controls.[80] The AG Report concluded that the OPPG referred 12 of the complaints to the AC within 4 to 116 business days (an average of 64 business days) after receiving the complaints.[81] Additionally, the investigations for 11 of these complaints were not initiated within 10 business days of the OPPG receiving the complaint.[82] The investigations for the 11 complaints were initiated from 19 to 110 business days after the OPPG received the complaint.[83] As a result of these various delays, the Investigative Memoranda or Investigation Report, as applicable, for the 12 complaint investigations were not provided to the OPPG within 60 days of receipt of the complaint.[84] Specifically, the Memoranda and one Investigation Report were provided to the OPPG within 63 to 228 days (an average of 150 days) after the OPPG received the complaints.[85]

[73] *Id*. at p. 1.
[74] *Id*. at p. 3.
[75] *Id*.
[76] AG Report at p. 3-4.
[77] *Id*. at p. 4.
[78] *Id*. at p. 9.
[79] *Id*.
[80] AG Report at p. 10.
[81] *Id*. at p. 10.
[82] *Id*.
[83] *Id*.
[84] *Id*.
[85] *Id*.

Finding 4: OPPG Rules

SB 232 (2016) required the DOEA to adopt rules implementing provisions for OPPG complaint, disciplinary proceeding, and enforcement processes by October 1, 2016.[86] The AG Report noted that the DOEA had not, as of the time of the audit in 2020, adopted rules for:

- Investigating complaints against guardians;
- Communicating the disciplinary process to guardians and complainants; or
- Reporting determined or suspected abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline established by the DCF.[87]

To date, the DOEA has not promulgated rules to address the issues detailed in findings 3 and 4 of the AG Report.

III. Effect of Proposed Changes:

Ombudsman Program Staff (Section 1)

The bill expressly adds staff employed in the state office of the Program, in addition to staff employed in district offices, to the category of employees exempt from the prohibition against DOEA employees serving as ombudsmen. This clarifies that such state Program employees may be certified as ombudsmen and be designated as a representative of the office. Additionally, by becoming certified ombudsmen, state Program staff will gain a better understanding of the issues faced by ombudsmen around the state.

Background Screening Requirements (Section 2)

The bill requires any attorney, regardless of whether the attorney is licensed in Florida, to be background screened if serving as a direct service provider.

Additionally, the bill amends the definition of direct service providers to include, but not be limited to, the following additional persons:

- Administrators of persons who are responsible for the day-to-day operations of other providers or financial officers who are responsible for the financial operations of providers;[88] and
- Any other person who is seeking employment with a provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to:
  - Client funds;
  - Financial matters;
  - Legal matters;
  - Personal property; or
  - Living areas.

[86] *Id*. at p. 13; Section 744.2006
[87] *Id*.
[88] The bill provides that this includes "similarly titled persons" to the administrators and the financial officers.

The bill also deletes obsolete language relating to the DOEA joining the Clearinghouse, as the DOEA has since become a part of the Clearinghouse.

OPPG Related Provisions

Information Dissemination to Certain Stakeholders (Section 3, in part)

The bill requires the OPPG to provide information relating to alternatives to and types of guardianship to Area Agencies on Aging and Aging Resource Centers for dissemination to the populations they serve, allowing the public to become more aware of guardianships and what options may be available to them.

OPPG Online Education Course (Sections 3, in part, and 6)

The bill requires the executive director of the OPPG, within available resources, to offer an online education course for guardians who are not professional guardians.

The bill offers court-appointed guardians the option to complete the requisite number of hours of instruction and education needed within the first 4 months of appointment through a course offered by the OPPG under s. 744.2001, F.S. This provides an additional option for all guardians in completing required training, but may be especially useful for non-professional guardians unsure of where or how to complete the requisite training.

Continuing Education Requirements (Section 4)

The bill revises the continuing education requirements of professional guardians by increasing the hours of continuing education required to be taken by a professional guardian from 16 hours to 30 hours every two years and be completed through a course approved or offered by the OPPG. The bill specifically requires that continuing education include at least:

- 2 hours on fiduciary responsibilities;
- 2 hours on professional ethics;
- 1 hour on advance directives;
- 3 hours on abuse, neglect, and exploitation; and
- 4 hours on guardianship law.

Complaint Investigations by the OPPG (Section 5)

The bill revises the process by which the OPPG is required to investigate complaints made against a professional guardian and details timelines for providing information to the complainant and the professional guardian who is subject to the complaint. The OPPG must review complaints and, if determined legally sufficient, initiate investigations within 10 business days of receiving a complaint. The bill also requires the OPPG to notify the complainant no later than 10 business days after the OPPG determines a complaint is not legally sufficient. Additionally, within 45 business days (rather than the current 60 business days) after receipt of a complaint, the OPPG must complete and provide initial investigative findings and recommendations, if any, to the professional guardian and the complainant.

Within 10 business days after completing an investigation, the OPPG must provide the complainant and the professional guardian with a written statement specifying any finding of a

violation of a standard of practice by a professional guardian and any actions taken, or specifying that no such violation was found. Written statements will need to adhere to the confidentiality requirements of s. 744.2111, F.S., relating to complaints against professional guardians.

The OPPG did not previously raise objections to the timelines imposed by the bill when similar provisions were included in HB 7025 (2020).[89]

Responsibilities of the Clerk of the Circuit Court (Section 7)

The bill adds the reporting of any sanctions imposed by the court on a professional guardian, including, but not limited to, contempt of court or removal of the professional guardian, to the responsibilities of the clerk of the circuit court. The clerk must submit such information to the OPPG within 10 business days after the court imposes any sanctions, which will close the communication loop between the court and the OPPG.

Rulemaking (Sections 3 and 5)

The bill removes obsolete language from SB 232 (2016) requiring the OPPG to take certain actions by various dates in 2016. However, as mentioned above, the OPPG still has not promulgated these Rules and will need to promulgate these to be in compliance with Florida law.

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.

[89] *See* The DOEA, *Agency Analysis of HB 7025 (2020)*, January 21, 2020 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, "The DOEA HB 7025 Analysis").

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill that require background screening for a broader pool of individuals under the revised definition of 'direct service provider' may result in an indeterminate negative fiscal impact on those individuals.

C. Government Sector Impact:

The DOEA states that the provisions of the bill relating to certification of Program staff and background screening are not expected to have a fiscal impact on the agency.[90] The revised OPPG requirements may require additional staff, which may lead to an indeterminate negative fiscal impact; however the OPPG did not previously anticipate a fiscal impact for identical provisions in HB 7025 (2020).[91]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 400.0069, 430.0402, 744.2001, 744.2003, 744.2004, 744.3145, and 744.368 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.

[90] The DOEA Analysis at p. 4.
[91] The DOEA HB 7025 Analysis at p. 4.

By Senator Bradley

6-00907B-23 20231412__

A bill to be entitled

An act relating to mental health; amending s. 394.461, F.S.; authorizing the Department of Children and Families to issue a conditional designation for up to a certain number of days to allow the implementation of certain corrective measures by receiving facilities, treatment facilities, and receiving systems; amending s. 916.107, F.S.; requiring the sheriff to administer or to permit the department to administer the appropriate psychotropic medication to forensic clients before admission to a state mental health treatment facility; amending s. 916.12, F.S.; revising what an expert is required to specifically report on for recommended treatment for a defendant to attain competence to proceed, if the expert finds that a defendant is incompetent to proceed; providing report requirements; amending s. 916.13, F.S.; revising the circumstances under which every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon specified findings by the court; requiring a court to review the examining expert's report before issuing a commitment order; decreasing the timeframe in which an administrator or his or her designee is required to file a certain report with the court; requiring that a defendant be transported to the committing court's jurisdiction within a certain number of days after certain occurrences; requiring that the referring mental health facility transfer the

patient with medication and assist in discharge planning with medical teams at the receiving county jail to ensure continuity of care; reenacting ss. 394.658(1)(a), 916.106(9), and 916.17(1) and (2), F.S., relating to the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program requirements; the definition of the term "forensic client" or "client"; and conditional release; respectively, to incorporate the amendment made to s. 916.13, F.S., in references thereto; providing an effective date.

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

Section 1. Section 394.461, Florida Statutes, is amended to read:

394.461 Designation of receiving and treatment facilities and receiving systems.—The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designation for failure to comply with this part and rules adopted under this part. The department may issue a conditional designation for up to 60 days to allow the implementation of corrective measures. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(1) RECEIVING FACILITY.—The department may designate any community facility as a receiving facility. Any other facility within the state, including a private facility or a federal

facility, may be so designated by the department, provided that such designation is agreed to by the governing body or authority of the facility.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient may ~~shall~~ not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before a court hearing for involuntary placement in a state treatment facility, the court shall receive and consider the information documented in the transfer evaluation. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

(3) PRIVATE FACILITIES.—Private facilities designated as receiving and treatment facilities by the department may provide examination and treatment of involuntary patients, as well as voluntary patients, and are subject to all the provisions of this part.

(4) REPORTING REQUIREMENTS.—

(a) A facility designated as a public receiving or treatment facility under this section shall report to the department on an annual basis the following data, unless these data are currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.

2. Number of contract days.

3. Number of admissions by payor class and diagnoses.

4. Number of bed days by payor class.

5. Average length of stay by payor class.

6. Total revenues by payor class.

(b) For the purposes of this subsection, "payor class" means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-pay health insurance, private-pay health maintenance organization, private preferred provider organization, the Department of Children and Families, other government programs, self-pay patients, and charity care.

(c) The data required under this subsection shall be submitted to the department no later than 90 days following the end of the facility's fiscal year.

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report shall include individual facilities' data, as well as statewide totals. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) RECEIVING SYSTEM.—The department shall designate as a receiving system one or more facilities serving a defined geographic area developed pursuant to s. 394.4573 which is responsible for assessment and evaluation, both voluntary and involuntary, and treatment, stabilization, or triage for patients who have a mental illness, a substance use disorder, or co-occurring disorders. Any transportation plans developed pursuant to s. 394.462 must support the operation of the receiving system.

(6) RULES.—The department may adopt rules relating to:

(a) Procedures and criteria for receiving and evaluating

facility applications for designation, which may include onsite facility inspection and evaluation of an applicant's licensing status and performance history, as well as consideration of local service needs.

(b) Minimum standards consistent with this part that a facility must meet and maintain in order to be designated as a receiving or treatment facility and procedures for monitoring continued adherence to such standards.

(c) Procedures and criteria for designating receiving systems which may include consideration of the adequacy of services provided by facilities within the receiving system to meet the needs of the geographic area using available resources.

(d) Procedures for receiving complaints against a designated facility or designated receiving system and for initiating inspections and investigations of facilities or receiving systems alleged to have violated the provisions of this part or rules adopted under this part.

(e) Procedures and criteria for the suspension or withdrawal of designation as a receiving facility or receiving system.

Section 2. Subsection (1) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, intellectual disability, or autism ~~and~~ who are charged with

committing felonies shall receive appropriate treatment or training. In a criminal case involving a client who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following the date the department or agency receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure. For a forensic client who is held in a jail awaiting admission to a facility of the department or agency, evaluation and treatment or training may be provided in the jail by the local community mental health provider for mental health services, by the developmental disabilities program for persons with intellectual disability or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility. The sheriff shall administer or permit the department to administer the appropriate psychotropic medication to a forensic client before his or her admission to a state mental health treatment facility.

(b) Forensic clients who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there.

Section 3. Subsection (4) of section 916.12, Florida Statutes, is amended to read:

916.12 Mental competence to proceed.—

(4) If an expert finds that the defendant is incompetent to proceed, the expert shall report on any recommended treatment

for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining expert shall specifically report on all of the following:

(a) The mental illness causing the incompetence.~~;~~

(b) The completion of a clinical assessment by approved mental health experts trained by the department to ensure the safety of the patient and the community.

(c) The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives, including, at a minimum, mental health services, treatment services, rehabilitative services, support services, and case management services as those terms are defined in s. 394.67(16), which may be provided by or within multidisciplinary community treatment teams, such as Florida Assertive Community Treatment, conditional release programs, outpatient services or intensive outpatient treatment programs, and supportive employment and supportive housing opportunities in treating and supporting the recovery of the patient. ~~in order of choices;~~

(d) ~~(c)~~ The availability of acceptable treatment, and, if treatment is available in the community, the expert shall so state in the report.~~; and~~

(e) ~~(d)~~ The likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

The examining expert's report to the court must include a full

and detailed explanation regarding why the alternative treatment options referenced in the evaluation are insufficient to meet the needs of the defendant.

Section 4. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness and because of the mental illness:

1. The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or

2. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities, ~~or~~ community inpatient or outpatient settings, or any other mental health services, treatment services, rehabilitative services, support services, or case management services as those terms are

defined or described in s. 394.67(16) which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

Before issuing a commitment order, the court must review the examining expert's report to ensure alternative treatment options have been fully considered and found insufficient to meet the needs of the defendant.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(a) Immediately after receipt of a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure, the department shall request all medical information relating to the defendant from the jail. The jail shall provide the department with all medical information relating to the defendant within 3 business days after receipt of the department's request or at the time the defendant enters the physical custody of the department, whichever is earlier.

(b) Within 60 days ~~6 months~~ after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the

defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) ~~A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment.~~ The defendant must be transported in accordance with s. 916.107 to the committing court's jurisdiction within 7 days after notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. A determination on the issue of competency must be made at a hearing within 30 days after the notification ~~for the hearing~~. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. To ensure continuity of care, the referring mental health facility shall transfer the patient with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.

Section 5. For the purpose of incorporating the amendment made by this act to section 916.13, Florida Statutes, in a

reference thereto, paragraph (a) of subsection (1) of section 394.658, Florida Statutes, is reenacted to read:

394.658 Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program requirements.—

(1) The Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee, in collaboration with the Department of Children and Families, the Department of Corrections, the Department of Juvenile Justice, the Department of Elderly Affairs, and the Office of the State Courts Administrator, shall establish criteria to be used to review submitted applications and to select the county that will be awarded a 1-year planning grant or a 3-year implementation or expansion grant. A planning, implementation, or expansion grant may not be awarded unless the application of the county meets the established criteria.

(a) The application criteria for a 1-year planning grant must include a requirement that the applicant county or counties have a strategic plan to initiate systemic change to identify and treat individuals who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in, or at risk of entering, the criminal or juvenile justice systems. The 1-year planning grant must be used to develop effective collaboration efforts among participants in affected governmental agencies, including the criminal, juvenile, and civil justice systems, mental health and substance abuse treatment service providers, transportation programs, and housing assistance programs. The collaboration efforts shall be the basis for developing a problem-solving model and strategic plan for treating adults and juveniles who are in, or at risk of

entering, the criminal or juvenile justice system and doing so at the earliest point of contact, taking into consideration public safety. The planning grant shall include strategies to divert individuals from judicial commitment to community-based service programs offered by the Department of Children and Families in accordance with ss. 916.13 and 916.17.

Section 6. For the purpose of incorporating the amendment made by this act to section 916.13, Florida Statutes, in a reference thereto, subsection (9) of section 916.106, Florida Statutes, is reenacted to read:

916.106 Definitions.—For the purposes of this chapter, the term:

(9) "Forensic client" or "client" means any defendant who has been committed to the department or agency pursuant to s. 916.13, s. 916.15, or s. 916.302.

Section 7. For the purpose of incorporating the amendment made by this act to section 916.13, Florida Statutes, in references thereto, subsections (1) and (2) of section 916.17, Florida Statutes, are reenacted to read:

916.17 Conditional release.—

(1) Except for an inmate currently serving a prison sentence, the committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15 based upon an approved plan for providing appropriate outpatient care and treatment. Upon a recommendation that outpatient treatment of the defendant is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all

parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be returned to the department if it is found, after the appointment and report of experts, that the person meets the criteria for involuntary commitment under s. 916.13 or s. 916.15.

Section 8. This act shall take effect July 1, 2023.

Lowery, Nikki

From: Delia, Peter
Sent: Friday, March 17, 2023 2:39 PM
To: Lowery, Nikki
Subject: FW: DCF: SB 1412 - FSA Feedback

From: Allie McNair <amcnair@flsheriffs.org>
Sent: Thursday, March 16, 2023 1:31 PM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>; Cox, Ryan <Cox.Ryan@flsenate.gov>; Delia, Peter <Delia.Peter@flsenate.gov>
Subject: RE: DCF: SB 1412 - FSA Feedback

Thank you for the introduction JP. Our legislative committee reviewed those sections impacting the sherris and we were good with those provisions. I would be happy to answer any questions you might have or discuss more in depth.

Thanks!

Allie (Pass) McNair, Government Affairs Coordinator
(850) 877-2165 x. 5841 (office)
(850) 566-1979 (cell)
FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Thursday, March 16, 2023 12:54 PM
To: Allie McNair <amcnair@flsheriffs.org>; Cox, Ryan <Cox.Ryan@flsenate.gov>; Delia, Peter <Delia.Peter@flsenate.gov>
Subject: DCF: SB 1412 - FSA Feedback

Good Afternoon Allie,

Following up on our call, please let this email serve as an introduction between you and Senate CFE Staff. Allie serves as the Director of Legislative Affairs for the Florida Sheriff's Association. Ryan Cox is the S. CFE Staff Director and Peter Delia is the Senior Staff Attorney over SAMH issues.

As we discussed, they would like to know what FSA's position is on SB 1412. They may have other questions too, but I'll leave that to them.

Best,
JP

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ENGAGED • COLLABORATIVE
IDEAL TEAM PLAYERS

John Paul Fiore, J.D.
Director of Legislative Affairs
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Florida Department of Children and Families
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Office: (850) 488-9410
Cell: (850) 354-1551

Lowery, Nikki

From: Delia, Peter
Sent: Friday, March 17, 2023 2:39 PM
To: Lowery, Nikki
Subject: FW: Forensic Bed Waitlist

From: Delia, Peter
Sent: Wednesday, March 15, 2023 5:19 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Subject: FW: Forensic Bed Waitlist

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Wednesday, March 15, 2023 4:41 PM
To: Delia, Peter <Delia.Peter@flsenate.gov>
Cc: Guzman, Alex <alex.guzman@myflfamilies.com>; Corcoran, Chad <chad.corcoran@myflfamilies.com>
Subject: RE: Forensic Bed Waitlist

Peter,

Please see below:

- Forensic Wait List – 330
- 45 admissions this week

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From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Tuesday, March 14, 2023 10:55 AM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>
Subject: Forensic Bed Waitlist

Hey John Paul, would you mind sending over current numbers for the forensic bed waitlist?

Thanks!

Peter Delia
Senior Attorney
Florida Senate
Committee on Children, Families,
And Elder Affairs
404 South Monroe Street
520 Knott Building
Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

Lowery, Nikki

From: Delia, Peter
Sent: Friday, March 17, 2023 2:40 PM
To: Lowery, Nikki
Subject: FW: SB 1600

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Saturday, January 29, 2022 4:39 PM
To: Delia, Peter <Delia.Peter@flsenate.gov>
Subject: RE: SB 1600

Peter,

The table below reflects the data on January 13, 2022.

Individuals on the Waitlist	**548**
Individuals on the Waitlist for Greater Than 15 days	**492**
Average Number of Days Individuals Are on the Waitlist	**59**
Number of Individuals Waiting	**Number of Days Waiting**
287	**0-60 Days**
203	**61-100 Days**
58	**101 Days and Over**

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From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Saturday, January 29, 2022 12:28 PM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>
Subject: RE: SB 1600

Thanks so much JP, I've got it. One other question: Do you all have current numbers for the forensic bed waitlist?

Peter Delia
Senior Attorney
Florida Senate
Committee on Children, Families,
And Elder Affairs
404 South Monroe Street
520 Knott Building
Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

From: Fiore, John Paul <John.Fiore@myflfamilies.com>
Sent: Thursday, January 27, 2022 3:40 PM
To: Delia, Peter <Delia.Peter@flsenate.gov>
Cc: Brown, Terri <Terri.Brown@myflfamilies.com>; Cox, Ryan <Cox.Ryan@flsenate.gov>
Subject: RE: SB 1600

Hey Peter,

We'll get that over to you ASAP. It's with OPB now.

JP

From: Delia, Peter <Delia.Peter@flsenate.gov>
Sent: Thursday, January 27, 2022 12:47 PM
To: Fiore, John Paul <John.Fiore@myflfamilies.com>
Subject: SB 1600

Hey JP, do you all have an analysis for SB 1600 available?

Thanks!

Peter Delia
Senior Attorney
Florida Senate
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And Elder Affairs
404 South Monroe Street
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Tallahassee, Florida 32399-1100
delia.peter@flsenate.gov
(850) 487-5343

2023 AGENCY LEGISLATIVE BILL ANALYSIS
Department of Children and Families

BILL INFORMATION	
BILL NUMBER:	
BILL TITLE:	**Mental Health**
BILL SPONSOR:	
EFFECTIVE DATE:	July 1, 2023

COMMITTEES OF REFERENCE
1)
2)
3)
4)
5)

CURRENT COMMITTEE

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
Yes

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	July 30, 2022 For further information, please contact John Paul Fiore at (850) 488-9410.
LEAD AGENCY ANALYST:	Meghan Collins
ADDITIONAL ANALYST(S):	Heather Allman, SAMH Bill Hardin, SAMH Elaine C. Fygetakis, Ph.D., SAMH Courtney Smith, Office of Licensing
LEGAL ANALYST:	SaVannah Reading, OGC
FISCAL ANALYST:	Windy Brown, Budget Manager, Mental Health Services Julie Mayo, Budget Manager, Community SAMH

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The Florida Department of Children and Families (Department) is the state authority on issues related to substance abuse and mental health treatment. As such, the Department plays a critical role in regulating the designation of Baker Act receiving facilities and licensing substance abuse treatment providers. This bill establishes a conditional designation for Baker Act receiving facilities that will empower the Department with additional regulatory options for assisting providers with addressing their problems with meeting standards of care without requiring them to suspend crisis care services or reapply for a designation.

The Department also provides competency restoration treatment in state mental health treatment facilities (SMHTFs) for individuals charged with a felony who are determined incompetent to stand trial. Individuals served in SMHTFs have the most intensive behavioral health needs. While SMHTFs play a critical role in the behavioral health continuum of care, there are Department-funded, community-based inpatient treatment options, with varying levels of intensity, that are suitable for many of these individuals.

This bill makes the following revisions to Chapter 916, Florida Statutes:

a) Strengthens statutory language to require expert evaluators and courts to consider alternative treatment options before ordering state mental health treatment facility (SMHTF) placement;
b) Reduces the maximum amount of time patients may wait to be discharged from a SMHTF once they are clinically cleared, from 30 days to 72 hours;
c) Requires competency determinations at a competency hearing within 30 days of notification from SMHTFs that patients have been clinically cleared; and

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Conditional Designation of Baker Act Receiving Facilities
Section 1

A designated receiving facility is a behavioral health facility approved by the Department of Children's and Families which provides, at a minimum, emergency screening, evaluation, and short-term stabilization for mental health or substance use disorders. Only facilities designated by the Department are permitted by law to involuntarily hold and treat persons for a mental illness. Designated receiving facilities include hospitals licensed under Chapter 395, Florida Statutes, and Crisis Stabilization Units (CSUs), licensed under Chapter 394, Florida Statutes. CSUs are mainly residential units of community mental health centers and receive Department funds for Baker Act related services.

The Department designates these facilities as public or private. "Public" in this context means the receiving facility received funds from the Department for Baker Act exam related services. These public facilities are under contract with a Managing Entity. Public receiving facilities may also receive funding through Medicaid, private insurance, or county governments. "Private" receiving facilities do not receive funds from the Department and most are not under contact with a Managing Entity.

Section 394.461, Florida Statutes, provides the Department statutory and rulemaking authority to regulate designations of Baker Act receiving facilities:

> "The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and **may suspend or withdraw such designation** for failure to comply with this part and rules adopted under this part. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part."

Currently, this statute does not provide the Department with the authority to issue a "conditional" designation, only suspension or withdrawal of designations. In circumstances where a provider is the only available public receiving facility in a county or geographic area, "suspending" or "withdrawing" the designation based on an inspection violation is not usually a viable option because either of these actions would result in reducing access to crisis care services.

Currently, there are 126 public and private designated receiving facilities in Florida. In past years, providers submitted requests for re-designation while they were still under review by the Department for outstanding inspection finding, or they were the subject of an investigation by the Agency for Health Care Administration or the U.S. Department of Health and Human Services. In these situations, the Department does not have a licensing mechanism to allow the facilities to temporally operate while under a corrective action plan.

The Department has authority under the Substance Abuse Licensure rule to issue an interim license for this purpose and has experienced positive results in remediating minor issues and enforcing corrective action plans through this similar mechanism.

Forensic System Efficiencies
Sections 2, 3, and 4
The Department is responsible for providing high quality behavioral health services necessary to restore individuals to competency in its six SMHTFs, three of which are state operated and three of which are privately operated, and through contracts with a network of providers that offer treatment in the community. While SMHTFs play a critical role in the behavioral health continuum of care, Department-funded, community-based inpatient treatment options are suitable for many of these individuals.

As of July 21, 2022, there were 420 individuals awaiting SMHTF placement; of these, 306 have been waiting more than 15 days. Although these figures represent a significant decrease from a peak in February 2022, the Department is committed to continue to reduce the jail backlog.

Mental health experts are appointed, pursuant to section 916.115, Florida Statutes, to determine whether a defendant has a mental illness and, if so, consider whether the defendant meets the criteria for competence. When expert evaluators determine that a person does not meet the established criteria to proceed to trial, the courts may commit the defendant to a secure setting to receive intensive behavioral health services, with the goal of competency restoration. The evaluator must also report on any recommended treatment for the defendant to attain competence to proceed. The statute does not specify the treatment options that should be considered. For Fiscal Year 2022-2023, the Department is funding 299 community-based beds. 278 of these beds are currently filled. In addition, the Department is increasing the number of community-based diversion options to meet anticipated future demand.

Currently, statute requires that a competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed. However, many defendants are either not being transported back to the committing jurisdiction in a timely manner or are not being transported for the hearing at all. While patients await transportation back to the county with jurisdiction, they remain at the SMHTF. Most days, there are between 80 and 100 competent individuals in SMHTFs awaiting transportation back to the committing jurisdiction. This directly impacts the waitlist for state mental health services as those individuals left in state facilities are occupying beds that could be utilized by those awaiting treatment.

Chapter 916, Florida Statutes also mandates a competency hearing be held within 30 days of receiving the competency notification. However, there are times in which the courts do not make a determination of competency during an initial hearing, and in many of these cases, the defendant is left at the facility far longer than the maximum 30 days anticipated by the statute. For those that are transported back to the jail, some decompensate before a determination of competency can be made because hearings are continued or not scheduled within the 30-day timeframe.

In addition to having the right to be served in the least restrictive appropriate setting, once individuals have completed their treatment at a SMHTF and have been restored to competency, they should be discharged promptly and returned to stand trial in the judicial process.

2. EFFECT OF THE BILL:

Conditional Designation of Baker Act Receiving Facilities
Section 1
This section of the bill amends s. 394.461, F.S., to authorize the Department to issue a conditional designation for up to 60 days to allow the implementation of corrective measures. For facilities with monitoring deficiencies, this amendment will allow the Department time to enforce corrective action plans without suspending or withdrawing

their designation and allow facilities time to address their inspection issues without having to suspend services or reapply for a designation. Ultimately, this section will facilitate the Department's ability to work with facilities to correct program deficiencies while they remain in business examining and treating individuals in their care.

Forensic System Efficiencies
As Florida's population grows, there is also an increase in patients' behavioral health needs. In Florida, within this population, there has been a 19.3 percent increase in commitments, from 1,900 in Fiscal Year 2017-2018 to 2,267 in Fiscal Year 2021-2022. This bill will enable the Department to better respond to increasing demands on the behavioral health system, ensuring the highest quality of care and a more streamlined discharge process once patients are clinically cleared. These revisions will aid the Department in increasing the number of individuals served each year and reducing their average length of stay from 95-125 days towards the national average of 75 days.

Section 2
This section amends s. 916.107, F.S., to require forensic clients, who are held in a jail awaiting admission to a statement mental health treatment facility, to receive psychiatric medication therapy prior to their admission to the state mental health treatment facility if it is clinically indicated. This change will help the client regain competency by initiating therapy the moment it is deemed necessary for them to do so. In turn, this may reduce the length of time a client needs to receive treatment once they arrive at the state mental health treatment facility. The section further stipulates that the sheriff will be responsible for administering the appropriate medication in the county jails.

Section 3
This section amends s. 916.12, F.S., to require expert evaluators and courts to consider a list of minimum alternative treatment options, all of which are Department-funded, before ordering the defendant be placed in a SMHTF. The list includes: multi-disciplinary community teams, Florida Assertive Community Treatment, conditional release programs, intensive outpatient, and supportive employment and/or housing opportunities in treating the defendant.

Section 4
This section amends s. 916.13, F.S., to allow courts to include an explanation in their order to as to why each of the alternative treatment options listed in Section 3 are insufficient to meet the defendant's needs.

This section is also amended to require patients be evaluated within 60 days instead of six months so that a report is sent to the court 60 days after their admission. This section also reduces the maximum amount of time patients may wait to be transported out of a SMHTF, from 30 days to 72 hours, once they are clinically cleared. The language is also amended to require courts to make a competency determination at the competency hearing within 30 days of notification from SMHTFs.

Reducing the amount of time patients are allowed to wait to be transferred from a SMHTF will increase the number of individuals who can be served in SMHTFs and reduce the amount of time that defendants wait in jail to access these critical services. Requiring that a determination on the issue of competency be made at the competency hearing will reduce the possibility of competent defendants occupying a bed in SMHTFs beyond the statutorily allowable timeframe and reduce the risk that a defendant will decompensate when returned to jail.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? NO

If yes, explain:	N/A
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	Proponents: Patients, victims of crime, and state attorneys Opponents: Some public defenders
Provide a summary of the proponents' and opponents' positions:	Proponents: The patients will benefit from these revisions, as will victims of crime and state attorney whose cases will resolved faster. Opponents: Some public defenders who may believe patients should stay in a state facility and not return to jail.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? NO

If yes, provide a description:	N/A
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? NO

Board:	N/A
Board Purpose:	
Who Appoints:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	N/A
Expenditures:	**Section 2** Each of the 67 counties have an overall infrastructure to manage incarcerated individuals within local jails. In compliance with s. 951.23(4)(a), F.S., and Florida Model Jail Standards (FMJS), medical staff at each jail have basic resources to support an individual's medical or psychiatric needs. Support could include low-level first-aid, medication administration (Section 7.12 FMJS), chronic diseases and management of patients in active crisis (Section 7.23 FMJS). With their current infrastructure, jail medical staff can and do begin initial psychiatric medication management. With these basic medical and psychiatric resources, it is anticipated that there would not be a fiscal impact to the local jails (Sheriffs) when requiring jail-based psychiatric medication therapy.

	Section 4 According to s. 916.107(10)(a), F.S., each sheriff is solely responsible for the transportation of individuals to and from each SMHTF. This adjustment to statute will not increase the number of transports already being performed by local jails. With these transports already budgeted, it is anticipated that there will not be a fiscal impact to local jails (Sheriffs). The requirement to transport defendants within 72 hours rather than 30 days does not impact the total number of transports. Alternatively, decreasing the time to transport defendants back to their respective jail will have a direct impact on system wide throughput, creating availability of beds across the SMHTF system.
Does the legislation increase local taxes or fees?	No
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. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	N/A
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	None
Expenditures:	No fiscal impact
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	No
Does the bill decrease taxes, fees or fines?	No
What is the impact of the increase or decrease?	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No
If yes, describe the anticipated impact to the agency including any fiscal impact.	No

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	The Department has defended significant litigation involving access to state hospitals including: • Individuals waiting in jail pending an available bed, • Ensuring individuals are returned to court in a timely manner, and • Commitments that do not meet criteria for admission.

The Florida Senate

APPEARANCE RECORD

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

3/20/2023	1412
Meeting Date	Bill Number or Topic
S. CFE	
Committee	Amendment Barcode (if applicable)

Name John Paul Fiore, DCF - Legislative Affairs Director Phone 850-488-9410

Address 2415 N. Monroe Street Email

Street

Tallahassee FL 32303

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:

Florida Department of Children and Families

☐ 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)

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 Children, Families, and Elder Affairs

BILL:	CS/SB 1412
INTRODUCER:	Committee on Children, Families, and Elder Affairs and Senator Bradley
SUBJECT:	Mental Health
DATE:	March 21, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1412 establishes a conditional designation for Baker Act receiving and treatment facilities as an alternative to the suspension or withdrawal of a standard facility designation issued by the Department of Children and Families (the DCF). The bill also:

- Requires local sheriffs or the DCF to administer psychotropic medications to forensic clients in jails if clinically indicated prior to their admission to forensic facilities if clinically indicated;
- Requires expert evaluators and courts to consider alternative, community-based treatment options before ordering the placement of a defendant to a forensic facility;
- Requires administrators of forensic facilities to provide notification to courts no more than 60 days, rather than six months as in current law, from the time a defendant is competent to proceed or no longer meets commitment criteria;
- Reduces the maximum amount of time patients may wait to be transported from a forensic facility to the committing jurisdiction once they are competent to proceed or no longer meet commitment criteria, from 30 days to 7 days;
- Requires competency determinations to be made at a competency hearing within 30 days of notification from forensic facilities that patients have gained competency or no longer meet commitment criteria;
- Requires forensic facilities to transfer defendants back to the committing jurisdiction with up to 30 days of medication and assist in discharge planning with medical teams at the receiving county jail; and
- Reenacts and makes conforming changes to several existing sections of statute.

The DCF anticipates that the bill will have no fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Receiving and Treatment Facilities

The DCF is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designations for failure to comply with Florida law.[1] Unless specifically designated by the DCF, facilities are not permitted to hold or treat involuntary patients experiencing a mental health or substance use disorder crisis.[2] The DCF has authority to designate any community-based facility as a receiving facility.[3]

The DCF may also specifically designate any state-owned, state-operated, or state-supported facility as a state treatment facility.[4] The DCF can designate any other facility, including private and federal facilities, as either a receiving facility or a treatment facility provided that the governing board or authority of such facility agrees to the designation.[5] Private facilities designated as receiving and treatment facilities by the DCF may provide examination and treatment of involuntary patients, as well as voluntary patients.[6]

The DCF is also statutorily authorized to adopt rules relating to a number of issues surrounding receiving and treatment facilities, including:

- Procedures and criteria for receiving and evaluating facility applications for designation, which may include onsite facility inspection and evaluation of an applicant's licensing status and performance history, as well as consideration of local service needs;
- Minimum standards consistent that a facility must meet and maintain in order to be designated as a receiving or treatment facility and procedures for monitoring continued adherence to such standards;
- Procedures and criteria for designating receiving systems which may include consideration of the adequacy of services provided by facilities within the receiving system to meet the needs of the geographic area using available resources;
- Procedures for receiving complaints against a designated facility or designated receiving system and for initiating inspections and investigations of facilities or receiving systems alleged to have violated regulatory laws or rules; and
- Procedures and criteria for the suspension or withdrawal of designation as a receiving facility or receiving system.[7]

[1] Section 394.461, F.S.
[2] *Id*.
[3] Section 394.461(1), F.S.
[4] Section 394.461(2), F.S.
[5] Section 394.461(1) and (2), F.S.
[6] Section 394.461(3), F.S.
[7] Section 394.461(6), F.S.

Current law does not provide the DCF with the authority to issue a "conditional" designation, only suspension or withdrawal of designations. In circumstances where a provider is the only available public receiving facility in a county or geographic area, "suspending" or "withdrawing" the designation based on an inspection violation is not usually a viable option because either of these actions would result in reducing access to crisis care services.[8]

There are currently 126 public and private designated receiving facilities in Florida.[9] In past years, providers submitted requests for re-designation while still under review by the DCF for outstanding inspection findings, or while the subject of an investigation by the Agency for Health Care Administration (the AHCA) or the U.S. Department of Health and Human Services (HHS).[10] In such instances, the DCF does not have a licensing mechanism to allow such facilities to temporally operate while under a corrective action plan.[11]

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism, and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed[12] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil and forensic treatment facilities by the circuit court,[13] or in lieu of such commitment, may be released on conditional release[14] by the circuit court if the person is not serving a prison sentence.[15] The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release and a defendant may not be released from either commitment or conditional release except by order of the committing court.[16]

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. Florida law provides for the ability to commit a person under either basis; however, the goals for the commitment are different for each basis of the commitment. Persons committed under s. 916.13, F.S., after an adjudication of incompetency to proceed have a primary goal of restoration of competency; whereas persons who have been found not guilty by reason of insanity that are committed have a primary goal of stabilization and post-hospital planning.

[8] The Department of Children and Families (the DCF), *Draft Agency Analysis of SB 1412*, July 30, 2022 at p. 2. (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, "The DCF Analysis").
[9] *Id*., p. 3.
[10] *Id*.
[11] *Id*.
[12] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." Section 916.12(1), F.S.
[13] Sections 916.13, 916.15, and 916.302, F.S.
[14] Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[15] Section 916.17(1), F.S.
[16] Section 916.16(1), F.S.

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[17]

A forensic facility is a separate and secure facility established within the DCF or the Agency for Persons with Disabilities (the APD) to service forensic clients committed pursuant to ch. 916, F.S.[18] A separate and secure facility means a security-grade building for the purposes of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.[19]

Determination of Incompetency

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[20] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[21] If the defendant is found to be competent, the criminal proceeding resumes.[22] If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.[23]

Expert Evaluations

Section 916.115, F.S., requires courts to appoint no more than three experts to determine the mental condition of a defendant in a criminal case, including competency to proceed, insanity, involuntary placement, and treatment.[24] A defendant is considered incompetent to proceed if the defendant:

- Does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding; or
- Has no rational, as well as factual, understanding of the proceedings against her or him.

The experts may evaluate the defendant in jail or in another appropriate local facility or in a facility of the Department of Corrections (the DOC). When expert evaluators determine that a person does not meet the established criteria to proceed to trial, a court may commit the defendant to a secure setting to receive intensive behavioral health services, with the goal of competency restoration.[25]

[17] Section 916.106(4), F.S.
[18] Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to ch. 916, F.S., from non-forensic residents.
[19] *Id*.
[20] Rule 3.210, Fla.R.Crim.P.
[21] *Id.*
[22] Rule 3.212, Fla.R.Crim.P.
[23] *Id.*
[24] Section 916.115(1), F.S.
[25] The DCF Analysis at p. 3.

Evaluators must also report on any recommended treatment for the defendant to attain competence to proceed.[26] The statute does not specify the treatment options that should be considered. For Fiscal Year 2022-2023, the DCF reports that it is funding 299 community-based beds, 278 of which are currently filled. [27] In addition, the DCF reports that it is increasing the number of community-based diversion options to meet anticipated future demand.[28]

Judicial Determination of Incompetency and Commitment

A defendant is deemed incompetent to proceed if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.[29]

Mental health experts appointed pursuant to s. 916.115, F.S., must first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed.[30] A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding. The court may commit the defendant or take other action without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant.[31] Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.[32]

In considering the issue of competence to proceed, an examining expert must first consider and specifically include in his or her report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings at issue;
- Manifest appropriate courtroom behavior; and
- Testify relevantly.[33]

In addition, an examining expert must consider and include in his or her report any other factor deemed relevant by the expert.[34]

[26] Section 916.13(1)(b), F.S.
[27] The DCF Analysis at p. 3.
[28] *Id*.
[29] Section 916.12(1), F.S.
[30] Section 916.12(2), F.S.
[31] *Id*.
[32] *Id*.
[33] Section 916.12(3), F.S.
[34] *Id*.

If an expert finds that the defendant is incompetent to proceed, the expert must report on any recommended treatment for the defendant to attain competence to proceed.[35] In considering the issues relating to treatment, the examining expert must specifically report on:

- The mental illness causing the incompetence;
- The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;
- The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and
    - The likelihood of the defendant's attaining competence under the treatment recommended,
    - An assessment of the probable duration of the treatment required to restore competence, and
    - The probability that the defendant will attain competence to proceed in the foreseeable future.[36]

A defendant who, because of psychotropic medication,[37] is able to understand the nature of proceedings and assist in the defendant's own defense must not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental functioning is dependent upon such medication.[38]

If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.[39]

Judicial Procedure for Release and Transportation Back to Committing Jurisdiction

Current law also requires that a competency hearing must be held within 30 days after the court receives notification that a defendant is competent to proceed or no longer meets the criteria for continued commitment.[40] However, many defendants are either not being transported back to the committing jurisdiction in a timely manner or are not being transported for the hearing at all.[41] While patients await transportation back to the county with jurisdiction, they remain at a treatment facility.[42] There are between 80 and 100 competent individuals in treatment facilities

[35] Section 916.12(4), F.S.
[36] *Id*.
[37] "Psychotropic medication" is defined to mean any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs. Section 916.12(5), F.S.
[38] Section 916.12(5), F.S.
[39] Sections 916.13(2)(b) and 916.15(3)(c), F.S. For involuntary commitment of a person under s. 916.15, F.S., the additional report must be submitted prior to the end of any period of extended commitment, rather than "at the end" of the extended commitment.
[40] Sections 916.13(2)(c) and 916.15(5), F.S.
[41] The DCF Analysis at p. 3.
[42] *Id*.

awaiting transportation back to the committing jurisdiction on an average day.[43] As a result, the waitlist for state mental health services is longer as it contains some individuals left in state facilities that are occupying beds which could be utilized by those awaiting treatment.[44]

While s. 916.13, F.S., requires that a competency hearing be held within 30 days of receiving a competency notification, there are instances in which courts do not make a determination of competency during an initial hearing, resulting in a defendant remaining at a treatment facility for longer than the maximum 30 days required by current law.[45] Additionally, in some instances individuals that are transported back to the committing jurisdiction decompensate[46] before a determination of competency can be made because hearings are continued or not scheduled within the 30-day timeframe.[47]

If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it.[48] The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.[49]

State Forensic System – Mental Health Treatment for Criminal Defendants

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).[50] The DCF also contracts with a private provider to operate three additional facilities that provide competency restoration training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility which are operated by Wellpath Recovery Solutions (Wellpath).[51]

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[43] *Id*.
[44] *Id*.
[45] *Id*.
[46] Psychiatrists and psychologists use the term "decompensating" to describe worsening symptoms of mental illness. An "episode of decompensation" is a period of significant, often rapid, deterioration in mental health, such as a panic attack. *See Episodes of Decompensation in Mental Illness: Social Security Disability*, available at https://www.disabilitysecrets.com/mic2.html (last visited March 14, 2023).
[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] The DCF, *State Mental Health Treatment Facilities*, available at https://www2.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml last visited March 14, 2023).
[51] *Id*.

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.[52] The hospital's civil services are comprised of the following three units with a total of 490 beds:

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.[53]

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.[54]

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.[55] The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.[56]

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.[57] The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.[58]

As of March 15, 2023, there were a total of 330 individuals on the waitlist for forensic beds at the state's mental health facilities.[59] Individuals spend 59 days on the waitlist on average.[60]

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[52] The DCF, *Forensic Facilities*, available at https://www2.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml (last visited March 14, 2023).
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Forensic Bed Waitlist*, March 15, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[60]The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Re: SB 1600*, January 29, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

Rights of Forensic Clients

Section 916.107, F.S., establishes a number of rights for clients of the state's forensic system. Clients with mental illness, intellectual disability, or autism who are charged with committing felonies must receive appropriate treatment or training.[61] In a criminal case involving a client who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following the date the department or agency receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure.[62]

For a forensic client who is held in a jail awaiting admission to a facility of the DCF or the APD, evaluation and treatment or training may be provided in the jail by the local community mental health provider for mental health services, by the developmental disabilities program for persons with intellectual disability or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility.[63]

Clients also have a right to treatment, including the right to be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.[64] Not more than 30 days after admission, each client shall also have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.[65]

III. Effect of Proposed Changes:

Conditional Designations (Section 1)

In lieu of the suspension or withdrawal of a receiving or treatment facility's designation following inspection issues requiring a corrective action plan, the bill amends s. 394.461, F.S., authorizing the DCF to issue conditional designations for up to 60 days to allow for the implementation of corrective measures. . This will facilitate the DCF's ability to work with facilities to correct program deficiencies while they remain in business examining and treating individuals in their care.

Administration of Psychotropic Medications – Rights of Forensic Clients (Section 2)

The bill amends s. 916.107, F.S., requiring sheriffs to either administer, or permit the DCF to administer, clinically indicated psychotropic medication to forensic clients held in a jail awaiting admission to a state mental health treatment facility before they are admitted to the facility. This will help to stabilize defendants and create a smoother transition to the competency restoration process once a defendant is committed to a forensic facility.

[61] Section 916.107(1)(a), F.S.
[62] *Id*.
[63] *Id*.
[64] Section 916.107(2)(b), F.S.
[65] Section 916.107(2)(d), F.S.

Process for Incompetency Determinations and Alternative Treatment Options (Sections 3 and 4)

The bill amends s. 916.12, F.S., requiring expert evaluators and courts to consider a list of DCF-funded minimum alternative treatment options before ordering a defendant who has been found by an expert to be incompetent to be placed in a treatment facility. Specifically, the bill requires evaluating experts to report on the completion of a clinical assessment made by DCF-trained mental health experts to ensure the safety of the patient and the community. Experts must also report on the appropriateness of the following community-based options for treating and supporting the recovery of a patient:

- Mental health services;
- Treatment services;
- Rehabilitative services;
- Support services; and
- Case management services as those terms are defined in s. 394.67(16), F.S., which may be provided by or within:
  - Multidisciplinary community treatment teams;
  - Community treatment teams, such as Florida Assertive Community Treatment (FACT) teams;
  - Conditional release programs;
  - Outpatient services or intensive outpatient treatment programs; and
  - Supportive employment and supportive housing opportunities.

The bill also requires the examining expert's report to the court to include a full and detailed explanation of why the alternative treatment options referenced in the evaluation are insufficient to meet the needs of the defendant.

The bill also amends s. 916.13, F.S., requiring courts to review the examining expert's report to ensure that each of the above-mentioned alternative treatment options are insufficient to meet the defendant's clinical needs when determining if there is clear and convincing evidence that requires the issuance of a commitment order.

Modified Timelines for Certain Procedures for an Incompetent Defendant After Admission (Section 4, in part)

The bill also requires treatment facilities to evaluate defendants within 60 days, instead of six months, so that a report is sent to the court 60 days after a defendant's admission to the treatment facility.

The bill also reduces the maximum amount of time defendants may wait to be transported out of a treatment facility, from 30 days to 7 days, once they are competent to proceed or no longer meet commitment criteria. This will require the sheriff or the entity transporting the defendant to the committing jurisdiction to pick up the defendant in a much shorter time. This provision will also reduce the likelihood that the defendant will decompensate while also reducing the waitlist for other defendants who are in need of such treatment.

The bill also requires courts to make a competency determination at the competency hearing within 30 days of notification from treatment facilities that the defendant is competent to proceed or no longer meets commitment criteria. Treatment facilities must discharge the defendant with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. This will ensure the defendant is provided continuity of care when returning back to the committing jurisdiction.

Conforming Changes (Section 5-8)

The bill also reenacts ss. 394.658(1)(a), 916.106(9), and 916.17(1) and (2), F.S., for the purposes of incorporating changes made under the act

The bill is effective 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF states that the bill will have no impact on state government.[66] The DCF also states that the bill will not have a fiscal impact on local jails because existing medical and psychiatric resources within jails throughout the state are sufficient to meet the requirements of the bill.[67] The agency also anticipates that decreasing the time for transporting defendants will not result in a fiscal impact on sheriffs due to the fact that the total number of transports will not increase.[68] The Florida Sheriff's Association anticipates the provisions in the bill that address the delivery of certain psychotropic medications and timelines for transporting a defendant back to the committing jurisdiction will not have a negative fiscal impact on sheriffs.[69]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.461, 916.107, 916.12, and 916.13 of the Florida Statutes.

This bill reenacts sections 394.658, 916.106, and 916.17 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 Children, Families, and Elder Affairs on March 20, 2023:

The Committee Substitute changes all instances of the word "patient" in the bill to "defendant" to provide consistency with the rest of ch. 916, F.S.

B. Amendments:

None.

[66] The DCF Analysis at p. 6.
[67] *Id*., p. 5.
[68] *Id*, p. 6.
[69] *See* The Florida Sheriff's Association, E-mail from Allie McNair, Government Affairs Coordinator, *Re: DCF: SB 1412 – FSA Feedback* March 16, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

119516

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
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The Committee on Children, Families, and Elder Affairs (Bradley) recommended the following:

Senate Amendment

Delete lines 181 - 280
and insert:
safety of the defendant and the community.

(c) The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives, including, at a minimum, mental health services, treatment services, rehabilitative services, support services, and case management services as those terms


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are defined in s. 394.67(16), which may be provided by or within multidisciplinary community treatment teams, such as Florida Assertive Community Treatment, conditional release programs, outpatient services or intensive outpatient treatment programs, and supportive employment and supportive housing opportunities in treating and supporting the recovery of the defendant. ~~in order of choices;~~

(d) ~~(c)~~ The availability of acceptable treatment, and, if treatment is available in the community, the expert shall so state in the report. ~~; and~~

(e) ~~(d)~~ The likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

The examining expert's report to the court must include a full and detailed explanation regarding why the alternative treatment options referenced in the evaluation are insufficient to meet the needs of the defendant.

Section 4. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness and because of the

mental illness:

1. The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or

2. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities, ~~or~~ community inpatient or outpatient settings, or any other mental health services, treatment services, rehabilitative services, support services, or case management services as those terms are defined or described in s. 394.67(16) which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

Before issuing a commitment order, the court must review the examining expert's report to ensure alternative treatment options have been fully considered and found insufficient to meet the needs of the defendant.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(a) Immediately after receipt of a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure, the department shall request all medical information relating to the defendant from the jail. The jail shall provide the department with all medical information relating to the defendant within 3 business days after receipt of the department's request or at the time the defendant enters the physical custody of the department, whichever is earlier.

(b) Within 60 days ~~6 months~~ after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) ~~A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment.~~ The defendant must be transported in accordance with s. 916.107 to the committing court's jurisdiction within 7 days after notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. A determination on the issue of competency must be made at a

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hearing within 30 days after the notification ~~for the hearing~~. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. To ensure continuity of care, the referring mental health facility shall transfer the defendant with